

VIRGINIA:

BEFORE THE VIRGINIA GAS AND OIL BOARD

APPLICANTS:	Torch Energy Advisors Incorporated) (herein "Torch") and Consolidation Coal) Company (herein "CCC")) (Torch and CCC sometimes collectively) referred to as "Applicants")))	VGOB DOCKET NO 97-0218-0563-01
RELIEF SOUGHT:	Issuance of an Amended Supplemental) Order Amending Prior Orders Affecting) U-27 Drilling Unit to Provide: (1) for) The Calculation of Those Funds the) Unit Operator Deposited into the Escrow) Account for Tract 1 of the U-27 Drilling Unit;)) (2) to Provide to Applicants a Royalty) Accounting; and) (3) Disbursement to Applicants in) Accordance with Their Agreement) Those Funds Deposited by the Unit) Operator into the Escrow Account for) Tract 1 of the U-27 Drilling Unit)	

1. **Hearing Date and Place:** This matter came on for further and final hearings before the Virginia Gas and Oil Board (herein "Board") at 9:00 a.m. on March 23, 1999 at the Southwest Virginia Higher Education Center, Classroom 226, One Partnership Drive, Abingdon, VA.
2. **Appearances:** Jill Harrison of the firm Penn Stuart appeared in behalf of the Applicants; Mark A. Swartz of the firm Swartz & Stump appeared on behalf of PGP as 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 claimants and/or the Unit Operators or to abridge or contravene the provisions of such agreements, and (3) that pursuant to Va. Code § 45.1-361.22.A.5, it does have jurisdiction and authority to disburse funds from the Escrow Account provided there has first been either a legal determination of claimants' entitlement thereto or there is an agreement by all the claimants.
4. **Prior Proceedings:**
 - 4.1 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 Order entered July 16, 1997, and filed July 24, 1997, at Deed Book 464 at Page 763, the Board (1) named CONSOL Inc. as Unit Operator (herein "Unit Operator"); and (2) pooled the gas interests in the U-27 Drilling Unit for the production of occluded natural gas produced from coalbeds and rock strata associated therewith (herein "Coalbed Methane Gas") pursuant to Va. Code §§ 45.1-

361.21 and 45.1-361.22, from all coal seams below the Tiller Seam, including the Lower Castle, Upper Seaboard, Greasy Creek, Middle Seaboard, Lower Seaboard, Upper Horsepen, Middle Horsepen, C, War Creek, , Pocahontas No. 10, Lower Horsepen, Pocahontas No. 9, Pocahontas No. 8, Pocahontas No. 7 Pocahontas, No. 6 Pocahontas No. 5, Pocahontas, No. 4, Pocahontas No. 3, Pocahontas No. 2 and various unnamed coal seams and rock strata associated therewith, (herein "Subject Formations"). On October 2, 1997, the Board entered its Supplemental Order Regarding Elections incorporating the Unit Operator's Affidavit of Election which was filed on October 21, 1997 with the Clerk of the Circuit Court of Buchanan County, VA in Deed Book 469 at Page 227 (herein "Supplemental Order") to comply with the requirements of the Board's Regulation 4 VAC 26-160.70.C. by supplementing the Pooling Order to complete the record regarding elections and to identify to the Board those claimants whose interests were subject to the escrow requirements of Act and the Pooling 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 Unit Operator through its royalty statements as being attributable to various tracts identified in the attached Exhibit E and the attached Accounting. By order entered on June 26, 1998 (herein "Accounting Order"), the Board granted Applicants' request for a tract-by-tract accounting from the Unit Operator of the funds placed deposit in the U-27 Escrow Account.

4.3 Through their application in this cause, Applicants' sought royalty accountings, determination of the funds on deposit in the Escrow Account for Tract 1 of Subject Drilling Unit, and disbursement to them of all such Escrowed Funds attributable to said Tract pursuant to their written agreement with each other (herein referred to as "Split Agreement"). The Applicants warranted and represented to the Board that:

- (1) CCC is the sole owner of oil and gas interests in Tract 1 of the U-27 Drilling Unit;
- (2) Hugh Macrae Land Trust (herein "Trust") is the sole owner of coal interests in Tract 1; and, by Assignment and Bill of Sale dated December 29, 1997 (herein "Assignment") Trust assigned to Torch its conflicting coalbed methane gas royalty interest in said tracts including all its interest in the funds on deposit in the Escrow Account which the Unit Operator attributes to said tract;
- (3) that together CCC and Trust have and own in the aggregate the following conflicting Gas royalty interest in Subject Drilling Unit by virtue of their respective ownership interests in Tract 1 , and by virtue of their voluntary leases with the Unit Operator pertaining to same, and that Trust has assigned to Torch its interest in the escrowed funds deposited by the Unit Operator into the Escrow Account established by the Board for the U-27 Drilling Unit with respect to said tract:

Tract#	Acres	Interest in Unit	Funds to be Disbursed From Escrow Account
1	72.52	90.6500%	\$1,903.48

(4) That while at the time of the entry of the Pooling Order, as amended, Trust and CCC had conflicting claims of ownership in Tract 1, subsequent to the entry of the Pooling Order and Trust's assignment to Torch of its interest in the escrowed funds attributable to said tract, Torch and CCC entered into a Split Agreement whereby each of them is entitled to receive a sum equal to fifty percent (50%) of the funds due from the Unit Operator to them pursuant to the terms of their voluntary 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, at the Board's hearing of this matter on March 23, 1999, the Unit Operator presented the attached accounting that included funds attributable to Tract 1 (herein "Accounting"), and represented that the Unit Operator's records as reflected in the Accounting had been reconciled to the records of the Escrow Agent.
- 4.5 The Applicants represented to the Board on March 23, 1999 that they had been provided with an advance copy of the Accounting, had reviewed same, and that Applicants are in agreement that the Accounting accurately reflects their Entitlement to the Escrowed Funds for Tract 1 of Subject Drilling Unit. Applicants seek disbursement to them, in the aggregate, the sum of \$1,903.48 from the Escrow Account for the U-27 Drilling Unit.
5. **Findings:** Va. Code 45.1-361.22.5 provides that "*The Board shall order payment of principal and accrued interest from the escrow account to all persons legally entitled thereto pursuant to the provisions of § 45.1-361.21 and the Order of the Board. Such order shall be issued within thirty days of receipt of notification of the final legal determination of entitlement thereto or upon agreement of all claimants*". The term "entitlement" is not defined by law or regulation; therefore, the Board applies its common meaning as set forth in *Black's Law Dictionary* to be "*Right or benefits, income or property which may not be abridged without due process*". Thus, the Board defines the term "entitlement" as used in Va. Code § 45.1-361.22.A.5. to mean "the liquidated dollar amount of that portion of the Escrowed Funds which are attributable to Applicant's/Claimant's nonconflicting Gas interest in Subject Drilling Unit". The Escrowed Funds are comprised of the Principal deposited by PGP into the Escrow Account, plus interest accruing on the Principal while on deposit in the Escrow Account, less Escrow Agent fees charged to the Escrow Account. In determining that Applicants have established their Entitlement to the Escrowed Funds, the Board finds that:
- 5.1. The Board lacks the statutory authority to supercede, impair, abridge or affect any contractual rights or other obligations existing between the Operator and 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 (including without limitation *Levisa Coal Company, et al. v. Consolidation Coal Company, et al.*, Civil Action No. 97-0117-A pending in the United States District Court at Abingdon) 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.
- 5.2. Notwithstanding the fact that Trust is challenging Unit Operator's royalty calculations and/or payments under the terms of its voluntary lease with Unit Operator, Trust has assigned its right to the escrowed funds to Torch and Torch has entered entered into a Split Agreements with CCC 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 1 of Subject Drilling Unit and their conflicting claims to bonuses and/or royalties deposited by 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 Agreement those funds set forth in 4.3(3) above.
- 5.3. According to the Pooling Order, the Supplemental Order, the Accounting and the Application filed in this matter: (a) the funds deposited by Unit Operator into the Escrow Account for Subject Drilling Unit consists of payments calculated by Unit Operator to be due those persons identified in Exhibit E hereto and (b) Unit Operator has represented to the Board through Accounting that as of June 25, 1998 the funds set forth in Paragraphs 4.3(3) above are those funds on deposit in the Escrow Account which are attributable to Tract 1 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 5 above, and based upon the Accounting and the Applicants' agreements to same, the Escrow Agent is ordered to disburse via wire transfer in accordance with instructions provided to the Escrow Agent by Applicants' counsel's letter dated March 30, 1999, copy attached hereto: (1) the sum of \$951.74, together with any interest which accrues thereon from the date of the Accounting through the date of disbursement, to CCC, and (2) the sum of \$951.74, together with any interest which accrues thereon from the date of the Accounting through the date of disbursement to Torch. Further, the Supplemental Order filed in this cause is hereby modified to delete the requirement that funds attributable to Applicants' conflicting coalbed methane gas ownership interests in Tract 1 of the U-27 Drilling Unit be deposited by Unit Operator into the Escrow Account. To the extent not specifically granted herein, any other or further relief requested by the Applicants in their application filed herein or in their objections to the accountings heretofore provided is denied;

7. **Conclusion:**

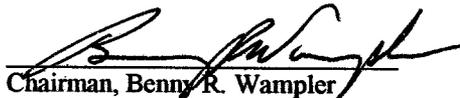
Therefore, the requested relief and all terms and provisions set forth above in Paragraph 6 above be and hereby are granted and IT IS SO ORDERED.

