

**VIRGINIA:**

**BEFORE THE VIRGINIA GAS AND OIL BOARD**

**APPLICANTS:** Torch Energy Advisors Incorporated, a ) VIRGINIA GAS  
 Delaware Corporation (herein "Torch"), ) AND OIL BOARD  
 successor to Royalties Attributable to the )  
 interests of Hugh MacRae Land Trust, )  
 a Virginia Land Trust (herein "Trust") in ) DOCKET NO.  
 Coalbed Methane Gas (herein "Gas") ) 91-0716-0135-01  
 Produced from Subject Drilling Unit; )  
 Consolidation Coal Company (herein )  
 "Consolidation"); and Pocahontas Gas )  
 Partnership (herein "PGP") (herein Torch, )  
 Consolidation and PGP are sometimes )  
 collectively referred to as "Applicants") )

**RELIEF SOUGHT:** (1) Accountings/Determination of Those )  
 Royalties Attributable to the Conflicting )  
 Claims of the Consolidation, PGP and Trust )  
 to the Gas Produced From Sealed Gob )  
 Areas of Consolidation Coal Company's )  
 Buchanan No. 1 Mine Designated as Drilling )  
 Unit Number BUN1 (herein "Subject Drilling )  
 Unit"), and )  
 (2) Disbursement to the Applicants of )  
 Royalties Held in the Escrow Account )  
 Established by the Board (herein "Escrow )  
 Account") Which Are Attributable to )  
 Consolidation's, PGP's and Trust's/Torch's )  
 Conflicting Gas Claims within )  
 Tracts Located In Subject Drilling Unit )  
 Based on Trust's Assignment and Sale of )  
 Said Royalties to Torch and Based Upon )  
 Applicants' and Trust's Settlement )  
 Agreements effective December 30, 1997 )  
 (herein "Settlement Agreement") )

**LEGAL** )  
**DESCRIPTION:** Subject Drilling Unit Created and Pooled by )  
 Board Order executed September 30, 1991 )  
 in Docket No. VGOB 91-0716-0135 )  
 Recorded on October 1, 1991 in Deed Book )  
 381, Page 43, Clerk's Office of the Circuit )  
 Court of Buchanan County, VA (herein )  
 "Pooling Order"), as amended by )

Supplemental Order Regarding Elections )  
 entered April 4, 1996 and recorded in afore- )  
 said Clerk's Office on April 17, 1996 at )  
 Deed Book 447, Page 803 (herein )  
 "Supplemental Order), Hurricane )  
 Magisterial District, Buchanan County, )  
 Virginia (herein "Subject Lands") )

**REPORT OF THE BOARD**

**FINDINGS AND ORDER**

1. **Hearing Date and Place:** This matter came on for hearing before the Virginia Gas and Oil Board (herein "Board") at 9:00 a.m. on May 19, 1998, and as a result of action taken by the Board on that date, the Board enters this Order (herein "Accounting Order").
2. **Appearances:** Ms. Jill Harrison of the firm Penn, Stuart, et al appeared in behalf of Applicants. Sandra B. Riggs, Assistant Attorney General, was present to advise the Board.
3. **Jurisdiction and Notice:** Pursuant to Va. Code Ann. § 45.1-361.1 *et seq.*, the Board finds that it has jurisdiction over the subject matter. Notice of the hearing of this matter was given by Applicants as required by Va. Code § 45.1-361.19 and published in a local paper of general circulation as required by Va. Code Ann. § 45.1-361.19(B). Whereupon, the Board hereby finds that the notices given hereby satisfy all statutory requirements, Board rule requirements, and the minimum standards of state due process.
4. **Prior Proceedings:** At the Board's hearing on August 20, 1991, in Docket No. VGOB 91/0716-0135, the Board granted the relief sought by PGP (herein "Unit Operator") and pooled the Gas interests in the Subject Drilling Unit for the production of coalbed methane gas from the sealed gob areas of Consolidation's Buchanan No. 1 Mine pursuant to §§ 45.1-361.21 and 45.1-361.22, Code of Virginia and named PGP as the Unit Operator, all pursuant to the terms of the Pooling Order. The Supplemental Order was entered by the Board *sua sponte* on April 4, 1996 to comply with the requirements of the Board's Regulation 4 VAC 25-160.70.C. by supplementing the Pooling Order to complete the record regarding elections. By their application to the Board for this Accounting Order, the Applicants, including the Unit Operator, warranted and represented to the Board that:
  - 4.1. Trust was a conflicting claimant with regard to the tracts listed in Paragraph 4.2 below and by Assignment and Bill of Sale dated as of December 29, 1997, the Trust assigned all its interest in the royalty payments (whether suspended, escrowed or subject to future payment in accordance with the Voluntary Leases) with regard to said tracts to Torch.

