

disbursement  
050002469 tract  
8

VIRGINIA:

BEFORE THE VIRGINIA GAS AND OIL BOARD

APPLICANTS: Kyle P. Robinson and Edith A. Robinson )  
)  
)  
RELIEF SOUGHT: Issuance of an Amended Supplemental )  
Order Amending Prior Orders Affecting )  
Drilling Unit P-40 Located in )  
Buchanan County, VA )  
(herein "Subject Drilling Unit" to Provide: )  
(1) Calculation of Funds Unit Operator )  
Deposited into the Escrow Account for )  
Subject Drilling Unit by Tract Subaccounts; )  
(2) to Applicants a Royalty Accounting; and )  
(3) Disbursement to Kyle P. Robinson and )  
Edith A. Robinson in Accordance with )  
Their Ownership Interests Those Funds )  
Deposited by the Unit Operator into Subject )  
Drilling Unit's Escrow Subaccount for )  
VGOB Tract 8. )

DOCKET NO.  
93-0216-0330-03

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 April 19, 2005 at the Southwest Virginia Higher Education Center on the campus of Virginia Highlands Community College, Abingdon, VA.
2. **Appearances:** Peter Glubiak, Esq. Appeared for the applicant, Mark Swartz, Esq. appeared for the Unit Operator; and Sharon M.B. Pigeon, 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 that are subject to a Board pooling order. Further, 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. 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 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 final decision of a court of competent jurisdiction adjudicating the ownership of coalbed methane gas as between the conflicting claimants or an agreement among all claimants owning conflicting estates in the tract in question or any undivided interest therein.

4. **Prior Proceedings:**

- 4.1. On June 16, 1993, 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 and the Board's Oakwood I Field Rules (herein "Pooling Order"). The Pooling Order was filed with the Clerk of the Circuit Court of Buchanan County on June 18, 1993 in Deed Book 410 at Page 267. The Pooling Order was modified in accordance with the Board's Oakwood II Field Rules under the same Docket number by order executed on December 30, 1993 and filed with the Clerk's Office on January 7, 1994 in Deed Book 417, Page 378, and supplemented by 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 Orders") (hereafter the Pooling Orders and the Supplemental Order are collectively referred to as the "Pooling Orders"). A revised Supplemental Order executed on February 6, 2001 that was filed with the Clerk's Office on February 15, 2001 in Deed Book 519 at page 384 authorized the operator to discontinue payment of funds into the Escrow Account attributable to owners in VGOB Tract 9 who are subject to a royalty split agreement. A revised Supplemental Order entered under Docket Number 93-0216-0330-01 was executed by the Board on October 3, 2001 along with a statement of correction executed on December 20, 2001 authorizing disbursement of funds attributable to Tract 9 from the Board's Escrow Account was filed with the Clerk in Deed Book 537 at page 726. A revised Supplemental Order entered under Docket Number 93-0216-0330-02 and authorizing disbursement of funds attributable to owners in VGOB Tracts 2 and 3 who are subject to a royalty split agreement was executed by the Board on February 18, 2003 and filed with the Clerk in Deed Book 563 at page 14. On June 17, 2003, The Board executed an order without docket number amending all prior pooling orders that named Buchanan Production Company, Pocahontas Gas Partnership, Island Creek Coal Company or Consol Energy, Inc. as unit operator, and designated CNX Gas Company, LLC as operator. In Buchanan County, the amendment order was recorded with the Buchanan County Clerk in Deed Book 585, Page 65.
- 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 were ordered deposited by the Unit Operator into the escrow account established by the Pooling Orders (herein "Escrow Account"). According to the Pooling Orders the coalbed methane claims of oil and gas fee owners Kyle P. Robinson and Edith A. Robinson in a 8.31-acre tract known as VGOB Tract 8 in the Subject Drilling Unit were in conflict and became subject to the escrow requirements of the Pooling Order.
- 4.3 The Applicant's Affidavit Regarding Supplemental Order and Disbursement of Escrowed Funds dated March 18, 2005, a copy of which is attached to and made a part hereof, states under oath that Applicants were plaintiffs in a Motion for Judgment filed on November, 2004 in the Circuit Court of Buchanan County, Virginia Styled Robinson, et al v. Hurt-McGuire Heirs, et al, Chancery Number: CH04000202-00, and that the Court ruled in favor of plaintiffs;
- 4.4 Applicants gave notice to Hurt-McGuire Land Trust, CNX Gas Company, LLC and Reserve Coal Properties Company through Counsel that the Board would take the Affidavit referred to in Paragraph 4.3 above under consideration at its hearing on April 19, 2005 and consider whether to: (1) amend the Pooling Order to provide for the disbursement of funds on deposit in the Escrow Account attributable to Tract 8 the interests of Kyle P. Robinson and Edith A. Robinson, (2) delete the requirement that the Unit Operator place future royalties attributable to Tract 8 and the interests of Kyle P. Robinson and Edith A. Robinson, and (3) continue the escrow account under this docket number because parties other than those seeking disbursement under this order are subject to escrow.

