

VIRGINIA:

BEFORE THE VIRGINIA GAS AND OIL BOARD

APPLICANTS: Coal Mountain Mining Company Limited) DOCKET NO.
Liability Partnership L.L.P., f/k/a Coal) VGOB 95-04/18-0502-03
Mountain Mining Company and as Coal)
Mountain Mining Trust (herein "Coal)
Mountain"), and Garden Realty Corporation)
(herein "Garden") (Coal Mountain and)
Garden sometimes collectively referred to as)
"Applicants"))

RELIEF SOUGHT: Issuance of a First Amended Supplemental)
Order Amending Prior Orders Affecting)
W-30 Drilling Unit to Provide: (1) for the)
Calculation of Those Funds the)
Unit Operator Deposited into the Escrow)
Account for Tract 2 of the W-30 Drilling Unit;))
(2) to Provide to Applicants a Royalty)
Accounting;)
(3) Disbursement to Coal Mountain and)
Garden in Accordance with Their)
Agreement all Those Funds Deposited)
by the Unit Operator into the W-30 Escrow)
Account for Tract 2)

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 July 20, 1999 at the Dickenson Conference Room, Southwest Virginia Education 4-H Center, Abingdon, VA.
2. **Appearances:** Sandra Fraley of the firm Penn Stuart appeared on behalf of the Applicants; Pocahontas Gas Partnership (herein "Unit Operator"); 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 an escrow account for each of 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. Further, the Board finds: (1) that 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, (2) that it does not have jurisdiction to interpret voluntary agreements by and between the Gas owners/claimants and/or the Unit Operators or to abridge or contravene the provisions of such agreements, but (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) a final decision of a court of competent jurisdiction adjudicating the ownership of coalbed methane gas as between the conflicting 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. At the Board hearing held on October 24, 1995, the Board granted the relief sought by Buchanan Production Company in VGOB Docket 95-0418-0502 and 95-0418-0502-01, and on December 11, 1995 the Board executed its order pooling all interests in the W-30 Drilling

Unit located in the Oakwood Coalbed Methane Gas Fields I and II (herein "Subject Drilling Unit") in the Garden Magisterial District, Buchanan County, Virginia (herein "Subject Lands") for the production of occluded natural gas produced from coalbeds and rock strata associated therewith from frac wells, short holes, unsealed gob, and any additional wells that are authorized pursuant to Va. Code § 45.1-361.20 (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 December 19, 1995 in Deed Book 444 at Page 16 and pooled all Gas interests in all coalbed and coal seams below the Tiller Seam, including those portions of Consolidation Coal Company's Buchanan #1 Mine's 6 East Longwall Panel and 7 East Longwall Panel underlying Subject Drilling Unit (herein "Subject Formations") all pursuant to: (1) the permit provisions contained in Va. Code §§ 45.1-361.27 *et seq.*; (b) the Oakwood Coalbed Gas Field I Order No. OGCB 3-90 dated May 18, 1990; the Oakwood Coalbed Gas Field II Board Order 91-1119-0162 effective as of December 17, 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. The Pooling Order was amended and supplemented by the Board's Supplemental Order Regarding Elections executed on September 5, 1996 and filed on September 12, 1996 in Deed Book 453 Page 256 (herein "Supplemental Order"). The Board named PGP as the Unit Operator of the W-30 Drilling Unit. By letter dated June 25, 1999 the Board noticed the Applicants, the Unit Operator and the Escrow Agent of its intention to hear this matter on July 20, 1999, ordered the Unit Operator to file with the Board an accounting of funds placed on deposit in the escrow account for the W-30 Drilling Unit attributable to Tract 2, and ordered the Unit Operator and the Escrow Agent to reconcile their accountings with respect to same (herein "Accounting Order").

- 4.2. As instructed by the Board through the Pooling Order and the Supplemental Order, the Escrow Agent established the Escrow Account for Subject Drilling Unit (herein "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 as being attributable to various tracts identified in the attached Exhibit E and the attached Accounting. By letter dated June 25, 1999, the Board ordered PGP to file with the Board an accounting of funds on deposit in the Escrow Account attributable to Tract 2 (herein "Accounting Order").
- 4.3. Applicants' seek a royalty accounting, determination of the funds on deposit in the Escrow Account for Tract 2 of Subject Drilling Unit, and disbursement to Coal Mountain and Garden all such Escrowed Funds attributable to Tract 2 pursuant to their written agreement. The Applicants warranted and represented to the Board that:

- (1) Coal Mountain is the sole owner of the coal estate underlying Tract 2 of the W-30 Drilling Unit;
- (2) Garden is the sole owner of oil and gas estate underlying Tract 2 of the W-30 Drilling Unit;
- (3) That together Coal Mountain and Garden 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 Tract 2 and the terms of their leases pertaining to same:

Tract #	Acres	Interest in Unit	Funds On Deposit As of 6/25/99
2	0.15	0.18750%	\$102.80

- (4) That while at the time of the entry of the Pooling Order, as amended, Coal Mountain and Garden had conflicting claims of ownership in Tract 2, subsequent to the entry of the Pooling Order, Coal Mountain and Garden entered into a Split Agreement whereby Coal

Mountain and Garden are each entitled to receive a sum equal to fifty percent (50%) of funds due pursuant to the terms of their leases, including, but not necessarily limited to such funds on deposit in the Escrow Account.

