

VIRGINIA:

BEFORE THE VIRGINIA GAS AND OIL BOARD

APPLICANTS: Torch Energy Advisors Incorporated, a) VIRGINIA GAS
 Delaware Corporation, (herein "Torch"),) AND OIL BOARD
 successor to the Royalties Attributable to)
 the interests of Hugh MacRae Land Trust,) DOCKET NO.
 a Virginia Land Trust (herein "Trust") in) 97-0218-0563-01
 Coalbed Methane Gas (herein "Gas"))
 produced from Subject Drilling Unit and)
 Consolidation Coal Company (herein)
 "Consolidation"), (herein Torch and)
 Consolidation are sometimes)
 collectively referred to as "Applicants"))

RELIEF SOUGHT: (1) Accountings/Determination of Those)
 Royalties Attributable to the Conflicting)
 Claims of Consolidation and Trust, in the)
 Aggregate, to the Gas Produced From)
 Drilling Units U-27 and U-27/B Located in)
 the Oakwood Coalbed Methane Gas Fields I)
 & II, respectively (herein "Subject Drilling)
 Unit"), and)
 (2) Disbursement to the Applicants of)
 Royalties Held in the Escrow Account)
 Established by the Board (herein "Escrow)
 Account") Which Are Attributable to)
 Consolidation's and Trust's Conflicting Gas)
 Claims within Tracts Located in Subject)
 Drilling Unit Based On Trust's Assignment)
 and Sale of Said Royalties to Torch and)
 Based Upon the Applicants' and Trust's)
 Settlement Agreement effective)
 December 30, 1997 (herein "Settlement)
 Agreement"))

LEGAL)
DESCRIPTION: Subject Drilling Unit Created and Pooled by)
 Board Order executed July 16, 1997)
 in Docket No. VGOB 97-0218-0563 and)
 Recorded on July 24, 1997 in Deed)
 Book 464, Page 763 Clerk's Office of the)
 Circuit Court of Buchanan County, VA)
 (herein "Pooling Order"), as amended by)
 Supplemental Order Regarding Elections)

entered October 2, 1997 and recorded in)
aforesaid Clerk's Office on October 21,)
1997, at Deed Book 469, Page 227 (herein)
"Supplemental Order) , Keen Mountain)
Quadrangle, Garden)
Magisterial District, Buchanan County,)
Virginia (herein "Subject Lands"))

REPORT OF THE BOARD

FINDINGS AND ORDER

1. **Hearing Date and Place:** This matter came on for hearing before the Virginia Gas and Oil Board (herein "Board") at 9:00 a.m. on May 19, 1998, and as a result of action taken by the Board on that date, the Board enters this Order (herein "Accounting Order").
2. **Appearances:** Ms. Jill Harrison of the firm Penn, Stuart, et al appeared in behalf of Applicants. Sandra B. Riggs, Assistant Attorney General, was present to advise the Board.
3. **Jurisdiction and Notice:** Pursuant to Va. Code Ann. § 45.1-361.1 *et seq.*, the Board finds that it has jurisdiction over the subject matter. Notice of the hearing of this matter was given by Applicants as required by Va. Code § 45.1-361.19 and published in a local paper of general circulation as required by Va. Code Ann. § 45.1-361.19(B). Whereupon, the Board hereby finds that the notices given hereby satisfy all statutory requirements, Board rule requirements, and the minimum standards of state due process.
4. **Prior Proceedings:** At the Board's hearing on February 18, 1997, in Docket No. VGOB 97-0218-0563, the Board granted the relief sought by Buchanan Production Company by naming CONSOL Inc. as Unit Operator (herein "Unit Operator") and by pooling the Gas interests in the Subject Drilling Units for the production of coalbed methane gas pursuant to §§ 45.1-361.21 and 45.1-361.22, Code of Virginia, all pursuant to the terms of the Pooling Order. The Supplemental Order was entered by the Board *sua sponte* on October 2, 1997 to comply with the requirements of the Board's Regulation 4 VAC 25-160.70.C. by supplementing the Pooling Order to complete the record regarding elections. By their application to the Board for this Accounting Order, the Applicants warrant and represent to the Board that:
 - 4.1. Consolidation and the Trust are conflicting claimant to the Gas produced from Subject Drilling Unit with regard to the tracts listed in Paragraph 4.2 hereof, and by Assignment and Bill of Sale dated as of December 29, 1997, the Trust assigned all its interest in the royalty payments (whether suspended, escrowed or subject to future payment) with regard to said tracts to Torch.
 - 4.2. Consolidation's and Trust's conflicting Gas claims within Subject Drilling Unit constitute the following undivided interest(s) in the following tract of Subject Drilling Unit:

<u>Tract</u>	<u>Undivided Interest in Tract</u>	<u>Aggregate Interest in Unit</u>
Tract 1 (72.52 Acres)	Consolidation and Trust ¹	90.65%

- 4.3. Unit Operator filed with the Board an amended Supplemental Order certifying by Affidavit that together Consolidation and Trust have and own in the aggregate a 90.65 percent conflicting Gas royalty interest in Subject Drilling Unit.
- 4.4. Applicants, in their application filed herein, represented and warranted to the Board that Consolidation and Trust have and own in the aggregate a 90.65 percent conflicting Gas royalty interest in Subject Drilling Unit and are the sole claimants to said 90.65 percent interest.
- 4.5. Consolidation and Trust entered into voluntary leases with the Unit Operator with respect to their respective conflicting Gas interests in Subject Drilling Unit (herein "Voluntary Leases").
- 4.6. At the time of entry of the Pooling Order, Consolidation's and Trust's interests in Subject Drilling Unit constituted conflicting claims to payments to be made to them in accordance with the terms of the Voluntary Leases, but subsequent to the entry of the Pooling Order Consolidation and the Trust executed with each other an agreement with respect to the division and apportionment of royalties attributable to said conflicting interests, including those deposited by the Unit Operator into the Escrow Account, by which each of them is entitled to receive a sum equal to fifty percent (50%) of said royalties (herein "Stipulated Gas Royalty Interest").
5. **Relief Requested:** That the Board direct the Unit Operator and/or Escrow Agent to (1) determine the amount of funds attributable to the conflicting claims, in the aggregate, of Consolidation and Trust/Torch in Subject Drilling Unit, (2) provide to Torch and Consolidation an accounting thereof, and (3) disburse the funds in the Escrow Agent's hands, if any, including any applicable earnings, attributable to Applicants' respective Stipulated Gas Royalty Interest to Torch and Consolidation pursuant to their Settlement Agreement.
6. **Relief Granted:** Pursuant to Va. Code Ann. § 45.1-361.1 *et seq.*, and more particularly Va. Code Ann. § 45.1-361.15.A, with respect to Consolidation's and Trust/Torch's aggregate interest in Subject Drilling Unit as set forth in the application filed herein and in Paragraph 4.2 above, the Unit Operator is hereby directed to:

¹ According to the Application filed by Buchanan Production Company when seeking the Pooling Order, all of the coal underlying the 72.52 acres of Tract 1 constituting 90.65% of Subject Drilling Unit is owned by Trust and all of the gas and oil under said tract is owned by Consolidation.

