

#06-0000778

INSTRUMENT PREPARED BY
VIRGINIA GAS AND OIL BOARD

ORDER RECORDED UNDER CODE
OF VIRGINIA SECTION 45.1-361.26

VIRGINIA:

BEFORE THE VIRGINIA GAS AND OIL BOARD

APPLICANTS: Reserve Coal Properties)
Metcalf Estate)
Ruth Culbertson)
Clyborne, Inc.)

DOCKET NO.
93-0420-0358-02 J

RELIEF SOUGHT: Issuance of an Amended Supplemental)
Order Amending Prior Orders Affecting)
Drilling Unit N-40 Located in the Oakwood)
Coalbed Methane Gas Fields I and II in the)
Garden Magisterial District, 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 Applicants in)
Accordance with Their Ownership Interests)
Those Funds Deposited by the Unit Operator)
into Subject Drilling Unit's Escrow)
Subaccount for VGOB Tracts 2, 5, 6 and 7.)

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") on September 20, 2005 at the Southwest Virginia Higher Education Center on the campus of Virginia Highlands Community College, Abingdon, VA.
2. **Appearances:** Mark Swartz, Esq. of the firm Swartz and Stump L.C. appeared for the Unit Operator; J. C. Franks appeared for the Metcalf Estate; 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 October 29, 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 (herein "Pooling Order"). The Pooling Order was filed with the Clerk of the Circuit Court of Buchanan County on November 5, 1993 in Deed Book 415 at page 569. The Board designated Pocahontas Gas Partnership, predecessor of CNX Gas Company LLC, as the Unit Operator of the Subject Drilling Unit. The Pooling Order was amended and supplemented by the Board's Supplemental Order regarding elections executed on April 25, 1994 that was filed with the Buchanan County Circuit Court Clerk's Office on May 20, 1994 in Deed Book 422 at page 496 ("Supplemental Order")(hereafter the Pooling Order and the Supplemental Orders are collectively referred to as the Pooling Orders).
- 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 Reserve Coal Properties, Ruth Culbertson, and the Metcalf Estate and the oil and gas fee ownership of Clyborne, Inc. and Reserve Coal Properties or their predecessors in title in a 21.75 acres combined tract known as VGOB Tracts 2, 5, 6, and 7 in Subject Drilling Unit N-40 were in conflict and became subject to the escrow requirements of the Pooling Order.
- 4.3. The Unit Operator's Miscellaneous Petition to the Board, received August 19, 2005 by the Division of Gas and Oil, a copy of which is attached to and made a part hereof, and sworn testimony attested that Reserve Coal Properties and Ruth Culbertson, Metcalf Estate, and Clyborne, Inc. have entered into a royalty split agreements and that by terms of those agreements escrow regarding the conflicting claims of said parties is no longer required. By sworn testimony, the Unit Operator notified the Board that VGOB Tracts 2, 5, 6, and 7 of the Subject Drilling Unit and the interests of Reserve Coal Properties, Ruth Culbertson, Metcalf Estate, and Clyborne, Inc. are subject to the split agreements.
- 4.4. Petitioner gave notice to Reserve Coal Properties, Ruth Culbertson, Metcalf Estate, and Clyborne, Inc. that the Board would take the petition referred to in Paragraph 4.3 above under consideration at its hearing. Notice stated that the Board would 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, 5, 6, and 7; and (2) delete the requirement that the Unit Operator place future royalties attributable to the above-named parties in Tracts 2, 5, 6, and 7 in the Escrow Account.
- 4.5. The Unit Operator filed the attached accountings for Subject Drilling Unit's Escrow Account with the Board ("Accountings").

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 Petitioner has certified and represented to the Board that:

- (1) Reserve Coal Properties is the owner of 50% of the coal estate and the oil and gas estate underlying VGOB Tracts 2, 5, 6, and 7 of the subject Drilling Unit.
- (2) Metcalf Estate is the owner of 25% of the coal estate underlying VGOB Tracts 2, 5, 6, and 7 of the subject Drilling Unit.
- (3) Ruth Culbertson is the owner of 25% of the coal estate underlying VGOB Tracts 2, 5, 6, and 7 of the subject Drilling Unit.
- (4) Clyborne, Inc. is the owner of 50% of the oil and gas estate underlying VGOB Tracts 2, 5, 6, and 7 of the subject Drilling Unit.
- (5) Reserve Coal Properties and Metcalf Estate have entered into a royalty split agreement specifying that escrowed funds attributable to their conflicting interests are to be divided with 25% going to the gas owner and 75% going to the coal owner, and also specifying that future royalties be paid directly to the owners according to the split agreement.
- (6) Reserve Coal Properties and Ruth Culbertson have entered into a royalty split agreement specifying that escrowed funds attributable to their conflicting interests be divided with 50% going to the gas owner and 50% going to the coal owner, and also specifying that future royalties be paid directly to the owners according to the split agreement.
- (7) Reserve Coal Properties and Clyborne, Inc. have entered into a royalty split agreement specifying that escrowed funds attributable to their conflicting interests be divided with 50% going to the gas owner and 50% going to the coal owner, and also specifying that future royalties be paid directly to the owners according to the split agreement.
- (8) The net interests attributable and to be disbursed to Reserve Coal Properties, Ruth Culbertson, Metcalf Estate, and Clyborne, Inc. in Tracts 2, 5, 6, and 7 are shown in Table 1, below.