(5) Applicants have represented to the Board that notice of their Application was given in accordance with Va. Code 45.1-361.19, and the Board received no objections to it.

4.4. In compliance with the Accounting Order, PGP presented to the Board an accounting of funds deposited into the Escrow Account for Tract 2, including interest accruing thereon and fees charged to the Escrow Account together with a reconciliation of PGP's records of Escrowed Funds to the records of the Escrow Agent, a copy of which accounting is attached hereto as Exhibit A (herein "Accounting").

4.5. The Applicants represented to the Board that they were provided with a copy of the Accounting, have reviewed same, and that Applicants are in agreement that the sums set forth in Paragraph 4.3(3) above accurately reflect the Escrowed Funds attributable to Tract 2 of Subject Drilling Unit. Coal Mountain and Garden seek disbursement to them, in the aggregate, the sum of \$102.80, plus interest and less fees which accrue from the date of the Account to the date of disbursement from the Escrow Account for the W-30 Drilling Unit.

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 Board lacks the statutory authority to supercede, impair, abridge or affect any contractual rights or other obligations existing between the Operator and/or 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 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.

5.3 Coal Mountain has entered into a Split Agreement with Garden whereby they have agreed to split on a 50/50 basis royalties attributable to their respective conflicting claims to coalbed methane gas, including but not limited to their conflicting claims to ownership of coalbed methane gas underlying Tract 2 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. Based upon the Split Agreements, the Applicants', through their application herein, seek among other things, disbursement to them in accordance with the terms of the Split Agreements those funds set forth in 4.3(3) and 4.5 above.

5.4 According to the Pooling Order and the Supplemental Order, the Accounting and the Application filed in this matter: (a) the funds deposited by the Unit Operator into the Escrow Account for Subject Drilling Unit consists of payments calculated by PGP to be due those

persons identified in Exhibit E hereto and (b) PGP has represented to the Board through the Accounting that as of June 25, 1999 the funds set forth in Paragraphs 4.3(3) and 4.5 above are those funds on deposit in the Escrow Account which are attributable to Tract 2 all as more particularly reflected in the Accounting, and (c) Applicants have made the warranties and representations to the Board set forth in Paragraph 4.3 above.

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 disburse via wire transfer in accordance with instructions provided to the Escrow Agent by Applicants' counsel: (1) the sum of \$51.40, plus any additional payments and interest and less fees which accrue thereon from the date of the Accounting through the date of disbursement, to Coal Mountain Mining Company Limited Liability Partnership L.L.P. f/k/a Coal Mountain Mining Company and as Coal Mountain Mining Trust; and (2) the sum of \$51.40, plus any additional payments and interest and less fees which accrue thereon from the date of the Accounting through the date of disbursement, to Garden Realty Corporation. Further, the Supplemental Order filed in this cause is hereby modified to delete the requirement that lease payments attributable to Applicants' conflicting coalbed methane gas ownership interests in Tract 2 be deposited by PGP into the Escrow Account. To the extent not specifically granted herein, any other or further relief is denied.

7. **Conclusion:**

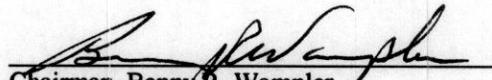
Therefore, the requested relief and all terms and provisions set forth above in Paragraph 6 above be and hereby are granted and IT IS SO ORDERED.

8. **Appeals:**

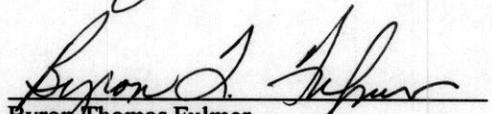
Appeals of this Order are governed by the provisions of Va. Code § 45.1-361.9 which provides that any order or decision of the Board may be appealed to the appropriate circuit court and that whenever a coal owner, coal operator, gas owner, gas operator, or operator of a gas storage field certificated 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 17th day of August, 1999, by a majority of the Virginia Gas and Oil Board.


Chairman, Benny R. Wampler

DONE AND PERFORMED this 20th day of August, 1999, by an Order of this Board.