- 6.1. determine and file with the Board, with a copy to the Applicant, an itemized accounting(s) of all funds deposited into the Escrow Account which are uniquely attributable to each of the Applicants' Stipulated Gas Royalty Interests, with said accounting(s) to cover the period from commencement of production of Gas from Subject Drilling Unit and continuing through July 25, 1998 (herein "Settlement Date"), after which Settlement Date the Unit Operator is authorized to commence making payments directly to the Applicants pursuant to their Settlement Agreement if and to the extent the Unit Operator determines from its title evidence that their interests are no longer in conflict. Said accountings shall contain for each Applicant the type and quality of information that is reflected in the Gas Royalty/Revenue Statement filed by the Unit Operator with the Escrow Agent as backup for deposits made into the Escrow Account and shall be unique to the Stipulated Gas Royalty Interest of each Applicant (herein "Principal"). Once the above referenced accountings have been filed with the Board as above ordered, the Board, on its own motion, will set the above-captioned matter for further hearing before the Board.
 - 6.2. file with the Board a certified verification of the percentage which when applied to the total amount of funds of deposit with the Escrow Agent for the Subject Drilling Unit represents each of the Applicants' share of the Principal on deposit with the Escrow Agent for Subject Drilling Unit.
 - 6.3. once disbursement has been made to the Applicants of those funds attributed to Applicants' respective Stipulated Gas Royalty Interests, file an updated affidavit and seek from the Board an amended supplemental order to properly reflect by tract number the identity and percentage of interests within the Subject Drilling Unit each conflicting claimant who may have or claim an interest in the funds remaining and/or to be placed on deposit by the Unit Operator with the Escrow Agent after the Settlement Date.
 - 6.4. commencing immediately and continuing for so long as there is a need for the Escrow Account, contemporaneously with the deposit of any funds into the Escrow Account, in addition to filing with the Escrow Agent a copy of the Gas Royalty/Revenue Statement for such escrowed sums, the Unit Operator shall file, by mail, a copy of each such statement with the Virginia Gas and Oil Inspector so that such statements are available for inspection by claimants in accordance with the provisions of Va. Code 45.1-361.21.C.6.
7. **Special Findings**: The Board specifically and specially finds:
- 7.1 With the commencement of production attributable to the Subject Drilling Unit and continuing through the Settlement Date, it has not been the Unit Operator's practice to mail to conflicting Gas owners/claimants in Subject Drilling Unit a copy of the Gas Revenue/Royalty Statements applicable to their conflicting interests, but instead the

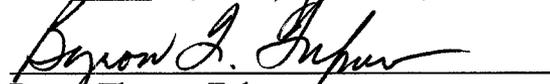
Unit Operator has forwarded said statements to the Escrow Agent as backup documentation for each of its deposits into the Escrow Account.

- 7.2 The Exhibit E attached to the Unit Operator's Affidavit given in support of the Supplemental Order and Paragraph 6 of said Affidavit reflect that the interests of the Applicants in Subject Drilling Unit are conflicting claims which are subject to escrow.
- 7.3 Based on information filed by the Unit Operator with the Board and/or its Escrow Agent, the Board and its Agents are unable to determine the dates and amounts of each Principal deposit made by the Unit Operator into the Escrow Account attributable to Applicants' respective Stipulated Gas Royalty Interest, the total of such Principal deposits, the interest accruing on the Escrow Account which is allocable to Applicants' respective interests, and/or the fees chargeable to the Escrow Account which are allocable to Applicants' respective interests.
8. **Conclusion:** Therefore, the requested relief and all terms and provisions set forth in Paragraph 6 above be and hereby are granted and IT IS SO ORDERED.
9. **Appeals:** Appeals of this Order are governed by the provisions of Va. Code Ann. § 45.1-361.9 which provides that any order or decision of the Board may be appealed to the appropriate circuit court. Such appeals must be taken in the manner prescribed in the Administrative Process Act, Va. Code Ann. §§ 9-6.14:1 *et seq.*
10. **Effective Date:** This Order shall be effective as of the date of its execution.

DONE AND EXECUTED this 26th day of June, 1998, by a majority of the Virginia Gas and Oil Board.


Chairman, Benry R. Wampler

DONE AND PERFORMED this 23rd day of June, 1998, by 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 21st day of June, 1998, 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 7/31/98

COMMONWEALTH OF VIRGINIA)
COUNTY OF WASHINGTON)

Acknowledged on this 13th day of July 1998, 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

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 14th day of July, 1998 at 2:13 P. M.
Deed Book No. 478 and Page No. 597 TESTE: James M. Bevins, Jr., Clerk
Returned this date to: Diane Davis TESTE: July 5, 1998 Deputy Clerk

OR

BY:

INSTRUMENT #8880218
RECORDED IN THE CLERK'S OFFICE OF
SUSSEX COUNTY ON
JULY 14, 1998 AT 02:13PM
JAMES M. BEVINS JR., CLERK