

**VIRGINIA:**

**BEFORE THE VIRGINIA GAS AND OIL BOARD**

**APPLICANTS:** Torch Energy Advisors Incorporated, a ) VIRGINIA GAS  
 Delaware Corporation (herein "Torch") as ) AND OIL BOARD  
 successor to the Coalbed Methane Gas )  
 (herein "Gas") interests of Hugh MacRae )  
 Land Trust, a Virginia Land Trust (herein ) DOCKET NO.  
 "Trust"), in Subject Drilling Unit; ) 91-0716-0136-01  
 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 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 BUS1 (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 )  
 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 91-0716-0136 )  
 Recorded on October 1, 1991 in Deed Book )  
 381, Page 20, 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 823 (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 91/0716-0136, 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 and or subject to future payment) with regard to the tracts listed below 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>
1 (67 Acres)	Consolidation and Trust <sup>1</sup>	7.204%
8 (11.20 Ac)	Consolidation and Trust <sup>2</sup> PGP and Trust <sup>3</sup>	0.860% 0.344%
18 (28.4 Ac)	Consolidation and Trust <sup>4</sup> PGP and Trust <sup>5</sup>	2.462624% 0.161376%
16 (171 Ac)	PGP and Trust <sup>6</sup>	14.91996%
	TOTAL	25.95196%

<sup>1</sup> According to the application filed by the Unit Operator when seeking the Pooling Order the Trust owns all of the coal and Consolidation owns all of the gas and oil underlying the 67 acres comprising Tract 1 constituting 7.204% of Subject Drilling.

<sup>2</sup> According to the application filed by the Unit Operator when seeking the Pooling Order: (a) the Trust owns all of the coal underlying underlying the 11.2 acres comprising Tract 8 constituting 1.204% of Subject Drilling Unit and (b) Consolidation owns the gas and oil underlying 8.00 acres of the 11.2 acres of Tract 8 constituting 0.860% of Subject Drilling Unit.

<sup>3</sup> According to the application filed by the Unit Operator when seeking the Pooling Order the William Blankenship Heirs owned the gas and oil underlying 3.2 acres of the 11.2 acres of Tract 8 constituting 0.344% of Subject Drilling Unit. Exhibit 3 introduced by Applicants at the hearing of this matter indicates that PGP (formerly Consol) is now the owner of this 0.344% gas and oil interest; however, it is not clear how PGP came to hold said interests.

<sup>4</sup> According to the application filed by the Unit Operator when seeking the Pooling Order: (a) all of the coal underlying the 18.4 acres comprising Tract 18 and constituting 3.054% of Subject Drilling Unit were held by Trust, and (b) Consolidation owns and holds oil and gas interest underlying 24.4 acres of said Tract 18 constituting 2.624% of Subject Drilling Unit. However, Exhibit 3 introduced by Applicants at the hearing of this matter indicates that 6.15% of Consolidation's 2.624% of said gas and oil interest have been transferred to PGP, leaving Consolidation with 93.85% of said 2.624% or 2.462624% of Subject Drilling Unit. It is unclear how this transfer occurred.

<sup>5</sup> See footnote 4 above.

<sup>6</sup> According to the application filed by the Unit Operator when seeking the Pooling Order: (a) Trust owned and held all of the coal underlying the 171 acres comprising Tract 16 constituting 18.387% of Subject Drilling Unit; however, PGP had no gas and oil interests within Tract 16. However, Exhibit 3 introduced by the Applicants at the hearing of this matter indicates that subsequent to the entry of the Pooling Order, PGP acquired a 14.91996% gas and oil interest within Subject Drilling Unit from the W. A. Street Family Trust, a portion of the Euly C. Vance Heirs, a portion of the James C. Blankenship Heirs, a portion of James Blankenship Heirs and Consolidation. It is unclear how PGP acquired all of said 14.91996% gas and oil interest within Tract 16.

- 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 25.95296 percent conflicting Gas royalty interest in Subject Drilling Unit.
- 4.4 Applicants, including the Unit Operator, in their application filed herein, represented and warranted to the Board that Applicants and Trust have and own in the aggregate a 25.952896% conflicting Gas royalty interest in Subject Drilling Unit and are the sole claimants to said 25.95296% 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 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, 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 from its title evidence that their 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 Tract 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.

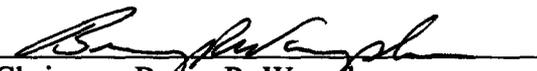
7.3 Based on information filed by the Unit Operator with the Board and/or its Escrow Agent, the Board and its Agents are unable to determine the dates and amounts of each Principal deposit made by the Unit Operator into the Escrow Account attributable to Applicants' respective Stipulated Gas Royalty 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.

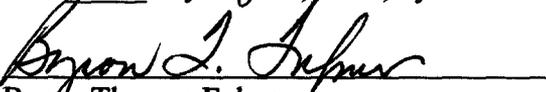
9. **Appeals:** Appeals of this Order are governed by the provisions of Va. Code Ann. § 45.1-361.9 which provides that any order or decision of the Board may be appealed to the appropriate circuit court. Such appeals must be taken in the manner prescribed in the Administrative Process Act, Va. Code Ann. §§ 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 ~~June~~ 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.

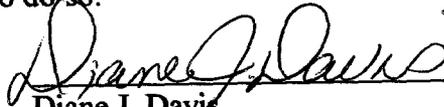
  
Susan G. Garrett

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 at 2:16 P. M.  
Deed Book No. 478 and Page No. 616 TESTE: Diane Davis James M. Bevins, Jr., Clerk  
Returned this date to: Diane Davis TESTE: Quincy S. Diller Deputy Clerk

*Handwritten initials*

BY:

JAMES W. BEWING JR., CLERK  
JULY 14, 1988 AT 10:15 AM  
RECORDED IN THE CLERK'S OFFICE OF  
INSTRUMENT #88001717