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VIRGINIA:

BEFORE THE VIRGINIA GAS AND OIL BOARD

APPLICANT: Dianna Graham )  
 )  
 )  
 RELIEF SOUGHT: Issuance of an Amended Supplemental )  
 Order Amending Prior Orders Affecting )  
 Drilling Unit W-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 Dianna Graham )  
 in Accordance with Her Ownership )  
 Interests Those Funds Deposited by the )  
 Unit Operator into Subject Drilling Unit's )  
 Escrow Subaccount for VGOB Tract 1. )

DOCKET NO.  
95-0718-0508-01

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 20, 2004 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 September 5, 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 September 21, 1995 in Deed Book 440 at Page 346. The Pooling Order was supplemented by the Board's Supplemental Order Regarding Elections executed on February 1, 1996 that was filed with the Clerk's Office on February 14, 1996 in Deed Book 445 at page 437 ("Supplemental Order") (hereafter the Pooling Orders and the Supplemental Order are collectively referred to as the "Pooling Orders"). 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 owner Dianna Graham in a 4.359-acre tract known as VGOB Tract 1 in the Subject Drilling Unit was 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 1 and the interests of Dianna Graham, (2) delete the requirement that the Unit Operator place future royalties attributable to Tract 1 and the interests of Dianna Graham in the Escrow Account, and (3) discontinue the escrow account under this docket number because no 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) Diana Graham is the owner of 100% of oil and gas estate underlying VGOB Tracts 1 of the Subject Drilling Unit;
- (2) Diana Graham is a prevailing Plaintiff in Case Number CL187-00 described in the attached affidavit and in Paragraph 4.3, above,
- (3) Tract 1 of unit W-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) Net interests attributable and to be disbursed to Applicants are shown in Table 1, below.

Tract # Owner Names	Net acres In unit	% interest in unit	% interest in 95-0718-0508 balance	Amount as of 1/31/04
Tract 1 Dianna Graham	4.359	5.449	100	\$28,144.15

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 1, being 100 percent of funds on deposit in the escrow sub-account, on the date of disbursement, to:

Peter Glubiak Law Offices and Dianna L. Graham  
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. 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 Diana Graham in VGOB Tract 1 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 close 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.

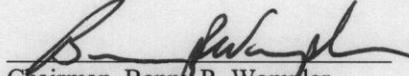
8. **Appeals:**

Appeals of this Order are governed by the provisions of Va. Code § 45.1-361.9 which provides that

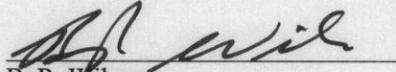
any order or decision of the Board may be appealed to the appropriate circuit court and that whenever a coal owner, coal operator, gas owner, gas operator, or operator of a gas storage field certificated by the State Corporation Commission is a party in such action, the court shall hear such appeal de novo.

9. **Effective Date:** This Order shall be effective on the date of its execution.

DONE AND EXECUTED this 30<sup>th</sup> day of September 2004, by a majority of the Virginia Gas and Oil Board.

  
Chairman, Benny R. Wampler

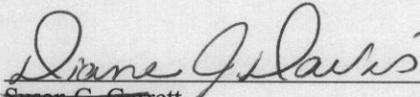
DONE AND PERFORMED this 30<sup>th</sup> day of September, 2004, by an Order of this Board.

  
B. R. Wilson  
Principal Executive to the Staff  
Virginia Gas and Oil Board

COMMONWEALTH OF VIRGINIA )  
COUNTY OF ~~WISE~~ )

Washington

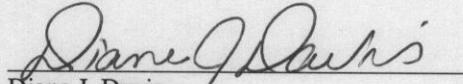
Acknowledged on this 30<sup>th</sup> day of September, 2004, personally before me a notary public in and for the Commonwealth of Virginia, appeared Benny R. Wampler, being duly sworn did depose and say that he is Chairman of the Virginia Gas and Oil Board, that he executed the same and was authorized to do so.

  
Susan G. Garrett  
Notary Public

My Commission expires: 9/30/05

COMMONWEALTH OF VIRGINIA )  
COUNTY OF WASHINGTON )

Acknowledged on this 30<sup>th</sup> day of September, 2004, 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

Order Recorded Under Code of  
Virginia Section 45.1-361.26

**VIRGINIA:**

**EXHIBIT D**

**BEFORE THE VIRGINIA GAS AND OIL BOARD**

**IN RE:**

**Application of Anna Pearl Ratliff, widow of Donald Ratliff, Deceased, Bill Ratliff and Geneva Ratliff, Ira Gordon Ratliff and Juanita Ratliff, Connie Sue Ratliff, Dianna L. Graham and Jerry Raines and Phyllis Raines, Plaintiffs/Applicants resulting from action brought before the Buchanan County Circuit Court, styled Ratliff, et al v. Harrison – Wyatt, LLC, for disbursement of escrowed funds on behalf of the Plaintiffs/Applicants in Unit W-17, VGOB Docket No. 95-0718-0508-01 in the Hurricane District, Buchanan County, Virginia**

