

disbursement

Supplemental previously recorded

INSTRUMENT PREPARED BY
VIRGINIA GAS AND OIL BOARD

VIRGINIA:

BEFORE THE VIRGINIA GAS AND OIL BOARD

APPLICANTS:

Ronald A. Clyborne ("Clyborne"), and)
Consolidation Coal Company ("Consol"))

DOCKET NO.
VGOB 91-0521-0120

RELIEF SOUGHT:

Issuance of an Amended Supplemental)
Order Amending Prior Orders Affecting)
Drilling Unit Q-35 located in the Oakwood)
Coalbed Methane Gas Field I, Buchanan)
County, VA (herein "Subject Drilling Unit"))
to Provide:)
(1) for the Calculation of Those Funds)
Unit Operator Deposited into the Escrow)
Account for VGOB Tract 2 of Subject)
Drilling Unit;)
(2) a Royalty Accounting;)
(3) Disbursement to Clyborne and Consol)
in Accordance with their Royalty Agreement)
Those Funds Deposited by the Unit Operator)
Into Subject Drilling Unit's Escrow Account)
For VGOB Tract 2; and)
(4) Authorization for the Unit Operator to)
Make Direct Payment of Royalties for)
VGOB Tract 2)

ENTERED

REPORT OF THE BOARD

FINDINGS AND ORDER

1. **Hearing Date and Place:** This matter came on for final hearing before the Virginia Gas and Oil Board (herein "Board") at 9:00 a.m. on June 19, 2001 at the Southwest Virginia Higher Education Center on the campus of Virginia Highlands Community College, Abingdon, VA.
2. **Appearances:** Mark Swartz, Esq. of the firm Swartz and Stump L. C. appeared for the Unit Operator; and Sandra B. Riggs, Assistant Attorney General, was present to advise the Board.
3. **Jurisdiction and Notice:** Pursuant to Va. Code §§ 45.1-361.1 *et seq.*, and in particular Va. Code §§ 45.1-361.21 and 45.1-361.22, the Board finds that it has jurisdiction over the establishment and maintenance of an escrow account, with tract subaccounts, for each of the coalbed methane gas drilling units established by the Board through its field rules and subject to a pooling orders, and that the Unit Operator is required to deposit, as applicable, those funds specified in Va. Code § 45.1-361.21.D., 45.1-361.22.A.2, 45.1-361.22.A.3 and 45.1-361.22.A.4 into the applicable escrow tract subaccounts. Further, the Board finds that: (1) while it does not have jurisdiction to resolve conflicting claims to the ownership of the Coalbed Methane Gas produced by the Unit Operator from wells located on Subject Drilling Unit, and (2) while it does not have jurisdiction to interpret voluntary agreements by and between the Gas owners/claimants and/or the Unit Operators or to abridge or contravene the provisions of such agreements, (3) pursuant to Va. Code § 45.1-361.22.A.5, the Board does have jurisdiction and authority to disburse funds from the Escrow Account provided the Board has been provided with (a) a final decision of a court of competent jurisdiction adjudicating the ownership of coalbed methane gas as between the

conflicting claimants or (b) an agreement among all claimants owning conflicting estates in the tract in question or any undivided interest therein.