4.2. Applicants' and Trust's conflicting claims within Subject Drilling Unit constitute the following undivided interest(s) in the following tracts of Subject Drilling Unit:

<u>Tract</u>	<u>Aggregate Undivided Interest in Tract</u>	<u>Aggregate Interest in Unit</u>
11 (384.33 Acres)	Consolidation and Trust <sup>1</sup> PGP and Trust <sup>2</sup>	18.9168% 12.87871%
12 (195.8 Acres)	Consolidation and Trust <sup>3</sup> PGP and Trust <sup>4</sup>	18.23097% 4.81948%
13 (160.0 Acres)	Consolidation and Trust <sup>5</sup> PGP and Trust <sup>6</sup>	5.013% 15.55082%

<sup>1</sup> According to the application filed by the Unit Operator when seeking the Pooling Order: (a) Consolidation Coal Company held the gas and oil interest in 210.59 acres of the 384.33 acres comprising Tract 11 constituting 27.068% of the gas and oil interest within Subject Drilling Unit; however, the Application filed in this cause warrants that the aggregate interest of Consolidation and Trust is only 18.9168 percent, and (b) Trust owns all of the coal underlying the entire 384.33 acres comprising Tract 11 constituting 49.400% of Subject Drilling Unit.

<sup>2</sup> According to the application filed by the Unit Operator when seeking the Pooling Order, PGP held no gas or oil interests in Tract 11; however, Exhibit 3 introduced by Applicants at the hearing of this matter represented to the Board that E. Stiltner transferred to PGP his .20 acres within Tract 11 constituting 0.02571% of Subject Drilling Unit and Burton Richard and Elsie May Stiltner transferred to PGP their 99 acres within Tract 11 constituting 12.725% of Subject Drilling Unit, by virtue of which transfers PGP now holds a 12.87871% gas and oil interest within Subject Drilling Unit.

<sup>3</sup> According to the Application filed by the Unit Operator when seeking the Pooling Order: (a) Consolidation owned all of the gas and oil underlying the 195.8 acres comprising Tract 12 constituting 25.167% of Subject Drilling Unit; however, according to Exhibit 3 introduced by Applicants at the hearing of this matter, 19.15% of said 125.167% (4.81948%) is now held by PGP and 72.44% of said 125.167% (18.230974%) is held by Consolidation, leaving 8.41% of said 125.167% (2.11655%) unaccounted for, and (b) all of the coal underlying the 195.8 acres of Tract 12 are held by Trust constituting 25.16% of Subject Drilling Unit.

<sup>4</sup> As stated in footnote 4 above, according to Exhibit 3 introduced by Applicants at the hearing of this matter, 4.81948% of the gas and oil interests in Subject Drilling Unit are held by PGP by virtue of its ownership interests within Tract 12.

<sup>5</sup> According to the application filed by the Unit Operator when seeking the Pooling Order: (a) 39 acres of the gas and oil interest underlying the 160 acres of Tract 13 were held by Consolidation constituting 5.013% of Subject Drilling Unit and (b) all of the coal underlying the 160 acres of Tract 13 are held by Trust constituting 20.565% of Subject Drilling Unit.

<sup>6</sup> According to the application filed by the Unit Operator when seeking the Pooling Order: (a) PGP owned gas and oil interests in (a) 95/96 of 31 acres of the 160 acres comprising Tract 13 constituting 3.943% of Subject Drilling Unit and 95/96 of 17 acres of the 160 acres comprising Tract 13 constituting 2.162% of Subject Drilling Unit and (b) Trust owned all of the coal underlying all 160 acres comprising Tract 13 constituting 20.565% of Subject Drilling Unit. Additionally, Exhibit 3 introduced by Applicants at the hearing of this matter reflected the following additional oil and gas interests within Tract 13 acquired by PGP subsequent to the entry of the Pooling Order: (a) Daniel Richard and Elsie Violet Justice transferred their 95/96 of 40 acres of Tract 13 to PGP constituting 5.087% of Subject Drilling Unit; (b) Hass Blankenship transferred to PGP his 1/96 of 40 acres of Tract 13 constituting 0.054% of Subject Drilling Unit, his 1/96 of 31 acres of Tract 13 constituting 0.042% of Subject Drilling Unit and his 1/96 of 17 acres of Tract 13 constituting 0.023% of Subject Drilling Unit for a total of

3 (27 Acres)	Consolidation and Trust <sup>7</sup>	3.470%
7 (0.1 Acres)	PGP and Trust <sup>8</sup>	0.013%
	TOTAL	78.89278%

4.3 The Unit Operator has filed with the Board an amended Supplemental Order certifying by Affidavit that together Applicants have and own in the aggregate a 78.89278 percent conflicting Gas royalty interest in Subject Drilling Unit.

