

4. **Prior Proceedings:**

- 4.1. On June 29, 1995, the Board executed its 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 June 10, 1993 in Deed Book 410 at Page 267. The Board designated Pocahontas Gas Partnership as the Unit Operator of the Subject Drilling Unit. The Pooling Order was amended and supplemented by: (1) the Board's Supplemental Order Regarding Elections executed on June 29, 1995 that was filed with the Clerk's Office on July 7, 1995 in Deed Book 437 at page 549 ("Supplemental Order"); (2) the Board's Revised Supplemental Order executed on February 6, 2001 that was filed with the Clerk's Office on February 15, 2001 at Deed Book 519 at Page 384 ("Revised Supplemental Order") ; and (3) the Board's Amended Supplemental/Disbursement Order for Tract 9 of Subject Drilling Unit executed on October 3, 2001 in VGOB Docket No. 93-0216-0330-01 that was filed with the Clerk's office on January 11, 2002 at Deed Book 537 at Page 728, as amended by order entered December 20, 2001 and filed with the Clerk's office at Deed Book 537 at Page 726 ("Disbursement Order for Tract 9") (hereafter the Pooling Order, Supplemental Order, Revised Supplemental Order, and Disbursement Order for Tract 9 are collectively referred to as "Pooling Order").
- 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 Pooling Order, the coal fee ownership of the Heirs and the oil and gas fee ownership of Reserve in a 6.20-acre tract known as VGOB Tract 2 and in a 2.87-acre tract known as VGOB Tract 3, both in Subject Drilling Unit, were in conflict and became subject to the escrow requirements of the Pooling Order.
- 4.3 The Unit Operator's Affidavit Regarding Escrow and Supplemental Order dated July 11, 2002, a copy of which is attached to and made a part hereof, states under oath:
- "That after the pooling hearing held in the captioned matter, the Hurt McGuire Heirs and Reserve Coal Properties entered into a royalty split agreement; that by the terms of said agreement escrow regarding the conflicting claims of the Hurt McGuire Heirs and Reserve Coal Properties is no longer required."
- 4.4 By letter dated September 12, 2002, the Board gave notice to the Heirs, Reserve, the Unit Operator and the Escrow Agent that on its own motion it would take the Affidavit referred to in Paragraph 4.3 above under consideration at its hearing on October 15, 2002 and consider whether to: (1) amend the Pooling Order to provide for the disbursement of funds on deposit in the Escrow Account attributable to Tracts 2 and 3 to the Heirs and Reserve in accordance with the terms of their split agreement, and (2) delete the requirement that the Unit Operator place future royalties attributable to Tracts 2 and 3 in the Escrow Account. Further, the Board ordered the Unit Operator to file with the Board a complete accounting of funds it has placed on deposit in the Escrow Account. The petition was carried forward to hearing on December 17, 2003.
- 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) The Heirs are the sole owners of the coal estate underlying VGOB Tracts 2 and 3 of the Subject Drilling Unit;
- (2) Reserve is the sole owner of oil and gas estate underlying VGOB Tracts 2 and 3 of the Subject Drilling Unit;
- (3) that together the Heirs and Reserve 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 Tracts 2 and 3:

| VGOB Tract # | Interest In Unit | Percent of Escrow | Escrowed Fund Attributable to: Tract 2 and 3as of10/15/02 |
|--------------|------------------|-------------------|--|
| 2 | 7.75000% | 13.85785% | \$ 22,920.24 |
| 3 | 3.58750% | 6.41484% | \$ 10,609.85 |

- (4) that the Heirs and Reserve have entered into an agreement 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 VGOB Tracts 2 and 3 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 tracts.

6. **Relief Granted:**

6.1. For the reasons set forth in Paragraph 4 and 5 above, and based upon the Accounting, the Escrow Agent is ordered to:

- (1) Disburse fifty percent (50%) of the funds attributable to the VGOB Tract 2 , being 6.928925 percent of funds on deposit in the escrow account, to the Hurt McGuire Heirs, c/o Charles Green, P. O. Box 1067, Bluefield, VA 24605, and (2) disburse fifty percent (50%) of the funds attributable to the VGOB Tract 2, being 6.928925 percent of funds on deposit in the escrow account, to Reserve Coal Properties, P. O. Box 947, Bluefield, VA 24605.
- (2) Disburse fifty percent (50%) of the funds attributable to the VGOB Tract 3, being 3.20742 percent of funds on deposit in the escrow account, to the Hurt McGuire Heirs, c/o Charles Green, P. O. Box 1067, Bluefield, VA 24605, and (2) disburse fifty percent (50%) of the funds attributable to the VGOB Tract 3, being 3.20742 percent of funds on deposit in the escrow account, to Reserve Coal Properties, P. O. Box 947, Bluefield, VA 24605.