Byron Thomas Fulmer
Principal Executive to the Staff
Virginia Gas and Oil Board

COMMONWEALTH OF VIRGINIA)
COUNTY OF WISE)

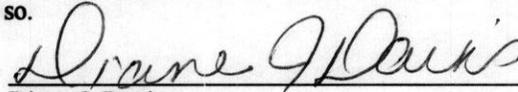
Acknowledged on this 17th day of August, 1999, personally before me a notary public in and for the Commonwealth of Virginia, appeared Benny R. Wampler, being duly sworn did depose and say that he is Chairman of the Virginia Gas and Oil Board, that he executed the same and was authorized to do so.


Susan G. Garrett
Notary Public

My Commission expires: July 31, 2002

COMMONWEALTH OF VIRGINIA)
COUNTY OF WASHINGTON)

Acknowledged on this 20th day of August, 1999, 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

PennStuart

Geo. E. Penn (1895-1931)
Wm. A. Stuart (1922-1976)

Wm. W. Eskridge
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Stephen M. Hodges
W. Challen Walling
Wade W. Massie ^{***}
Daniel H. Caldwell
Michael F. Blair
William M. Moffet
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AUG 18 1999

COMMERCE AND TRADE SECTION
BIG STORE GAP

July 26, 1999

Mr. Dale Dietz
First Virginia Bank
P.O. Box 429
Bristol, TN 37621

RE: Applications by Torch Energy/Garden Realty Corporation/ Coal Mountain Mining Co. Limited Liability Partnership, LLP, for the withdrawal of funds from the escrow accounts for the SLW5, SLW6, SLW7, SLW8, SLW9, V-28, V-29, W-29 and W-30 units PS&E File Nos. 4169-9, 3373-8, 3373-10, 3373-12, 3373-14, 3373-16, 3373-18 and 3373-20

Dear Mr. Dietz:

The wiring instructions for the portion of the funds to be paid on behalf of Torch Energy Advisors Incorporated are:

Bank Name: Chase Bank of Texas
Bank ABA No: 113000609
Account Name: Torch Operating Company
Account No: 00103291234

The wiring instructions for the portion of the funds to be paid on behalf of the Addison Heirs:

Bank Name: Wachovia Abingdon, VA
Bank ABA No: 051000253
Account Name: PennStuart Trustee Account
Account No: 3110033322

Sandra B. Riggs
July 26, 1999
Page 2

The wiring instructions for the portion of the funds to be paid on behalf of Garden Realty Corporation are:

Bank Name: Centura Bank
Bank ABA No: 053100850
Account Name: Garden Realty Corporation
Account No: 3250011144

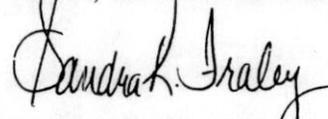
The wiring instructions for the portion of the funds to be paid on behalf of Coal Mountain Mining Co. Limited Liability Partnership, LLP, are

Bank Name: First Virginia Bank, SW Roanoke, VA
Bank ABA No: 051402903
Account Name: Coal Mountain Mining Co., Limited Liability Partnership, LLP
Account No: 00009121

I would appreciate it if the escrow agent would provide a letter or memorandum stating the amount wired and a breakdown by units with the portion of the funds wired attributable to that unit. My clients will need this information for their accounting records. I would also appreciate it if the escrow agent would advise me when the funds are being wired so I may notify my clients. Please call me if you have any questions. Thank you.

Sincerely,

PENN, STUART & ESKRIDGE



By: Sandra K. Fraley

SKF/tjd

cc: Alan Siegel, Esq.
Mr. Burt Williams
George W. Williams, Esq.
Mrs. Betty Boyd King
Sandra B. Riggs, Esq.
Addison Heirs

UNIT W-30
Docket # VGOB-95/04/18-0502-1
Exhibit E
List of Conflicting Owners/Claimants

BOOK 453 PAGE 261

	Acres in Unit	Percent of Unit	Division of Interest in	
			6 East 6.7850%	7 East 6.2030%
Tract No. 2, 0.15 Acres				
<u>COAL FEE OWNERSHIP</u>				
(1) Coal Mountain Mining Company Tr 24 Coal Mountain Mining P.O. Box 675 Tazewell, VA 24651	0.15 acres	0.18750%	0.01272%	0.01163%
<u>OIL & GAS FEE OWNERSHIP</u>				
(1) Garden Realty Corporation c/o Mrs. Betty Boyd King 2370 Lyndhurst Avenue Winston-Salem, NC 27103	0.15 acres	0.18750%	0.01272%	0.01163%
Tract No. 4, 59.33 Acres				
<u>COAL FEE OWNERSHIP</u>				
(1) Coal Mountain Mining Company Tr 17 Coal Mountain Mining P.O. Box 675 Tazewell, VA 24651	59.33 acres	74.16250%	5.03193%	4.60030%
<u>OIL & GAS FEE OWNERSHIP</u>				
(1) Yukon Pocahontas Coal Company P.O. Box 187 Tazewell, VA 24651	59.33 acres	74.16250%	5.03193%	4.60030%

