

VIRGINIA:

BEFORE THE VIRGINIA GAS AND OIL BOARD

APPLICANTS:	Torch Energy Advisors Incorporated (herein) "Torch") and Consolidation Coal Company) (herein "Consolidation") (Torch and) Consolidation are sometimes herein) Collectively referred to as "Applicants"))	DOCKET NO. VGOB 92/02/18-0190-01
RELIEF SOUGHT:	Issuance of an Amended Supplemental) Order Amending Prior Orders Affecting) NELW10 Drilling Unit to Provide: (1) for the) Calculation of Those Funds Attributable) To the Conflicting Claims, in the Aggregate,) Of Hugh MacRae Land Trust (herein "Trust"))) and Consolidation Pursuant to the Terms) of Trust's and Consolidation's) Voluntary Lease Agreements with Pocahontas) Gas Partnership (herein "PGP"), (2) to) Provide a Royalty Accounting,) And (3) Disbursement To Torch and) Consolidation of Funds on Deposit in the) Escrow Account(s) Which are Attributable to) Trust's and Consolidation's Conflicting) Coalbed Methane Gas Claims in Tracts 46) and 48 of the NELW10 Drilling Unit)	

1. **Hearing Date and Place:** This matter came on for further and final hearings before the Virginia Gas and Oil Board (herein "Board") at 9:00 a.m. on July 18, 2000 at the Southwest Virginia Higher Education Center on the campus of Virginia Highlands Community College, Room 240, Abingdon, VA.
2. **Appearances:** Jill Harrison of the firm Penn Stuart appeared in behalf of the Applicants; Mark A. Swartz of the firm Swartz & Stump appeared on behalf of PGP; 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 escrow accounts for the coalbed methane gas drilling units established by the Board through its 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 account (herein "Escrow Account"). Further, the Board finds that 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 in Subject Drilling Unit, and while it does not have jurisdiction to interpret voluntary agreements by and between the Gas claimants and/or the Unit Operators or to abridge or contravene the provisions of such agreements, 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 there has first been either (a) a final decision of a court of competent jurisdiction adjudicating the ownership of coalbed methane gas as between the 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. Drilling Unit Number NELW10 was created by Board Order effective as of November 19, 1991, Docket No. VGOB 92/11/19-0160 as amended by Board Order in VGOB Docket No. 93/06/22-0384 (herein "Subject Drilling Unit") in the Hurricane Magisterial District, Buchanan County, Virginia (herein "Subject Lands"). At the Board's hearing of Docket No. VGOB 92/02/18-0190, in accordance with the provisions of Va. Code §§ 45.1-361.21 and 45.1-361.22, the Board granted the relief sought by PGP and executed an Order dated April 29, 1992 and filed with the Clerk of the Circuit Court of Buchanan County on May 1, 1992 in Deed Book 390 at Page 656, as amended by Order entered June 9, 1992 and filed July 1, 1992 in Deed Book 393 at Page 831, pooling all interests in the Subject Drilling Unit for the production of gas produced from coalbeds and rock strata associated therewith below the Tiller seam (herein "Coalbed Methane Gas" or "Gas") from active gob areas from a longwall panel and its surrounding area in Consolidation Coal Company's Buchanan No. 1 Mine (herein "Subject Formations") all pursuant to: (1) the permit provisions contained in Section 45.1-361.27 *et seq.*, Code of Virginia, 1950 as amended; (b) the Oakwood Coalbed Gas Field Order No. OGCB 3-90 dated May 18, 1990; (c) the Board's Order No. VGOB No. 91/11/19-0160 dated as of November 19, 1992; (d) §§480-05-22.1 *et seq.*, Gas and Oil Board Regulations; and (e) §§ 480-05-22.2 *et seq.*, Virginia Gas and Oil Board Regulations, all as amended from time to time (herein "Pooling Order"). The Board named PGP as the Unit Operator of Subject Drilling Unit.
- 4.2. The Pooling Order was amended and supplemented by: (1) the Board's Supplemental Order Regarding Elections executed on December 20, 1994 and filed on December 28, 1994 in Deed Book 431, Page 41 (herein "Supplemental Order"), (2) the Board's Amended Supplemental Order Regarding Elections executed on May 8, 1997 and filed May 13, 1997 in Deed Book 462 at Page 412 (herein "First Amended Supplemental Order"), (3) the Board's Amended Supplemental Order Regarding Elections executed on June 26, 1998 and filed July 14, 1998 at Deed Book 478 at Page 690 (herein "Second Amended Supplemental Order"), and (4) the Board's Order in Docket No. VGOB 91-1119-0161-01 executed January 15, 1999 and filed February 1, 1999 in Deed Book 487 at Page 316.
- 4.3. As instructed by the Board through the Pooling Order, as amended and supplemented, the Escrow Agent established Escrow Account(s) for Subject Drilling Unit (herein collectively "Escrow Account"), and thereafter the Escrow Agent periodically received from the Unit Operator for deposit into the Escrow Account proceeds which were designated by the Operator through its royalty statements and through its Accounting as being attributable to various tracts within Subject Drilling Unit, including but not limited to Tracts 46 and 48.
- 4.4. In VGOB Docket No. 97-0415-0579, Trust and Garden Realty Corporation applied to the Board for disbursement of funds attributable to Tracts 47 and 52 of the NELW10 Drilling Unit and the Board entered the following orders with respect to said petition:
 - 4.4.1. Order for Accounting entered June 16, 1997 and filed July 8, 1997 in Deed Book 464 at Page 241;
 - 4.4.2. Order for Further Accounting entered April 15, 1998 and filed April 29, 1998 in Deed Book 475 at Page 358; and
 - 4.4.3. Amended Supplemental Order Amending all Prior Orders Affecting NELW10 Drilling Unit ordering disbursement to Trust and Garden of funds on deposit in the NELW10 Escrow Account which were attributable to Trust's and Garden's conflicting coalbed methane gas claims in Tracts 47 and 52 of the NELW10 drilling Unit.
- 4.5. In Applicants' application herein for royalty accountings, determination of the funds on deposit in the Escrow Account for Tracts 46 and 48 of Subject Drilling Unit, and disbursement to them of all such funds attributable to Tracts 46 and 48 pursuant to their written agreement with each other (herein referred to as "Split Agreement"), the Applicants warranted and represented to the Board that:

- 4.5.1. Consolidation is the sole oil and gas owner within Tracts 46 and 48;
 - 4.5.2. Trust is the sole coal owner within Tracts 46 and 48; however, by assignment and Bill of Sale dated December 29, 1997 (herein "Assignment") Trust assigned to Torch its conflicting coalbed methane gas royalty interests in said tracts including all its interest in the funds on deposit in the Escrow Account(s) which the Unit Operator attributes to Tracts 46 and 48;
 - 4.5.3. Together Trust and Consolidation claim to have and own, in the aggregate, a 1.15058 percent conflicting Gas royalty interest in Subject Drilling Unit by virtue of their respective ownership interests in Tracts 46 and 48 and the terms of their voluntary leases with PGP pertaining to same;
 - 4.5.4. While at the time of the entry of the Pooling Order, Consolidation and Trust had conflicting claims of ownership in Tracts 46 and 48, subsequent to the entry of the Pooling Order, Trust assigned its conflicting claim to the escrow account to Torch and thereafter the Applicants entered into the Split Agreement whereby each Applicant is entitled to receive a sum equal to fifty percent (50%) of funds on deposit for said tracts.
- 4.6. With respect to the relief sought by the Applicants herein, the Board entered an order on November 2, 1998 (herein "Accounting Order") directing, among other things, that the Unit Operator provide an accounting of the funds it had deposited into the Escrow Account, including those attributable to Trust's and Consolidation's conflicting coalbed methane gas interests in Tracts 46 and 48. However, said funds have not been heretofore ordered disbursed due to an appeal of the Accounting Order to the Circuit Court of Buchanan County. The appeal of the Accounting Order was dismissed without prejudice by court order entered May 2, 2000 thereby restoring to the Board jurisdiction over Torch's and Consolidation's petition for disbursement to them of escrowed funds attributable to Tracts 46 and 48 of the NELW10 Drilling Unit.

5. **Findings:**

Va. Code 45.1-361.22.5 provides that "*The Board shall order payment of principal and accrued interest, less escrow account fees, from the escrow account to conflicting claimants within thirty days of receipt of notification of (1) a final decision of a court of competent jurisdiction adjudicating the ownership of coalbed methane gas as between them or (2) 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.*" The Board finds that:

- 5.1. The Board lacks the statutory authority to supercede, impair, abridge or affect any contractual rights or other obligations existing between the Operator and the Applicants. The Operator and the Applicants have acknowledged such limitation and have, therefore, agreed that no such party will argue or contend in other pending or future proceedings or actions inter se (including without limitation Levisa Coal Company, et al. v. Consolidation Coal Company, et al., Civil Action No. 97-0117-A pending in the United States District Court at Abingdon) that the findings and/or order of the Board herein bar their assertion of any claims or defenses, including payment, or otherwise constitute a waiver or an estoppel in such other proceedings or actions.
- 5.2. Notwithstanding the fact that Trust is challenging PGP's royalty calculations and/or payments under the terms of its voluntary lease with PGP, Trust has assigned its interest in the Escrowed Funds to Torch, and Torch and Consolidation have entered into the Split