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 Applicant has certified and represented to the Board that:

- (1) Kyle P. Robinson and Edith A. Robinson are the owners of 100% of oil and gas estate underlying VGOB Tract 8 of the Subject Drilling Unit;
- (2) Donald and Anna Pearl Ratliff are prevailing Plaintiffs in Case Number CH04000202-00 described in the attached affidavit and in Paragraph 4.3, above,
- (3) Tract 8 of unit P-40 is subject to that decision which awards Plaintiffs all bonuses and/or royalties, if any, deposited by the Unit Operator in the Escrow Account which are attributable to said tract,
- (4) Net interests attributable and to be disbursed to Applicants are shown in Table 1, Below.

<b>Tract # Owner Names</b>	<b>Net acres In unit</b>	<b>% interest in unit</b>	<b>% interest in 93-0216-0330 balance</b>
Tract 8 Kyle P. Robinson and Edith A. Robinson – 100%	8.31	10.3875	23.1993

6. **Relief Granted:**

For the reasons set forth in Paragraph 4 and 5 above, and based upon the Accounting, the Escrow Agent is ordered to, within 10 days of receipt of this executed order: (1) disburse one hundred percent (100%) of the funds attributable to VGOB Tract 8, being 23.1993 percent of funds on deposit in the escrow sub-account on the date of disbursement, to:

Peter Glubiak Law Offices, Kyle P. Robinson and Edith A. Robinson  
C/O Glubiak Law Office  
P. O. Box 144

Aylett, VA 23009

Exhibit E to the Pooling Order, showing owners subject to escrow, is deleted in toto and replaced with the Exhibit E attached to this order. Further, the Supplemental Order filed in this cause is hereby modified to delete the requirement that payments attributable to the conflicting coalbed methane gas ownership interests of Kyle P. Robinson in VGOB Tract 8 be deposited by the Unit Operator into the Escrow Account and the Unit Operator is ordered to pay directly to Kyle P. Robinson and Edith A. Robinson 100% of all future royalties attributable to Tract 8. Because there are other owners subject to escrow under the Supplemental Order, the Escrow Agent is directed to continue the Escrow Account for Subject Drilling Unit. 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 16<sup>th</sup> day of August, 2005, by a majority of the Virginia Gas and Oil Board.

  
Chairman, Benny R. Wampler

DONE AND PERFORMED this 17<sup>th</sup> day of August, 2005, 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~~ )  
WASHINGTON

Acknowledged on this 16<sup>th</sup> day of August, 2005, 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

COMMONWEALTH OF VIRGINIA )  
COUNTY OF WASHINGTON )

Acknowledged on this 17<sup>th</sup> day of August, 2005, 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: 9/30/05

VIRGINIA:

AFFIDAVIT

BEFORE THE VIRGINIA GAS AND OIL BOARD

IN RE: Pertaining to Applicants/Plaintiffs Kyle P. Robinson & Edith A. Robinson  
Hurt-McGuire Heirs Land Trust (44.74 acre Tract), which includes Unit P-  
40 (Tract 4 and Tract 13), created by Board Order as VGOB 93-0216-0330-  
0

Application of Kyle P. Robinson and Edith A. Robinson, Plaintiffs/Applicants, resulting from action brought before the Buchanan County Circuit Court, styled Robinson, et al v. Hurt-McGuire Heirs, et al for disbursement of escrowed funds on behalf of the Plaintiffs/Applicants in Unit P-40 (44.74 acre Tract), VGOB Docket No. 93-0216-0330-0 in the Garden Magisterial District, Buchanan County, Virginia (Tract 4 and Tract 13)

AFFIDAVIT OF PETER G. GLUBIAK, COUNSEL FOR APPLICANTS LISTED ABOVE REGARDING SUPPLEMENTAL ORDER AND DISBURSEMENT OF FORCED POOLING UNIT FUNDS