4.4 Applicants, including Unit Operator, in their application filed herein, represent and warrant to the Board that Applicants and Trust have and own in the aggregate a 78.89278 percent conflicting Gas royalty interest in Subject Drilling Unit and are the sole claimants to said 78.89278 percent interest.

4.5 Consolidation and Trust entered into voluntary leases with the Unit Operator with respect to their respective conflicting Gas royalty interests in Subject Drilling Unit (herein "Voluntary Leases").

4.6 At the time of entry of the Pooling Order, Applicant's interests in Subject Drilling Unit constituted conflicting claims to royalties paid for Gas produced by the Unit Operator from Subject Drilling Unit, but that subsequent to the entry of the Pooling Order: (1) PGP and the Trust executed with each other an agreement with respect to the division and apportionment of royalties attributable to their conflicting interests, including those deposited by the Unit Operator into the Escrow Account, by which each of them is entitled to receive a sum equal to fifty percent (50%) of said royalties and bonuses (herein "Stipulated Gas Royalty Interest") and (2) Consolidation and the Trust executed with each other an agreement with respect to the division and apportionment of royalties attributable to their conflicting interests, including those deposited by the Unit Operator into the Escrow Account, by which each of them is entitled to receive a

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0.92 acres or 0.11782% of Subject Drilling Unit, and (c) Melvin Ashby to PGP his gas and oil interests in 33 acres of Tract 13 constituting 4.241% of Subject Drilling Unit.

<sup>7</sup> According to the application filed by the Unit Operator when seeking the Pooling Order: (a) the gas and oil interests underlying the 27 acres comprising Tract 3 and constituting 3.470% of Subject Drilling Unit are held by Consolidation, and all of the coal interests underlying said tract are held by Trust.

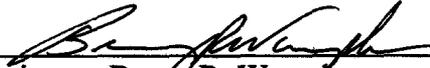
<sup>8</sup> According to the application filed by Unit Operator when seeking the Pooling Order, all of the gas and oil interests underlying the 0.1 acres comprising Tract 7 and constituting 0.013% of Subject Drilling Unit were held by the V. H. Street Family Trust and (b) all of the coal interests underlying the 0.1 acres comprising Tract 7 and constituting 0.013% of Subject Drilling Unit are held by Trust.. Exhibit 3 introduced by Applicants at the hearing of this matter reflects that V. H. Street Family Trust has transferred its gas and oil interests, including any interest it may have to coalbed methane gas, to PGP who now holds a 0.013% interest in Subject Drilling Unit by virtue of said transfer.

sum equal to fifty percent (50%) of said royalties and bonuses (herein "Stipulated Gas Royalty Interest").

5. **Relief Requested:** That the Board direct the Unit Operator and/or Escrow Agent to (1) determine the amount of funds attributable to the conflicting claims, in the aggregate, of Trust/Torch and PGP in Subject Drilling Unit, (2) determine the amount of funds attributable to the conflicting claims, in the aggregate, of Trust/Torch and Consolidation, in Subject Drilling Unit, (2) provide to Torch, PGP and Consolidation, as applicable, an accounting thereof, and (3) disburse the funds in the Escrow Agent's hands, if any, including any applicable earnings, attributable to Applicants' respective Stipulated Gas Royalty Interest to Torch, PGP and Consolidation pursuant to their Settlement Agreements.
  
6. **Relief Granted:** Pursuant to Va. Code Ann. § 45.1-361.1 *et seq.*, and more particularly Va. Code Ann. § 45.1-361.15.A, the Unit Operator is hereby directed to:
  - 6.1. determine and file with the Board, with a copy to the Applicants, an itemized accounting(s) of all funds deposited into the Escrow Account which are uniquely attributable to each of the Applicants' Stipulated Gas Royalty Interests, with said accounting(s) to cover the period from commencement of production of Gas from Subject Drilling Unit and continuing through July 25, 1998 (herein "Settlement Date"), after which Settlement Date the Unit Operator is authorized to commence making payments directly to the Applicants pursuant to their Settlement Agreements if and to the extent the Unit Operator determines through its title evidence that said interests are no longer in conflict. Said accountings shall contain for each Applicant the type and quality of information that is reflected in the Gas Royalty/Revenue Statement filed by the Unit Operator with the Escrow Agent as backup for deposits made into the Escrow Account and shall be unique to the interest of each Applicant (herein "Principal"). Once the above-referenced accountings have been filed with the Board as above ordered, the Board, on its own motion, will set the above-captioned matter for further hearing before the Board.
  
  - 6.2. file with the Board a certified verification of the percentage which when applied to the total amount of funds of deposit with the Escrow Agent for the Subject Drilling Unit represents each of the Applicants' share of the Principal on deposit with the Escrow Agent for Subject Drilling Unit.
  