4. **Prior Proceedings:**

- 4.1. On July 19, 1991, the Board executed an order pooling all interests in the Subject Drilling Unit for the production of occluded natural gas produced from coalbeds and rock strata associated therewith (herein "Gas") in accordance with the provisions of Va. Code §§ 45.1-361.21 and 45.1-361.22 (herein "Pooling Order"). The Pooling Order was filed with the Clerk of the Circuit Court of Buchanan County on July 19, 1991 in Deed Book 377 at Page 449. The Board designated Oxy USA, Inc. as the Unit Operator of the Subject Drilling Unit. The Pooling Order was amended and supplemented by the Board's Supplemental Order Regarding Elections executed on January 3, 1994, which was filed on January 7, 1994 in Deed Book 417 page 341 ("Supplemental Order"). Consol, Inc. succeeded Oxy USA, Inc. as the Unit Operator. On February 6, 2001, the Board entered its Revised Supplemental Order, which was filed with the Clerk of the Court on February 15, 2001 in Deed Book 519 at Page 368 ("Revised Supplemental Order") (herein the Pooling Order, the Supplemental Order, and the Revised Supplemental Order are sometimes collectively referred to as the "Pooling Order"). Consol Energy Inc. succeeded Consol, Inc. as Unit Operator.
- 4.2 To the extent claims to the Gas were in conflict, pursuant to Va. Code § 45.1-361-22 payments attributable to said conflicting claims/interests were ordered deposited by the Unit Operator into the escrow account established by the Pooling Order (herein "Escrow Account"). According to the Revised Supplemental Order, the oil and gas interests of Clyborne, Inc. and the coal interests of Consolidation Coal Company in half of a 0.01-acre tract (.005 acres), n/k/a VGOB Tract 2 of Subject Drilling Unit, were in conflict and became subject to the escrow requirements of the Pooling Order.
- 4.3 The Unit Operator's Supplemental Affidavit Re CBM Unit Q-35 ("Affidavit") and the Exhibit EE attached to said Affidavit, copies of which were attached to and made a part of the Revised Supplemental Order are in conflict, in the following respects: (a) the Affidavit states "That after the pooling hearing held in the captioned matter, Ronald Clyborne and Reserve Coal Properties entered into a royalty split agreement; that by the terms of said agreement escrow regarding the conflicting claims of Ronald A. Clyborne and Reserve Coal Properties is no longer required"; and (b) Exhibit EE to said Affidavit reflects that Consolidation Coal Company (1/2 Coal) and Clyborne, Inc. (1/2 Oil & Gas) have entered into a royalty split agreement. Notwithstanding the discrepancies in the Unit Operator's Affidavit and Exhibit EE attached thereto, at the final hearing of this matter, the Unit Operator testified that the parties to the Split Agreement are Consolidation Coal Company and Ronald A. Clyborne, and that they are the parties entitled to disbursement of the funds on deposit in the VGOB Tract 2 subaccount as reflected in the revised Exhibit EE attached hereto.
- 4.4 By letter dated February 13, the Board gave notice to the Unit Operator, Reserve Coal Properties, Consolidation Coal Company, Ron Clyborne, Clyborne, Inc., CONSOL, Inc., and the Escrow Agent that on its own motion it would take the Affidavit under consideration at its hearing on March 19, 2001 and consider whether to: (1) amend the Pooling Order to provide for the disbursement of all funds on deposit in the Tract 2 Escrow Subaccount to Reserve Coal Properties, Consolidation Coal Company, Clyborne, Inc. and/or Ron Clyborne in accordance with the terms of split agreements executed by all or some of said parties based on the Unit Operator's representations as to entitlement, (2) close the Tract 2 escrow subaccount, and (3) delete the requirement that the Unit Operator place future royalties attributable to Tract 2 in the Escrow Account. Further, the Board ordered the Unit Operator to file with the Board a complete accounting of funds it had placed on deposit in the Escrow Account. At the March 19, 2001 hearing this matter was continued to April 17, 2001, then to May 15, 2001, and then came on for final hearing before the Board on June 19, 2001.

4.5 The Unit Operator filed the attached accounting for Subject Drilling Unit's Escrow Account with the Board ("Accounting").

5. **Findings:**

5.1. Va. Code 45.1-361.22.5 provides:

The Board shall order payment of principal and accrued interests, less escrow account fees, from the escrow account to conflicting claimants within thirty days of receipt of notification of (i) a final decision of a court of competent jurisdiction adjudicating the ownership of coalbed methane gas as between them or (ii) an agreement among all claimants owning conflicting estates in the tract in question or any undivided interest therein. The amount to be paid to the conflicting claimants shall be determined based on the percentage of ownership interest of the conflicting claimants as shown in the operator's supplemental filing made part of the pooling order that established the escrow account, the operator's records of deposits attributable to those tracts for which funds are being requested, and the records of the escrow account for the coalbed methane gas drilling unit. The interests of any cotenants who have not entered into an agreement shall remain in the escrow account.

5.2 The Unit Operator has certified and represented to the Board that:

- (1) Consolidation Coal Company, not Reserve Coal Properties, is the sole owner of the coal estate underlying half of VGOB Tract 2 of the Subject Drilling Unit;
- (2) Ronald A. Clyborne, not Clyborne, Inc., is the sole owner of the oil and gas estate underlying half of VGOB Tract 2 of the Subject Drilling Unit;
- (3) that together Consolidation Coal Company and Ronald A. Clyborne claim to have and own, in the aggregate, the following Gas royalty interest in Subject Drilling Unit by virtue of their respective ownership interests in Tract 2:

VGOB Tract #	Acres in Unit	Percent of Unit	Escrowed Fund Attributable To Consol's/Clyborne's Conflicting Interests in Tract 2 as of 2/23/01
2	0.005	0.00625%	\$780.95

- (4) that Consolidation Coal Company and Ronald A. Clyborne have entered into an agreement whereby they have agreed to split on a 50/50 basis royalties attributable to their conflicting claims to coalbed methane gas, including but not limited to their conflicting claims to ownership of coalbed methane gas underlying half of VGOB Tract 2 of Subject Drilling Unit and their conflicting claims to bonuses and/or royalties deposited by the Unit Operator in the Escrow Account which are attributable to said tract.
- (5) that all funds currently on deposit in the Escrow Account are attributable to Consolidation Coal Company's and Ronald A. Clyborne's claims to coalbed methane gas in VGOB Tract 2 of Subject Drilling Unit, and that once said funds are disbursed to them, the Escrow Account for Subject Drilling Unit should be closed.

6. **Relief Granted:**

- A. For the reasons set forth in Paragraph 4 and 5 above, and based upon the Accounting, the Escrow Agent is ordered to disburse: (1) fifty percent (50%) of the funds on deposit in the VGOB Tract 2 escrow subaccount as of the date of disbursement to Consolidation Coal Company, P. O. Box 947,

Bluefield, VA 24605; and (2) fifty percent (50%) of the funds on deposit in the VGOB Tract 2 escrow subaccount as of the date of disbursement to Ronald A. Clyborne, 9325 Olympic View Drive, Edmonds, WA 98020.

B. Further, the Pooling Order is hereby modified to delete the requirement that payments attributable to Tract 2 of Subject Drilling Unit be deposited by the Unit Operator into the Escrow Account, to add Exhibit EE, and to delete Exhibit E to the Supplemental Order in toto and replace it with the revised Exhibit E attached hereto. To the extent not specifically granted herein, any other or further relief is denied.

7. **Conclusion:**

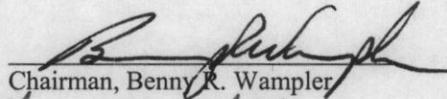
Therefore, the requested relief and all terms and provisions set forth above in Paragraph 6 above be and hereby are granted and IT IS SO ORDERED.

8. **Appeals:**

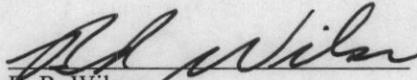
Appeals of this Order are governed by the provisions of Va. Code § 45.1-361.9 which provides that any order or decision of the Board may be appealed to the appropriate circuit court and that whenever a coal owner, coal operator, gas owner, gas operator, or operator of a gas storage field certificated by the State Corporation Commission is a party in such action, the court shall hear such appeal de novo.

9. **Effective Date:** This Order shall be effective on the date of its execution.

DONE AND EXECUTED this 31st day of October, 2001, by a majority of the Virginia Gas and Oil Board.

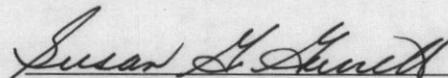

Chairman, Benny R. Wampler

DONE AND PERFORMED this 2nd day of ~~October~~ November, 2001, by an Order of this Board.


B. R. Wilson
Principal Executive to the Staff
Virginia Gas and Oil Board

COMMONWEALTH OF VIRGINIA)
COUNTY OF WISE)

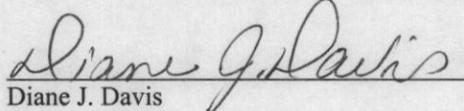
Acknowledged on this 31st day of October, 2001, personally before me a notary public in and for the Commonwealth of Virginia, appeared Benny R. Wampler, being duly sworn did depose and say that he is Chairman of the Virginia Gas and Oil Board, that he executed the same and was authorized to do so.


Susan G. Garrett
Notary Public

My Commission expires: July 31, 2002

COMMONWEALTH OF VIRGINIA)
COUNTY OF WASHINGTON)

Acknowledged on this 2nd day of November, 2001, personally before me a notary public in and for the Commonwealth of Virginia, appeared B. R. Wilson, being duly sworn did depose and say that he is Principal Executive to the Staff of the Virginia Gas and Oil Board, that he executed the same and was authorized to do so.