Peter G. Glubiak (herein Affiant), being first duly sworn on oath, deposes and says:

1. That your Affiant, Peter G. Glubiak, Glubiak Law Offices, a discreet and competent attorney licensed in the State of Virginia, whose office is located at P. O. Box 144, Aylett, Virginia 23009; and that your Affiant is the attorney for the Applicants listed above and has been the attorney of record for Applicants throughout the judicial proceedings described below;
2. That pursuant to Order, Amended Order, and Supplemental Order certain funds have been escrowed with regard to the Applicants above for Unit P-40 with the Virginia Gas and Oil Board;
3. Conflicting claim as shown on Order, Amended Order and Supplemental Order for the escrowed funds for above-referenced unit arose between Applicants and Hurt-McGuire Heirs (Charles Green, Trustee), coal owner underlying Applicants tracts of property as described below;
4. In order to resolve this conflict, a Motion for Judgment Pursuant to Declaratory Judgment Act, Virginia Code § 8.01-184 was filed in November, 2004 by Applicants listed above in the Circuit Court of Buchanan County, Virginia, Styled Robinson, et al v. Hurt-McGuire Heirs, et al, Chancery Number: CH04000202-00;
5. Pursuant to trial and Order of the Court, resulting from the Ratliff, et al v. Harrison-Wyatt, LLC case, the Honorable Judge Keary R. Williams, Chief Judge of the Circuit Court of Buchanan County, Virginia rendered an Opinion Letter dated August 29, 2002, and an Amendment To Opinion Letter, Page 7, Paragraph 2 dated December 6, 2002, in favor of the Plaintiffs, and pursuant to statute, the Virginia Gas and Oil Board was Ordered to distribute the funds held in escrow attributable to the Plaintiffs. The Decision of the Buchanan County Circuit Court was appealed to the Virginia Supreme Court and pursuant to Order dated March 5, 2004 the Decision of the Buchanan County Circuit Court was affirmed by unanimous opinion of the Virginia Supreme Court, resulting in a final non-appealable order pursuant to statute. It is the Order of the Virginia Supreme Court as well as the original Order of the Buchanan County Circuit

Court under which Applicants, represented by Affiant, apply for the distribution of funds held on escrow for the above-referenced Unit;

6. The Robinson, et al v. Hurt-McGuire Heirs, et al case being specific in content, therefore resulted in an agreed Final Order being entered by Judge Williams on March 18, 2005, and pursuant to statute, the Virginia Gas and Oil Board was Ordered to distribute the funds held in escrow attributable to the Applicants listed above;

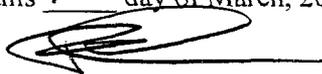
7. The interest in claims of all persons involved in the funds currently held in escrow by the Virginia Gas and Oil Board have been determined by a final non-appealable Order of Court and the ownership of the escrowed funds has also been the subject of a Circuit Court Order. It is Affiant's position that the matter has finally been determined and that therefore as the attorney on behalf of the Applicants listed above, he seeks distribution of all funds currently held in escrow for this unit, as well as those funds to be deposited at any later date pertaining to this unit.

8. Unit P-40, (Tract 4 and Tract 13) created by Board Order as VGOB 93-0216-0330-0\_\_, is subject to disbursement of funds due to the Court's Decision regarding ownership and Final Order entered by Judge Williams, (Hurt-McGuire Heirs - 44.74 coal Tract); and

9. There are no other parties interested in these funds other than those who have previously been notified, including Hurt-McGuire Heirs (Charles Green, Trustee), by its Attorney, J. Scott Sexton, and Reserve Coal Properties Company and CNX Gas Company, LLC, by their attorney, Stephen M. Hodges, pursuant to the Orders, Amended Orders and Supplemental Orders on file with the board.

Further saith Affiant not.

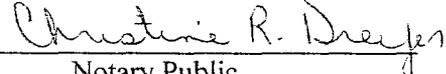
Dated at Aylett, Virginia, this 18 day of March, 2005.

  
\_\_\_\_\_  
Peter G. Glubiak, Affiant

COMMONWEALTH OF VIRGINIA:  
CITY/COUNTY OF King William, to-wit:

I, the undersigned, a Notary Public, in and for the County aforesaid, in the State of Virginia, do certify that, **PETER G. GLUBIAK**, Affiant, has acknowledged the foregoing writing before me in my County and State aforesaid.