6.2. The Exhibits E and EE to the Pooling Order are deleted in toto and replaced with the Exhibit E and

EE attached to the Affidavit. Further, the Supplemental Order filed in this cause is hereby modified to delete the requirement that payments attributable to the Heirs' and Reserve's conflicting coalbed methane gas ownership interests in VGOB Tracts 2 and 3 be deposited by the Unit Operator into the Escrow Account. 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 18th day of February, 2003, by a majority of the Virginia Gas and Oil Board.

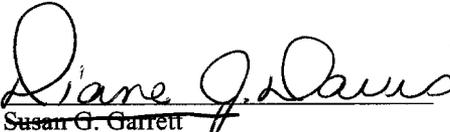

Chairman, Benny R. Wampler

DONE AND PERFORMED this 19th day of February, 2003, 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 18th day of February, 2003, 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: 9/30/05
~~07/31/06~~

Order Recorded Under Code of
Virginia Section 45.1-361.26

COMMONWEALTH OF VIRGINIA)
COUNTY OF WASHINGTON)

Acknowledged on this 19th day of February, 2003, 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: 09/30/05

**Order Recorded Under Code of
Virginia Section 45.1-361.26**

VIRGINIA:

SUPPLEMENTAL AFFIDAVIT RE CBM UNIT P-40

BEFORE THE VIRGINIA GAS AND OIL BOARD

IN RE: Application of Pocahontas Gas Partnership for Forced Pooling of Interests in CBM Unit P-40
VGOB-93-0420-0330 in the Garden District of Buchanan County, Virginia

AFFIDAVIT OF POCAHONTAS GAS PARTNERSHIP (herein "Designated Operator")
REGARDING ESCROW AND SUPPLEMENTAL ORDER

Leslie K. Arrington, being first duly sworn on oath, deposes and says:

That your affiant is employed by Consol Energy Inc. as a Gas Engineer and is duly authorized to make this affidavit on behalf of POCAHONTAS GAS PARTNERSHIP, the Designated Operator;

That the Order entered on June 29, 1995, by the Virginia Gas and Oil Board (hereinafter "Board") regarding the captioned CBM Unit required the Applicant to tender to the Escrow Agents funds attributable to the rights, interests and claims of the persons identified in the annexed Exhibit E as subject to escrow under the Board's Order pooling the captioned Unit, Board Regulations and the Code of Virginia;

That after the pooling hearing held in the captioned matter, the Hurt McGuire Heirs and Reserve Coal Properties entered into a royalty split agreement; that by the terms of said agreement escrow regarding the conflicting claims of the Hurt McGuire Heirs and Reserve Coal Properties is no longer required;

That annexed hereto are revised Exhibits E and EE;

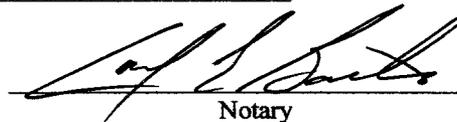
That the Designated Operator has heretofore filed its petition seeking the disbursement from escrow of all funds on deposit attributable to the conflicting claims of the Hurt McGuire Heirs and Reserve Coal Properties or the Designated Operator is preparing its petition seeking disbursement from escrow of all funds on deposit attributable to the conflicting claims of said respondents and will file same at its earliest opportunity; and

That the annexed supplemental order provides that the payment of funds subject to the annexed royalty split agreement shall be made to the said parties thereto rather than to the Escrow Agent.

Dated at Tazewell, Virginia, this 11th day of July, 2002.


Leslie K. Arrington

Taken, subscribed and sworn to before me by Leslie K. Arrington as Gas Engineer of Consol Energy Inc., on behalf of the corporate Designated Operator, this 11th day of JULY, 2002.


Notary

My commission expires: May 31, 2003.