**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 and Supplemental Order certain funds have been escrowed with regard to the Applicants above for Unit W-17 with the Virginia Gas and Oil Board;
3. Conflicting claim as shown on Orders and Supplemental Orders for the escrowed funds for above-referenced unit arose between Applicants and Harrison – Wyatt, LLC, 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 on August 14, 2000 by Applicants listed above in the Circuit Court of Buchanan County, Virginia, Styled DONALD RATLIFF, et al v. HARRISON – WYATT, LLC, Case Number: CL187-00;
5. Pursuant to trial and Order of the Court, 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 Applicants listed above;
6. 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;

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, which has subsequently been affirmed by the Virginia Supreme Court. 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; and

8. There are no other parties interested in these funds other than those who have previously been notified, including Harrison – Wyatt, LLC, by its Attorney, J. Scott Sexton, and CNX Energy, pursuant to the Orders and Supplemental Orders on file with the board.

Further saith Affiant not.

Dated at Aylett, Virginia, this 1<sup>st</sup> day of April, 2004.

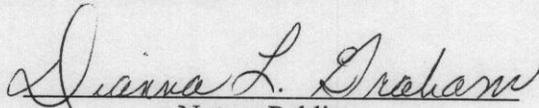


\_\_\_\_\_  
Peter G. Glubiak, Affiant

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

I, Dianna L. Graham, 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 1<sup>st</sup> day of April, 2004.

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

My commission expires: July 31, 2007.