Diane J. Davis
Notary Public

My commission expires: September 30, 2005

Exhibit E
UNIT Q-35
Docket # VGOB 91-0521-0120-01
List of Conflicting Owners/Claimants that require escrow

	Acres in Unit	Percent of Unit	5 East 15.69343%	6 East 11.49425%
<u>Tract No. 4, 1.37 Acres</u>				
<u>COAL FEE OWNERSHIP</u>				
(1) Yukon Pocahontas Coal Company et al., Tr.109	1.37 acres	1.7125%	0.26875%	0.19684%
(a) Yukon Pocahontas Coal Company P.O. Box 187 Tazewell, VA 24651	0.685 acres 1/2 of 1.37 acres	0.8563%	0.13437%	0.09842%
(b) Buchanan Coal Company P.O. Box 187 Tazewell, VA 24651	0.152 acres 1/9 of 1.37 acres	0.1903%	0.02986%	0.02187%
(c) Sayers-Pocahontas Coal Company P.O. Box 187 Tazewell, VA 24651	0.076 acres 1/18 of 1.37 acres	0.0951%	0.01493%	0.01094%
(d) North American Timber Corporation Mineral Department P.O. Box 105210 Atlanta, GA 30348	0.457 acres 1/3 of 1.37 acres	0.5708%	0.08958%	0.06561%
<u>OIL & GAS FEE OWNERSHIP</u>				
(1) D.C. Rakes Heirs, Devisees, Successors or Assigns Address Unknown	1.37 acres	1.71250%	0.26875%	0.19684%

Exhibit EE
UNIT Q-35
Docket # VGOB 91-0521-0120-01
List of Conflicting Owners/Claimants with Royalty Split Agreements

	Acres in Unit	Percent of Unit	5 East 15.69343%	6 East 11.49425%
<u>Tract No. 2, 0.01 Acres</u>				
<u>COAL FEE OWNERSHIP</u>				
Franks Estate et al.	0.01 acres	0.01250%	0.00196%	0.00144%
(2) Consolidation Coal Company (1/2 Coal) P.O. Box 947 Bluefield, VA 24605	0.005 acres 1/2 of 0.01 acres	0.00625%	0.00098%	0.00072%
<u>OIL & GAS FEE OWNERSHIP</u>				
Franks Estate et al.	0.01 acres	0.01250%	0.00196%	0.00144%
(2) Ronald A. Clyborne (1/2 Oil & Gas) 9325 Olympic View Drive Edmonds, WA 98020	0.005 acres 1/2 of 0.01 acres	0.00625%	0.00098%	0.00072%