Given under my hand this 18 day of March, 2005.

  
\_\_\_\_\_  
Notary Public

My commission expires: October 31, 2008

**Exhibit A**  
**Tract-by-Tract Escrow Calculation**  
**Account Balances as of 1/31/05**

Unit P-40  
 VGOB 93-0216-0330  
 Acres Escrowed: 35.82

Owners	Tract #	Acres	Total Tract Percent of Escrow	Fractional Interest	Owners' Percent of Escrow (50%)	Amount Due Owners \$159,611.69
	4	0.02	0.0558%	---	0.0279%	\$44.56
					0.0279%	\$44.56
	7	0.66	1.8425%	---	0.9213%	\$1,470.46
					0.9213%	\$1,470.46
Hurt McGuire Heirs - C Kyle Robinson - O&G	8	8.31	23.1993%	---	*	\$37,028.84
	10,12	17.25	48.1575%	---	24.0787%	\$38,432.46
					24.0787%	\$38,432.46
	14	0.01	0.0279%	---	0.0140%	\$22.28
					0.0140%	\$22.28
	15	1.09	3.0430%	---	1.5215%	\$2,428.49
					1.5215%	\$2,428.49
	16	2.04	5.6951%	---	2.8476%	\$4,545.06
					2.8476%	\$4,545.06
	17	0.53	1.4796%	---	0.7398%	\$1,180.82
					0.7398%	\$1,180.82
	18	5.76	16.0804%	---	8.0402%	\$12,833.10
					8.0402%	\$12,833.10
	19	0.15	0.4188%	---	0.2094%	\$334.20
					0.2094%	\$334.20

\*This owner is entitled to 100% of the royalties attributable to this tract.  
**This information is for estimation purposes only.**

Exhibit E  
Unit P-40

Docket #VGOB-93-0216-0330

Revised 8/11/05

List of Conflicting Owners/Claimants that require escrow

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

**Exhibit E**  
**Unit P-40**  
**Docket #VGOB-93-0216-0330**  
**List of Conflicting Owners/Claimants that require escrow**

Revised 8/11/05

	Net Acres in Unit	Interest in Unit
<b><u>TRACT #4 - 0.02 acres</u></b>		
<b><u>COAL FEE OWNERSHIP</u></b>		
(1) Hurt McGuire Heirs c/o Charles Green P.O. Box 1067 Bluefield, VA 24605	0.02 acres	0.02500%
<b><u>OIL &amp; GAS FEE OWNERSHIP</u></b>		
(1) Major Kidd General Delivery Whitewood, VA 24657	0.02 acres	0.02500%
<b><u>TRACT #7 - 0.66 acres</u></b>		
<b><u>COAL FEE OWNERSHIP</u></b>		
(1) Hurt McGuire Heirs c/o Charles Green P.O. Box 1067 Bluefield, VA 24605	0.66 acres	0.82500%
<b><u>OIL &amp; GAS FEE OWNERSHIP</u></b>		
(1) Charles Presley General Delivery Whitewood, VA 24657	0.66 acres	0.82500%
<b><u>TRACT #10 &amp; #12 - 17.25 acres</u></b>		
<b><u>COAL FEE OWNERSHIP</u></b>		
(1) Hurt McGuire Heirs c/o Charles Green P.O. Box 1067 Bluefield, VA 24605	17.25 acres	21.56250%
<b><u>OIL &amp; GAS FEE OWNERSHIP</u></b>		
(1) W. B. McDonald 30 Rolling Hills Hager Hill, KY 40122	17.25 acres	21.56250%

Exhibit E  
Unit P-40

Docket #VGOB-93-0216-0330

Revised 8/11/05

List of Conflicting Owners/Claimants that require escrow

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

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 18<sup>th</sup> day of August, 20 05 12:18P M. The tax imposed by §587.1-802 of the Code has been paid in the amount of \$                     .  
Deed Book No. DM 112 and Page No.                     .  
Returned to: DM 112 TESTE:                      James M. Bevins, Jr., Clerk  
TESTE:                      Deputy Clerk

BU

#21

ENTERED

INSTRUMENT #050002469  
RECORDED IN THE CLERK'S OFFICE OF  
BUCHANAN COUNTY ON  
AUGUST 18, 2005 AT 12:18PM  
JAMES M. BEVINS, CLERK  
RECORDED BY: AKT