

VIRGINIA:

BEFORE THE VIRGINIA GAS AND OIL BOARD

APPLICANTS:	Bill Ratliff and Geneva Ratliff	)	DOCKET NO.
		)	
		)	93-0420-0363-02
RELIEF SOUGHT:	Issuance of an Amended Supplemental	)	
	Order Amending Prior Orders Affecting	)	
	Drilling Unit U-17 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 Bill Ratliff and	)	
	Geneva Ratliff in Accordance with	)	
	Their Ownership Interests Those Funds	)	
	Deposited by the Unit Operator into Subject	)	
	Drilling Unit's Escrow Subaccount for	)	
	VGOB Tract 5.	)	

REPORT OF THE BOARD

FINDINGS AND ORDER

1. **Hearing Date and Place:** This matter came on for hearings before the Virginia Gas and Oil Board (herein "Board") on April 20, 2004, August 17, 2004 and September 21, 2004 at the Southwest Virginia Higher Education Center on the campus of Virginia Highlands Community College, Abingdon, VA. Testimony relative to this petition was heard by the Board at its February 15, 2005 hearing.
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 at the April and August hearings.
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 August 25, 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 August 31, 1993 in Deed Book 413 at Page 237. The Pooling Order was supplemented by the Board's Supplemental Order Regarding Elections executed on April 25, 1994 that was filed with the Clerk's Office on May 20, 1994 in Deed Book 422 at page 453 ("Supplemental Order") (hereafter the Pooling Orders and the Supplemental Order are collectively referred to as the "Pooling Orders"). On September 30, 2004, the Board executed an order under Docket 93-0420-0363-01 disbursing escrowed funds to other prevailing plaintiffs in Tracts 2, 3 and 4 of Unit U-17. That order along with amended exhibits was filed with the Clerk of the Circuit Court of Buchanan County in Deed Book 604, Page 80. 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 Order (herein "Escrow Account"). According to the Pooling Orders the coalbed methane claims of oil and gas fee owners Bill and Geneva Ratliff in a 38.68-acre tract known as VGOB Tract 5 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 April 1, 2004, a copy of which is attached to and made a part hereof, states under oath that Applicants were parties to a Motion for Judgment filed on August 14, 2000 in the Circuit Court of Buchanan County, Virginia styled DONALD RATLIFF, et al v. HARRISON-WYATT, LLC, Case Number: CL187-00; that the Court ruled in favor of plaintiffs; that the Decision was appealed to the Virginia Supreme Court; and that the Supreme Court, in final non-appealable order, affirmed the Circuit Court opinion.
- 4.4 Applicants gave notice to Harrison-Wyatt, LLC and CNX Gas Company, LLC that the Board would take the Affidavit referred to in Paragraph 4.3 above under consideration at its hearing on April 20, 2004 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 5 and the interests of Bill and Geneva Ratliff, (2) delete the requirement that the Unit Operator place future royalties attributable to Tract 5 and the interests of Bill and Geneva Ratliff in the Escrow Account, 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) Bill and Geneva Ratliff are the owners of 100% of oil and gas estate underlying VGOB Tract 5 of the Subject Drilling Unit;
- (2) Bill and Geneva Ratliff are prevailing Plaintiffs in Case Number CL187-00 described in the attached affidavit and in Paragraph 4.3, above,
- (3) Tract 5 of unit U-17 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 tracts.
- (4) Bill and Geneva Ratliff's interests in Tract 5 are subject to liens recorded by the U. S. Internal Revenue Service (IRS). Testimony and supporting documentation presented to the Board at its February 15, 2005 hearing indicate that a settlement has been reached with the IRS in which the IRS agrees to a 50/50 split of escrowed funds and future payments, less attorney fees, that are attributable to Bill and Geneva Ratliff. Peter Glubiak, attorney for Ratliffs and other prevailing plaintiffs, testified that all payments should be made jointly to him and Ratliffs and he will be responsible for deducting appropriate fees and forwarding remaining funds to appropriate parties. Future payments are to be paid in like manner until the liens are satisfied.
- (5) The Board relied on advice from John Byrum of the Virginia Office of Attorney General in its consideration of disbursement of Tract 5 funds.
- (6) Net interests attributable and to be disbursed to Applicants are shown in Table 1, Below.

TABLE 1				
Tract # Owner Names	Net acres In unit	% interest in unit	% interest in 93-0420-0363 balance	Amount as of 2/25/04
Tract 5 Bill and Geneva Ratliff	38.68	48.35	89.2272	85,969.41

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, disburse one hundred percent (100%) of the funds attributable to VGOB Tract 5, being 89.2272 percent of funds on deposit in the escrow sub-account, on the date of disbursement, to:

Peter Glubiak Law Offices, Bill Ratliff and Geneva Ratliff  
C/O Glubiak Law Office  
P. O. Box 144

Aylett, VA 23009

Exhibit B 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 Bill and Geneva Ratliff in VGOB Tract 5 be deposited by the Unit Operator into the Escrow Account (future payments attributable to Tract 5 are to be sent to Peter Glubiak Law Offices, Bill Ratliff and Geneva Ratliff, at the address shown above), and, 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 15<sup>th</sup> day of June, 2005, by a majority of the Virginia Gas and Oil Board.

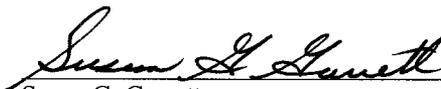
  
Chairman, Benny R. Wampler

DONE AND PERFORMED this 17<sup>th</sup> day of June, 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 )

Acknowledged on this 15<sup>th</sup> day of June, 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: 7-31-06

COMMONWEALTH OF VIRGINIA )  
COUNTY OF WASHINGTON )

Acknowledged on this 19<sup>th</sup> day of June, 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  
Diane J. Davis  
Notary Public

My commission expires 9/30/05

Order Recorded Under Code of  
Virginia Section 45.1-361.26

DOCKET NUMBER 93-0420-0360-02  
UNIT U-17  
EXHIBIT B

RESPONDENTS WHO HAVE NOT LEASED OR OTHERWISE CONTRACTED  
WITH OPERATOR AND WHO REQUIRE ESCROW

OIL AND GAS ESTATE

	Net Acreage Within Unit	Net Interest Within Unit
<u>Tract 6</u>		
Hershel J. Street Rebecca P. Street Box 143 Rowe, VA 24646	3.82 acres	4.77% *
<u>Tract 7</u>		
Rodney Keith Ratliff Darlene Ratliff Rt. 2, Box 50B Oakwood, VA 24631	0.85 acres	1.06%

\* Tract 6 may be subject to lien – see Pooling Orders.

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 2nd day of June, 2005 12:50 P. M.  
 Deed Book No. 6020 and Page No. 181.  
 Returned to: DMME TESTE: James M. Bevins, Jr., Clerk  
 TESTE: Shirley S. Miller Deputy Clerk

6/1  
\$16

INSTRUMENT #050001828  
RECORDED IN THE CLERK'S OFFICE OF  
BUCHANAN COUNTY ON  
JUNE 22, 2005 AT 12:52PM  
JAMES M. BEVINS, CLERK  
RECORDED BY: MKE