W.25

Order Recorded Under Code
Virginia Section 45.1-361.2

VGOB Tract # ILM Tract #	2	Check Total	+ / - Net Income	Balance	Bank Balance
	0.01				
Check Date					
11/25/93	\$5.48	\$5.48	\$0.00	\$5.48	
12/25/93	\$3.62	\$3.62	\$0.00	\$9.10	
1/25/94	\$4.52	\$4.52	\$0.00	\$13.62	
2/25/94	\$6.34	\$6.34	\$0.00	\$19.96	
3/25/94	\$5.60	\$5.60	\$0.00	\$25.56	
4/25/94	\$7.76	\$7.76	\$0.00	\$33.32	
5/25/94	\$9.53	\$9.53	\$0.00	\$42.85	
6/25/94	\$5.56	\$5.56	(\$9.95)	\$38.46	\$15.61
7/25/94	\$5.39	\$5.39	\$0.04	\$43.89	\$43.89
8/25/94	\$3.28	\$3.28	\$0.04	\$47.21	\$43.93
9/25/94	\$4.36	\$4.36	\$0.52	\$52.09	\$52.09
10/25/94	\$2.88	\$2.88	\$0.09	\$55.06	\$52.18
11/25/94	\$0.18	\$0.18	(\$0.30)	\$54.94	\$51.88
12/25/94			\$0.11	\$55.05	\$51.99
1/25/95	\$2.02	\$2.02	\$0.06	\$57.13	\$52.05
2/25/95	\$21.48	\$21.48	\$0.09	\$78.70	\$52.14
3/25/95	\$1.90	\$1.90	(\$9.59)	\$71.01	\$69.11
4/25/95	\$0.31	\$0.31	\$0.18	\$71.50	\$69.29
5/25/95	\$0.09	\$0.09	\$0.21	\$71.80	\$69.50
6/25/95	\$0.68	\$0.68	\$0.22	\$72.70	\$69.72
7/25/95	\$1.89	\$1.89	\$0.22	\$74.81	\$69.94
8/25/95	\$1.96	\$1.96	\$0.20	\$76.97	\$70.14
9/25/95	\$0.08	\$0.08	\$0.66	\$77.71	\$70.80
10/25/95			\$0.14	\$77.85	\$77.85
11/25/95	\$0.75	\$0.75	\$0.29	\$78.89	\$78.14
12/25/95	\$1.48	\$1.48	\$0.32	\$80.69	\$78.46
1/25/96	\$3.58	\$3.58	\$0.20	\$84.47	\$78.66
2/25/96	\$8.72	\$8.72	\$0.15	\$93.34	\$78.81
3/25/96	\$20.87	\$20.87	\$0.67	\$114.88	\$79.48
4/25/96	\$29.88	\$29.88	\$0.14	\$144.90	\$144.90
5/25/96	\$23.00	\$23.00	(\$9.77)	\$158.13	\$135.13
6/25/96	\$8.84	\$8.84	\$0.25	\$167.22	\$167.22
7/25/96	\$6.31	\$6.31	(\$9.33)	\$164.20	\$157.89
8/25/96	\$6.71	\$6.71	\$0.46	\$171.37	\$158.35
9/25/96	\$9.86	\$9.86	\$1.05	\$182.28	\$182.28
10/25/96			(\$9.54)	\$172.74	\$172.74
11/25/96			\$0.50	\$173.24	\$173.24
12/25/96			\$0.47	\$173.71	\$173.71
1/25/96			\$0.81	\$174.52	\$174.52
2/25/97	\$45.71	\$45.71	\$0.51	\$220.74	\$220.74
3/25/97			(\$9.34)	\$211.40	\$211.40
4/25/97	\$32.12	\$32.12	\$0.68	\$244.20	\$244.20
5/25/97			(\$9.38)	\$234.82	\$234.82
6/25/97			\$0.82	\$235.64	\$235.64
7/25/97			\$1.09	\$236.73	\$236.73
8/25/97			\$0.93	\$237.66	\$237.66
9/25/97			\$1.25	\$238.91	\$238.91
10/24/97	\$28.19	\$28.19	(\$8.44)	\$258.66	\$258.66
11/25/97			\$1.61	\$260.27	\$260.27
12/24/97	\$16.21	\$16.21	\$0.00	\$276.48	
3/25/98	\$26.28	\$26.28	\$0.00	\$302.76	
6/25/98			\$6.27	\$309.03	\$309.03
9/25/98	\$28.11	\$28.11	\$7.30	\$344.44	\$344.44
12/24/98	\$8.52	\$8.52	\$1.60	\$354.56	\$354.56
2/25/98			\$0.19	\$354.75	\$354.75
3/25/98			(\$9.02)	\$345.73	\$345.73
4/25/98			\$1.51	\$347.24	\$347.24
5/25/98			\$0.73	\$347.97	\$347.97
6/25/98			\$1.07	\$349.04	\$349.04
7/24/99	\$25.73	\$25.73	\$1.36	\$376.13	\$350.40
8/25/99			\$0.60	\$376.73	\$376.73
9/25/99			(\$8.20)	\$368.53	\$368.53
10/25/99	\$26.34	\$26.34	\$1.20	\$396.07	\$369.73
11/25/99			\$0.41	\$396.48	\$396.48
12/22/99	\$27.14	\$27.14	(\$6.39)	\$417.23	\$417.23
1/31/00			\$1.16	\$418.39	\$418.39
2/25/00	\$25.60	\$25.60	\$1.37	\$445.36	\$445.36
3/31/00			\$1.53	\$446.89	\$446.89
4/25/00	\$28.71	\$28.71	\$1.52	\$477.12	\$477.12
5/31/00			\$2.08	\$479.20	\$479.20
6/23/00	\$38.12	\$38.12	\$2.10	\$519.42	\$519.42
7/31/00			\$2.20	\$521.62	\$521.62
8/25/00	\$46.22	\$46.22	\$2.39	\$570.23	\$570.23
9/25/00	\$25.32	\$25.32	\$2.35	\$597.90	\$597.90
10/31/00			\$2.72	\$600.62	\$600.62
11/24/00	\$46.78	\$46.78	\$2.70	\$650.10	\$650.10
12/22/00	\$27.05	\$27.05	\$2.75	\$679.90	\$679.90
1/25/01	\$33.35	\$33.35	\$3.02	\$716.27	\$716.27
2/23/01	\$62.37	\$62.37	\$2.31	\$780.95	\$780.95