VGOB Tract #	Check Date	1 4,359	Check Total 4,359	+ / - Net Income	Operator Balance	Bank Balance
	4/25/96	\$260.81	\$260.81	\$4.36	\$265.17	\$265.17
	5/25/96	\$124.46	\$124.46	(\$10.18)	\$379.45	\$379.45
	6/25/96	\$63.54	\$63.54	(\$9.20)	\$433.79	\$433.79
	7/25/96	\$44.14	\$44.14	(\$8.74)	\$469.19	\$469.19
	8/25/96	\$37.53	\$37.53	(\$8.48)	\$498.24	\$498.24
	9/25/96	\$59.73	\$59.73	(\$9.58)	\$548.39	\$548.39
	10/25/96	\$44.80	\$44.80	(\$6.49)	\$586.70	\$586.70
	11/30/96		\$0.00	(\$8.39)	\$578.31	\$578.31
	12/24/96	\$38.28	\$38.28	\$0.47	\$617.06	\$617.06
	1/25/97	\$87.65	\$87.65	(\$7.46)	\$697.25	\$697.25
	2/25/97	\$207.19	\$207.19	(\$8.35)	\$896.09	\$896.09
	3/25/97	\$195.83	\$195.83	(\$10.92)	\$1,081.00	\$1,081.00
	4/25/97	\$92.67	\$92.67	(\$3.35)	\$1,170.32	\$1,170.32
	5/31/97		\$0.00	(\$6.09)	\$1,164.23	\$1,164.23
	6/25/97	\$55.53	\$55.53	\$3.86	\$1,223.62	\$1,223.62
	7/25/97	\$52.87	\$52.87	(\$5.13)	\$1,271.36	\$1,271.36
	8/25/97	\$50.62	\$50.62	(\$5.54)	\$1,316.44	\$1,316.44
	9/25/97	\$53.67	\$53.67	(\$5.28)	\$1,364.83	\$1,364.83
	10/24/97	\$41.77	\$41.77	(\$6.64)	\$1,399.96	\$1,399.96
	11/25/97	\$56.89	\$56.89	\$8.87	\$1,465.72	\$1,465.72
	12/24/97	\$86.43	\$86.43	\$0.00	\$1,552.15	
	1/24/98	\$160.79	\$160.79	\$0.00	\$1,712.94	
	2/25/98	\$43.41	\$43.41	\$0.00	\$1,756.35	
	3/25/98	\$66.52	\$66.52	\$0.00	\$1,822.87	
	4/24/98	\$41.24	\$41.24	\$0.00	\$1,864.11	
	5/22/98	\$59.44	\$59.44	\$38.19	\$1,961.74	\$1,961.74
	6/25/98	\$54.00	\$54.00	\$0.00	\$2,015.74	
	7/24/98	\$46.51	\$46.51	\$0.00	\$2,062.25	
	8/25/98	\$26.48	\$26.48	\$0.00	\$2,088.73	
	9/25/98	\$44.91	\$44.91	\$0.00	\$2,133.64	
	10/24/98	\$29.96	\$29.96	\$47.70	\$2,211.30	\$2,211.30
	12/24/98	\$54.56	\$54.56	\$10.25	\$2,276.11	\$2,276.11
	1/25/99	\$32.78	\$32.78	\$1.26	\$2,310.15	\$2,310.15
	2/28/99		\$0.00	(\$13.66)	\$2,296.49	\$2,296.49
	3/25/99	\$92.46	\$92.46	\$10.06	\$2,399.01	\$2,399.01
	4/24/99	\$174.05	\$174.05	(\$4.78)	\$2,568.28	\$2,568.28
	5/25/99	\$52.06	\$52.06	(\$1.95)	\$2,618.39	\$2,618.39
	6/25/99	\$117.86	\$117.86	\$0.38	\$2,736.63	\$2,736.63
	7/24/99	\$41.34	\$41.34	(\$5.36)	\$2,772.61	\$2,772.61
	8/25/99	\$31.19	\$31.19	\$3.34	\$2,807.14	\$2,807.14
	9/25/99	\$35.28	\$35.28	(\$0.80)	\$2,841.62	\$2,841.62
	10/25/99	\$143.51	\$143.51	(\$6.90)	\$2,978.23	\$2,978.23
	11/25/99	\$531.67	\$531.67	\$0.00	\$3,509.90	
	12/22/99	\$496.74	\$496.74	\$17.36	\$4,024.00	\$4,024.00
	1/25/00	\$821.28	\$821.28	\$13.44	\$4,858.72	
	2/25/00	\$428.05	\$428.05	\$16.33	\$5,303.10	
	3/24/00	\$496.78	\$496.78	\$21.69	\$5,821.57	
	4/25/00	\$539.82	\$539.82	\$21.99	\$6,383.98	
	5/25/00	\$260.79	\$260.79	\$28.98	\$6,673.15	
	6/23/00	\$171.34	\$171.34	\$27.74	\$6,872.23	
	7/25/00	\$155.15	\$155.15	\$29.74	\$7,057.12	
	8/25/00	\$146.43	\$146.43	\$30.38	\$7,233.93	
	9/25/00	\$129.11	\$129.11	\$29.01	\$7,392.05	
	10/25/00	\$101.22	\$101.22	\$34.03	\$7,527.30	
	11/24/00	\$133.73	\$133.73	\$31.96	\$7,692.99	
	12/22/00	\$129.83	\$129.83	\$31.75	\$7,854.57	
	1/25/01	\$152.13	\$152.13	\$33.88	\$8,040.58	
	2/23/01	\$1,057.67	\$1,057.67	\$26.94	\$9,125.19	
	3/23/01	\$3,678.60	\$3,678.60	\$40.64	\$12,844.43	
	4/25/01	\$2,499.61	\$2,499.61	\$39.90	\$15,383.94	
	5/25/01	\$2,764.50	\$2,764.50	\$46.05	\$18,194.49	
	6/25/01	\$2,456.59	\$2,456.59	\$44.00	\$20,695.08	
	7/25/01	\$2,073.80	\$2,073.80	\$50.73	\$22,819.61	
	8/24/01	\$1,859.18	\$1,859.18	\$49.35	\$24,728.14	
	9/25/01	\$579.72	\$579.72	\$40.70	\$25,348.56	
	10/25/01	\$1,128.37	\$1,128.37	\$38.19	\$26,515.12	
	11/23/01	\$388.96	\$388.96	\$30.41	\$26,934.49	
	12/24/01	\$109.67	\$109.67	\$32.67	\$27,076.83	
	1/25/02	\$77.08	\$77.08	\$19.45	\$27,173.36	
	2/25/02	\$73.47	\$73.47	\$14.42	\$27,261.25	
	3/25/02	\$62.71	\$62.71	\$15.99	\$27,339.95	
	4/25/02	\$55.79	\$55.79	\$17.86	\$27,413.60	
	5/24/02	\$68.50	\$68.50	\$15.02	\$27,497.12	
	6/25/02	\$46.33	\$46.33	\$14.24	\$27,557.69	
	7/25/02	\$25.51	\$25.51	\$14.98	\$27,598.18	
	8/23/02	\$26.27	\$26.27	\$14.52	\$27,638.97	
	9/25/02	\$43.38	\$43.38	\$12.30	\$27,694.65	
	10/25/02	\$42.01	\$42.01	\$13.61	\$27,750.27	
	11/30/02			\$12.86	\$27,763.13	
	12/24/02	\$73.48	\$73.48	\$6.32	\$27,842.93	
	1/24/03	\$42.63	\$42.63	\$5.80	\$27,891.36	
	2/25/03	\$46.40	\$46.40	\$2.91	\$27,940.67	
	3/25/03	\$52.36	\$52.36	\$4.75	\$27,997.78	
	4/30/03			\$3.30	\$28,001.08	
	5/23/03	\$40.79	\$40.79	\$4.54	\$28,046.41	
	6/30/03			\$2.77	\$28,049.18	
	7/25/03	\$28.62	\$28.62	\$1.15	\$28,078.95	
	8/31/03			\$1.01	\$28,079.96	
	9/25/03	\$30.13	\$30.13	\$1.54	\$28,111.63	
	10/31/03			\$2.38	\$28,114.01	
	11/30/03			\$1.54	\$28,115.55	
	12/24/03	\$23.63	\$23.63	\$2.89	\$28,142.07	
	1/31/04		\$0.00	\$2.08	\$28,144.15	\$28,144.15

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 15th day of October, 20 04 10:41A M.  
Deed Book No. 604 and Page No. 14.  
Returned to: Ann E  
TESTE: James M. Bevins, Jr., Clerk  
TESTE: Debra S. Jiles Deputy Clerk