TABLE-1		
Tracts # 2, 5, 6, and 7 Owner Names	Net acres in Unit	% interest in VGOB 93-0420-0358 balance
Reserve Coal Properties P.O. Box 947 Bluefield, VA 24605	10.8750	43.750%
Metcalf Estate c/o J. C. Franks, Agent 621 Peavler Street Marion, VA 24354	5.4375	18.7500%
Ruth Culbertson P.O. Box 217 Raven, VA 24639	5.4375	12.5000%
Clyborne, Inc. 9325 Olympic View Drive Edmonds, WA 98020	10.8750	25.0000%

6. **Relief Granted:**

For the reasons set forth in Paragraphs 4 and 5 above, and based upon the Accounting, the Escrow Agent is ordered to, within 10 days of receipt of this executed order: Disburse escrowed funds attributable to VGOB Tracts 2, 5, 6, and 7 and the interests of Reserve Coal Properties, Ruth Culbertson, Metcalf Estate, and Clyborne, Inc. according to the percentages shown in Table 1, above, and mail attributable proceeds to the addresses shown in the table. Exhibit E to the Pooling Order, showing owners subject to escrow, is deleted in toto. 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 Reserve Coal Properties, Ruth Culbertson, Metcalf Estate, and Clyborne, Inc. in Tracts 2, 5, 6, and 7 be deposited by the Unit Operator into the Escrow Account, and, because there are no other owners subject to escrow under the Supplemental Order, the Escrow Agent is directed to discontinue 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 9th day of March, 2006, by a majority of the Virginia Gas and Oil Board.

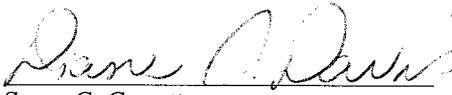

Chairman, Benny R. Wampler

DONE AND PERFORMED this 13th day of March, 2006, 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)

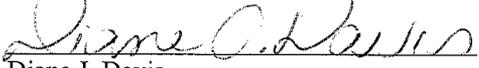
Wilmington
Acknowledged on this 9th day of March, 2006, personally before me a notary public in and for the Commonwealth of Virginia, appeared Benny R. Wampler, being duly sworn did depose and say that he is Chairman of the Virginia Gas and Oil Board, that he executed the same and was authorized to do so.


Susan G. Garrett
Notary Public

My Commission expires: 9/30/09

COMMONWEALTH OF VIRGINIA)
COUNTY OF WASHINGTON)

Acknowledged on this 13th day of March, 2006, 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: 9/30/09

BEFORE THE VIRGINIA GAS AND OIL BOARD

PETITIONER: CNX Gas Company LLC

DIVISION OF GAS AND OIL
DOCKET NO: VGOB 93-0420-0358-01

RELIEF SOUGHT: (1) DISBURSEMENT FROM
ESCROW REGARDING TRACT(S) 2
(2) AND AUTHORIZATION FOR DIRECT
PAYMENT OF ROYALTIES

HEARING DATE: September 20, 2005

DRILLING UNIT: N-40

BUCHANAN COUNTY, VIRGINIA

MISCELLANEOUS PETITION

1. **Petitioner and its counsel:** Petitioner is CNX Gas Company LLC, P. O. Box 947, Bluefield, Virginia 24605, 276/988-1000. Petitioner's counsel is Mark A. Swartz, SWARTZ & STUMP, L.C., P.O. Box 517, Abingdon, VA 24212.

2. **Relief sought:** (1) the disbursement of escrowed funds heretofore deposited with the Board's Escrow Agent(s) attributable to Tract(s) 2 as depicted upon the annexed Exhibit A; and (2) authorization to begin paying royalties directly to the parties to the royalty split between Ruth Culbertson and Reserve Coal Properties; Metcalf Estate and Reserve Coal Properties and Reserve Coal Properties and Clyborne, Inc. (see attached Exhibit A for details).

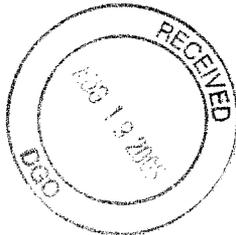
3. **Legal Authority:** Va. Code Ann. § 45.1-361.1 et seq., 4 VAC 25-160-140., and relevant Virginia Gas and Oil Board Orders ("Board") heretofore promulgated pursuant to law.

4. **Type of well(s):** Coalbed methane.

5. **Factual basis for relief requested:** Ruth Culbertson and Reserve Coal Properties; Metcalf Estate and Reserve Coal Properties and Reserve Coal Properties and Clyborne, Inc. (see attached Exhibit A for details), have entered into royalty split agreement. Said royalty split agreement allows the Applicant and Designated Operator to pay royalties directly to the persons identified in Exhibit EE annexed hereto and the annexed Exhibit A, further, specifies how said royalties are to be divided and paid.