  - 6.3. once disbursement has been made to the Applicants of those funds attributed to Applicants' respective Stipulated Gas Royalty Interests, file an updated affidavit and seek from the Board an amended supplemental order to properly reflect by tract number the identity and percentage of interests within the Subject Drilling Unit each conflicting claimant who may have or claim an interest in the funds remaining and/or to be placed on deposit by the Unit Operator with the Escrow Agent after the Settlement Date.

- 6.4. commencing immediately and continuing for so long as there is a need for the Escrow Account, contemporaneously with the deposit of any funds into the Escrow Account, in addition to filing with the Escrow Agent a copy of the Gas Royalty/Revenue Statement for such escrowed sums, the Unit Operator shall file, by mail, a copy of each such statement with the Virginia Gas and Oil Inspector so that such statements are available for inspection by claimants in accordance with the provisions of Va. Code 45.1-361.21.C.6.
7. **Special Findings:** The Board specifically and specially finds:
- 7.1 With the commencement of production attributable to the Subject Drilling Unit and continuing through the Settlement Date, it has not been the Unit Operator's practice to mail to conflicting Gas claimants in Subject Drilling Unit a copy of the Gas Revenue/Royalty Statements applicable to their conflicting interests, but instead the Unit Operator has forwarded said statements to the Escrow Agent as backup documentation for each of its deposits into the Escrow Account.
- 7.2 The Exhibit B-3 attached to the Unit Operator's Affidavit given in support of the Supplemental Order does not reflect the interests of the Applicants in Subject Drilling Unit as being subject to escrow; however, the Unit Operator has been ordered by the Board to file an amended supplemental order to reflect all Gas owners/claimants, including Trust and the Applicants, whose claimed entitlements have or are being placed by the Unit Operator into the Escrow Account pursuant to the requirements of Va. Code § 45.1-361.21 and 45.1-361.22 and the terms of the Pooling Order.
- 7.3 Based on information filed by the Unit Operator with the Board and/or its Escrow Agent, the Board and its Agents are unable to determine the dates and amounts of each Principal deposit made by the Unit Operator into the Escrow Account attributable to Applicants' respective Stipulated Gas Royalty Interest, the total of such Principal deposits, the interest accruing on the Escrow Account which is allocable to Applicants' respective interests, and/or the fees chargeable to the Escrow Account which are allocable to Applicants' respective interests.
8. **Conclusion:** Therefore, the requested relief and all terms and provisions set forth in Paragraph 6 above be and hereby are granted and IT IS SO ORDERED.
9. **Appeals:** Appeals of this Order are governed by the provisions of Va. Code Ann. § 45.1-361.9 which provides that any order or decision of the Board may be appealed to the appropriate circuit court. Such appeals must be taken in the manner prescribed in the Administrative Process Act, Va. Code Ann. §§ 9-6.14:1 *et seq.*
10. **Effective Date:** This Order shall be effective as of the date of its execution.

DONE AND EXECUTED this 26<sup>th</sup> day of June, 1998, by a majority of the Virginia Gas and Oil Board.

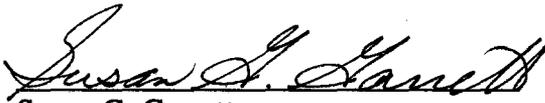
  
Chairman, Benny R. Wampler

DONE AND PERFORMED this 13<sup>th</sup> day of July, 1998, by Order of this Board.

  
Byron Thomas Fulmer  
Principal Executive to the Staff  
Virginia Gas and Oil Board

COMMONWEALTH OF VIRGINIA )  
COUNTY OF WISE )

Acknowledged on this 26<sup>th</sup> day of June, 1998, 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 7/31/98

COMMONWEALTH OF VIRGINIA )  
COUNTY OF WASHINGTON )

Acknowledged on this 13<sup>th</sup> day of July, 1998, personally before me a notary public in and for the Commonwealth of Virginia, appeared Byron Thomas Fulmer, 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, 2001

VIRGINIA: In the Clerk's Office of the Circuit Court of Buchanan County. The foregoing instrument was this day presented in the office aforesaid and is, together with the certificate of acknowledgment annexed, admitted to record this 14<sup>th</sup> day of July, 1998, 2:15 P.M. Deed Book No. 478 and Page No. 609. TESTE: James M. Bevins, Jr., Clerk  
Returned this date to; Diane Davis TESTE: Shirley S. Miller Deputy Clerk

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INSTRUMENT #98001716  
RECORDED IN THE CLERK'S OFFICE OF  
BUCHANAN COUNTY ON  
JULY 14, 1998 AT 02:15PM  
JAMES W. BEVINS JR., CLERK

BY:

*Handwritten initials*