Exhibit E

Unit P-40

BOOK 563 PAGE 20

Docket #VGOB-93-0216-0330

List of Conflicting Owners/Claimants that require escrow

| | Net Acres in Unit | Interest in Unit |
|---|----------------------|---------------------|
| <u>TRACT #4 - 0.02 acres</u> | | |
| <u>COAL FEE OWNERSHIP</u> | | |
| (1) Hurt McGuire Heirs c/o Charles Green P.O. Box 1067 Bluefield, VA 24605 | 0.02 acres | 0.02500% |
| <u>OIL & GAS FEE OWNERSHIP</u> | | |
| (1) Major Kidd General Delivery Whitewood, VA 24657 | 0.02 acres | 0.02500% |
| <u>TRACT #7 - 0.66 acres</u> | | |
| <u>COAL FEE OWNERSHIP</u> | | |
| (1) Hurt McGuire Heirs c/o Charles Green P.O. Box 1067 Bluefield, VA 24605 | 0.66 acres | 0.82500% |
| <u>OIL & GAS FEE OWNERSHIP</u> | | |
| (1) Charles Presley General Delivery Whitewood, VA 24657 | 0.66 acres | 0.82500% |
| <u>TRACT #8 - 8.31 acres</u> | | |
| <u>COAL FEE OWNERSHIP</u> | | |
| (1) Hurt McGuire Heirs c/o Charles Green P.O. Box 1067 Bluefield, VA 24605 | 8.31 acres | 10.38750% |
| <u>OIL & GAS FEE OWNERSHIP</u> | | |
| (1) Kyle Robinson Box 100 Whitewood, VA 24657 | 8.31 acres | 10.38750% |
| <u>TRACT #10 & #12 - 17.25 acres</u> | | |
| <u>COAL FEE OWNERSHIP</u> | | |
| (1) Hurt McGuire Heirs c/o Charles Green P.O. Box 1067 Bluefield, VA 24605 | 17.25 acres | 21.56250% |

Docket #VGOB-93-0216-0330

List of Conflicting Owners/Claimants that require escrow

| | Net Acres in Unit | Interest in Unit |
|---|----------------------|---------------------|
| <u>OIL & GAS FEE OWNERSHIP</u> | | |
| (1) W. B. McDonald 30 Rolling Hills Hager Hill, KY 40122 | 17.25 acres | 21.56250% |
| <u>TRACT #14 - 0.01 acres</u> | | |
| <u>COAL FEE OWNERSHIP</u> | | |
| (1) Hurt McGuire Heirs c/o Charles Green P.O. Box 1067 Bluefield, VA 24605 | 0.01 acres | 0.01250% |
| <u>OIL & GAS FEE OWNERSHIP</u> | | |
| (1) W. B. McDonald 30 Rolling Hills Hager Hill, KY 40122 | 0.01 acres | 0.01250% |
| <u>TRACT #15 - 1.09 acres</u> | | |
| <u>COAL FEE OWNERSHIP</u> | | |
| (1) Hurt McGuire Heirs c/o Charles Green P.O. Box 1067 Bluefield, VA 24605 | 1.09 acres | 1.36250% |
| <u>OIL & GAS FEE OWNERSHIP</u> | | |
| (1) Norfolk Southern Corporation Real Estate Dept. 185 Spring Street Atlanta, GA 30303 | 1.09 acres | 1.36250% |
| <u>TRACT #16 - 2.04 acres</u> | | |
| <u>COAL FEE OWNERSHIP</u> | | |
| (1) Hurt McGuire Heirs c/o Charles Green P.O. Box 1067 Bluefield, VA 24605 | 2.04 acres | 2.55000% |
| <u>OIL & GAS FEE OWNERSHIP</u> | | |
| (1) Norfolk Southern Corporation Real Estate Dept. 185 Spring Street Atlanta, GA 30303 | 2.04 acres | 2.55000% |

Docket #VGOB-93-0216-0330

List of Conflicting Owners/Claimants that require escrow

| | Net Acres in Unit | Interest in Unit |
|---|----------------------|---------------------|
| <u>TRACT #17 - 0.53 acres</u> | | |
| <u>COAL FEE OWNERSHIP</u> | | |
| (1) Hurt McGuire Heirs c/o Charles Green P.O. Box 1067 Bluefield, VA 24605 | 0.53 acres | 0.66250% |
| <u>OIL & GAS FEE OWNERSHIP</u> | | |
| (1) Norfolk Southern Corporation Real Estate Dept. 185 Spring Street Atlanta, GA 30303 | 0.53 acres | 0.66250% |
| <u>TRACT #18 - 5.76 acres</u> | | |
| <u>COAL FEE OWNERSHIP</u> | | |
| (1) Hurt McGuire Heirs c/o Charles Green P.O. Box 1067 Bluefield, VA 24605 | 5.76 acres | 7.20000% |
| <u>OIL & GAS FEE OWNERSHIP</u> | | |
| (1) Norfolk Southern Corporation Real Estate Dept. 185 Spring Street Atlanta, GA 30303 | 5.76 acres | 7.20000% |

Exhibit EE
Unit P-40
Docket No. VGOB-93-0216-0330
List of Conflicting Owners/Claimants with Royalty Split Agreements
(The disbursement for Tract #9 has already taken place)