Agreement with each other whereby they have agreed to split on a 50/50 basis royalties attributable to Trust's and Consolidation's conflicting claims to coalbed methane gas, including but not limited to their conflicting claims to ownership of coalbed methane gas allocable to Tracts 46 and 48 of Subject Drilling Unit and their conflicting claims to escrowed funds attributable to said tracts. The Applicants' seek disbursement to them, in accordance with the terms of the Split Agreement, those funds on deposit in the Escrow Account which are attributable to Tracts 46 and 48.

5.3. According to the Pooling Order, as supplemented and amended, and the accounting filed in this matter: (a) the funds deposited by PGP into the Escrow Account for Subject Drilling Unit consists of payments calculated by PGP to be due those persons identified in Exhibit E hereto, (b) PGP has identified Trust and Consolidation as the sole Owners and /or Claimants of coalbed methane gas within Tracts 46 and 48 of Subject Drilling Unit, (c) Trust has assigned its interest in the Escrowed Funds attributable to Tracts 46 and 48 to Torch; (d) thus Torch and Consolidation are the sole claimants to the funds on deposit in the Escrow Account attributable to Tracts 46 and 48; and (e) PGP has represented to the Board through its accounting (herein "Further Accounting") that as of August 3, 2000:

5.3.1 ~~\$3,638.35~~ of the funds on deposit in the Escrow Accounts are attributable to Tract 46, and

5.3.2 ~~\$4,547.86~~ of the funds on deposit in said Escrow Accounts are attributable to Tract 48,

6. **Relief Granted:**

6.1 For the reasons set forth in Paragraph 5 above, and based upon the Further Accounting and the Applicants' agreements to same, the Escrow Agent is ordered to:

6.1.1 If it has not already done so, combine the two escrow accounts established for the NELW10 drilling unit, and

6.1.2 Thereafter, disburse via wire transfer in accordance with instructions attached hereto: (1) The sum of \$4,093.11 together with any interest which accrues thereon from the date of the Further Accounting through the date of disbursement to Torch and (2) the sum of \$4,093.10 together with any interest accruing thereon from the date of the Further Accounting through the date of disbursement to Consolidation.

6.2. Further, any net income credited to the sub accounts for said Tracts 46 and 48 on and after June 30, 2000, shall be disbursed in equal shares to Torch and Consolidation, and the Amended Supplement Order filed in this cause is hereby modified to delete the requirement that funds attributable to Trust's/Torch's and Consolidation's conflicting coalbed methane gas ownership interests in Tracts 46 and 48 be deposited by PGP into the Escrow Account.

7. To the extent not specifically granted herein, any other or further relief requested by the Applicants in their application filed herein or in their objections to the accountings heretofore provided is denied.

8. **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.

9. **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. Such appeals must be taken in the manner prescribed in the Administrative Process Act, Va. Code §§

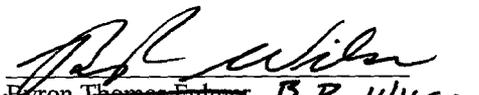
9-6.14:1 *et seq.*

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

DONE AND EXECUTED this 25th day of August, 2000, by a majority of the Virginia Gas and Oil Board.

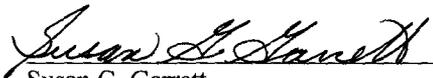

Chairman, Benny R. Wampler

DONE AND PERFORMED THIS 28th DAY OF August, 2000, by an Order of this Board.


Byron Thomas Fulmer **B. R. WILSON**
Principal Executive to the Staff
Virginia Gas and Oil Board

COMMONWEALTH OF VIRGINIA)
COUNTY OF WISE)

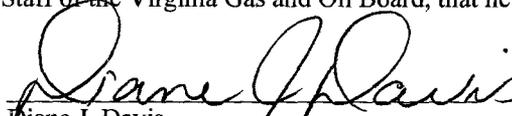
Acknowledged on this 25th day of August, 2000, personally before me a notary public in and for the Commonwealth of Virginia, appeared Benny R. Wampler, being duly sworn did depose and say that he is Chairman of the Virginia Gas and Oil Board, that he executed the same and was authorized to do so.


Susan G. Garrett
Notary Public

My Commission expires: July 31, 2002

COMMONWEALTH OF VIRGINIA)
COUNTY OF WASHINGTON)

Acknowledged on this 28th day of August, 2000, 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