6. **Attestation:** The foregoing Petition to the best of my knowledge, information, and belief is true and correct.

CNX GAS COMPANY LLC
BY IT'S PROFESSIONAL MANAGER
CNX GAS COMPANY LLC, PETITIONER



By

A handwritten signature in black ink, appearing to read "Leslie K. Arrington".

Leslie K. Arrington
Manager – Environmental / Permitting
CNX Gas Company LLC
P.O. Box 947
Bluefield, Virginia 24605
276/988-1000

Exhibit EE
Unit N-40
Docket No. VGOB-93-0420-0358-01
List of Conflicting Owners/Claimants with Royalty Split Agreements

	Net Acres in Unit	Percent of Unit
<u>Tracts #2, 5, 6, 7 - 21.75 acres</u>		
<u>COAL FEE OWNERSHIP</u>		
(1) Ruth Culbertson, et al., Tr 7A	21.75 acres	27.18750%
<i>*Note: This tract (7A) has a title conflict</i>		
(a) Ruth Culbertson P.O. Box 185 Doran, VA 24612	5.4375 acres 1/4 of 21.75 acres	6.79688%
(b) Metcalf Estate c/o J. C. Franks 621 Peavler Street Marion, VA 24641	5.4375 acres 1/4 of 21.75 acres	6.79688%
(c) Reserve Coal Properties (1/2 coal below jawbone) P. O. Box 947 Bluefield, VA 24605	10.875 acres 1/2 of 21.75 acres	13.59375%
<u>OIL & GAS FEE OWNERSHIP</u>		
<i>*Note: This tract (7A) has a title conflict</i>		
(1) Clyborne, Inc. 9325 Olympic View Drive Edmonds, WA 98020	10.86 acres 1/2 of 21.75 acres	13.57500%
(2) Reserve Coal Properties (Oil & Gas Claimant) P. O. Box 947 Bluefield, VA 24605	10.86 acres 1/2 of 21.75 acres	13.57500%

Exhibit EE
Unit N-40
Docket No. VGOB-93-0420-0358-01
List of Conflicting Owners/Claimants with Royalty Split Agreements

	Net Acres in Unit	Percent of Unit
<u>Tracts #2, 5, 6, 7 - 21.75 acres</u>		
<u>COAL FEE OWNERSHIP</u>		
(1) Ruth Culbertson, et al., Tr 7A	21.75 acres	27.18750%
<i>*Note: This tract (7A) has a title conflict</i>		
(a) Ruth Culbertson P.O. Box 185 Doran, VA 24612	5.4375 acres 1/4 of 21.75 acres	6.79688%
(b) Metcalf Estate c/o J. C. Franks 621 Peavler Street Marion, VA 24641	5.4375 acres 1/4 of 21.75 acres	6.79688%
(c) Reserve Coal Properties (1/2 coal below jawbone) P. O. Box 947 Bluefield, VA 24605	10.875 acres 1/2 of 21.75 acres	13.59375%
<u>OIL & GAS FEE OWNERSHIP</u>		
<i>*Note: This tract (7A) has a title conflict</i>		
(1) Clyborne, Inc. 9325 Olympic View Drive Edmonds, WA 98020	10.86 acres 1/2 of 21.75 acres	13.57500%
(2) Reserve Coal Properties (Oil & Gas Claimant) P. O. Box 947 Bluefield, VA 24605	10.86 acres 1/2 of 21.75 acres	13.57500%

Exhibit A
Tract-by-Tract Escrow Calculation
Account Balances as of 7/31/05

Unit N-40
 VGOB 93-0420-0358-01
 Acres Escrowed: 21.75

Owners	Tract #	Total Acres	Owners' Acres	Total Tract Percent of Escrow	Split Agreement	Owners' Percent of Escrow	Amount Due Owners
Metcalf Estate - Coal 1/4		21.750	5.43750	100.00%	75.0000%	18.7500%	\$61,292.48
Reserve Coal Properties - O&G 1/2					25.0000%	6.2500%	\$3,830.78
Ruth Culbertson - Coal 1/4		21.750	5.43750	100.00%	50.0000%	12.5000%	\$7,661.56
Reserve Coal Properties - O&G 1/2					50.0000%	12.5000%	\$7,661.56
Reserve Coal Properties - Coal 1/2	2,5,6,7	21.750	10.87500	100.00%	50.0000%	25.0000%	\$15,323.12
Clyborne, Inc. - O&G 1/2					50.0000%	25.0000%	\$15,323.12

*This account should be closed after disbursement.

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 13th day of March, 2006 at 3:12 P. M.
 Deed Book No. _____ and Page No. _____
 Returned to: James M. Bevins, Jr.
 TESTE: James M. Bevins, Jr. Clerk
 TESTE: Quincy S. Miller Deputy Clerk

VALIDATE CASE PAPERS
RCPT : 0600001328
DATE : 03/13/06 TIME: 15:12
CASE : 027CLR06000777
ACCT : VIRGINIA GAS AND OIL
AMT. : \$57.00

BU
\$19