BOOK **563** PAGE **23**

| | Net Acres in Unit | Interest in Unit | Percent of Escrow |
|--|----------------------------------|---------------------|----------------------|
| <u>TRACT #2 - 6.20 acres</u> | | | |
| <u>COAL FEE OWNERSHIP</u> | | | |
| (1) Hurt McGuire Heirs c/o Charles Green P.O. Box 1067 Bluefield, VA 24605 | 6.20 acres | 7.75000% | 13.85785% |
| <u>OIL & GAS FEE OWNERSHIP</u> | | | |
| (1) Reserve Coal Properties P. O. Box 947 Bluefield, VA 24605 | 6.20 acres | 7.75000% | 13.85785% |
| <u>TRACT #3 - 2.87 acres</u> | | | |
| <u>COAL FEE OWNERSHIP</u> | | | |
| (1) Hurt McGuire Heirs c/o Charles Green P.O. Box 1067 Bluefield, VA 24605 | 2.87 acres | 3.58750% | 6.41484% |
| <u>OIL & GAS FEE OWNERSHIP</u> | | | |
| (1) Reserve Coal Properties P. O. Box 947 Bluefield, VA 24605 | 2.87 acres | 3.58750% | 6.41484% |
| <u>TRACT #9 - 17.50 acres</u> | | | |
| <u>COAL FEE OWNERSHIP</u> | | | |
| (1) Reserve Coal Properties (1/2 coal below jawbone) P. O. Box 947 Bluefield, VA 24605 | 8.75 acres 1/2 of 17.50 acres | 10.93750% | |
| <u>OIL & GAS FEE OWNERSHIP</u> | | | |
| (1) Ronald A. Clyborne 9325 Olympic View Drive Edmonds, WA 98020 | 8.75 acres 1/2 of 17.50 acres | 10.93750% | |

VIRGINIA:

SUPPLEMENTAL AFFIDAVIT RE CBM UNIT P-40
BEFORE THE VIRGINIA GAS AND OIL BOARD

IN RE: Application of Pocahontas Gas Partnership for Forced Pooling of Interests in CBM Unit P-40
VGOB-93-0420-0330 in the Garden District of Buchanan County, Virginia

AFFIDAVIT OF POCAHONTAS GAS PARTNERSHIP (herein "Designated Operator")
REGARDING ESCROW AND SUPPLEMENTAL ORDER

Leslie K. Arrington, being first duly sworn on oath, deposes and says:

That your affiant is employed by Consol Energy Inc. as a Gas Engineer and is duly authorized to make this affidavit on behalf of POCAHONTAS GAS PARTNERSHIP, the Designated Operator;

That the Order entered on June 29, 1995, by the Virginia Gas and Oil Board (hereinafter "Board") regarding the captioned CBM Unit required the Applicant to tender to the Escrow Agents funds attributable to the rights, interests and claims of the persons identified in the annexed Exhibit E as subject to escrow under the Board's Order pooling the captioned Unit, Board Regulations and the Code of Virginia;

That after the pooling hearing held in the captioned matter, the Hurt McGuire Heirs and Reserve Coal Properties entered into a royalty split agreement; that by the terms of said agreement escrow regarding the conflicting claims of the Hurt McGuire Heirs and Reserve Coal Properties is no longer required;

That annexed hereto are revised Exhibits E and EE;

That the Designated Operator has heretofore filed its petition seeking the disbursement from escrow of all funds on deposit attributable to the conflicting claims of the Hurt McGuire Heirs and Reserve Coal Properties or the Designated Operator is preparing its petition seeking disbursement from escrow of all funds on deposit attributable to the conflicting claims of said respondents and will file same at its earliest opportunity; and

That the annexed supplemental order provides that the payment of funds subject to the annexed royalty split agreement shall be made to the said parties thereto rather than to the Escrow Agent.

Dated at Tazewell, Virginia, this 11th day of July, 2002.

Leslie K. Arrington
Leslie K. Arrington

Taken, subscribed and sworn to before me by Leslie K. Arrington as Gas Engineer of Consol Energy Inc., on behalf of the corporate Designated Operator, this 11th day of JULY, 2002.

[Signature]
Notary

My commission expires: May 31, 2003.

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 25th day of February, 2003 12:48PM.
Deed Book No. 563 and Page No. 19.
Returned to: DMME.
TESTE: James M. Bevins, Jr., Clerk
TESTE: Shirley S. Allen, Deputy Clerk

INSTRUMENT RECORDED
RECORDED IN THE CLERK'S OFFICE OF
BISHAM COUNTY ON
FEBRUARY 21, 2002 AT 12:42PM
JAMES M. SWINS JR., CLERK

16

BY:

(10)