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 7th day of April, 1999, by a majority of the Virginia Gas and Oil Board.


Chairman, Benny R. Wampler

DONE AND PERFORMED this 12th day of April, 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 7th day of April, 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 12th day of April, 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

UNIT U-27
 Docket # VGOB-97/02/18-0563
 Exhibit E
 List of Conflicting Owners/Claimants

	Net Acres in Unit	Interest in Unit	Divison of Interest in		
			2 Left 3.4066%	3 Left 9.5185%	4 Left 1.2413%
Tract No. 1, 72.52 Acre Tract					
<u>COAL FEE OWNERSHIP</u>					
(1) Hugh MacRae Land Trust Tr. 6 P. O. Box 29 Tazewell, VA 24651	72.52 acres	90.6500%	3.0881%	8.6285%	1.1252%
<u>OIL & GAS FEE OWNERSHIP</u>					
(1) Consolidation Coal Co. P. O. Box 947 Bluefield, VA 24605	72.52 acres	90.6500%	3.0881%	8.6285%	1.1252%
Tract No. 2, 2.14 Acre Tract					
<u>COAL FEE OWNERSHIP</u>					
(1) Yukon Pocahontas Coal Co. Tr. 110 P. O. Box 187 Tazewell, VA 24651	1.28 acres 3/5 of 2.14 acres	1.6050%	0.0547%	0.1528%	0.0199%
<u>OIL & GAS FEE OWNERSHIP</u>					
(1) Walter Wade Heirs					
(a) Carl Wade P. O. Box 23 Shortt Gap, VA 24647	0.07 acres 1/30 of 2.14 acres	0.0892%	0.0030%	0.0085%	0.0011%
(b) Eunice Wade Baldwin P. O. Box 111 Doran. VA 24612	0.07 acres 1/30 of 2.14 acres	0.0892%	0.0030%	0.0085%	0.0011%
(c) Stella Wade Gillespie 437 1/2 Brown Street Richlands, VA 24641	0.07 acres 1/30 of 2.14 acres	0.0892%	0.0030%	0.0085%	0.0011%
(d) Glayds Wade Boyd P. O. Box 374 Cedar Bluff, VA 24609	0.07 acres 1/30 of 2.14 acres	0.0892%	0.0030%	0.0085%	0.0011%
(e) Vinnie Wade Newberry 17339 Days Point Road Smithfield, VA 23430	0.07 acres 1/30 of 2.14 acres	0.0892%	0.0030%	0.0085%	0.0011%
(f) Eady Wade Smith Heirs					
i. Lula Smith Robins Rt. 3, Box 277-M Cedar Bluff, VA 24609	0.01 acres 1/150 of 2.14 acres	0.0178%	0.0006%	0.0017%	0.0002%
ii. Tom C. Smith P. O. Box 335 Doran. VA 24612	0.01 acres 1/150 of 2.14 acres	0.0178%	0.0006%	0.0017%	0.0002%
iii. Dolphus Smith 905 Big Creek Road Richlands, VA 24641	0.01 acres 1/150 of 2.14 acres	0.0178%	0.0006%	0.0017%	0.0002%

List of Conflicting Owners/Claimants

	Net Acres in Unit	Interest in Unit	Division of Interest in		
			2 Left 3.4066%	3 Left 9.5185%	4 Left 1.2413%
iv. Raymond S. Smith P. O. Box 335 Doran. VA 24612	0.01 acres 1/150 of 2.14 acres	0.0178%	0.0006%	0.0017%	0.0002%
v. Luther Smith General Delivery Doran. VA 24612	0.01 acres 1/150 of 2.14 acres	0.0178%	0.0006%	0.0017%	0.0002%
(2) Myrty N. Ratliff Heirs, Devisees, Successors or Assigns Address Unknown	0.43 acres 1/5 of 2.14 acres	0.5350%	0.0182%	0.0509%	0.0066%
(3) Mona Webb Heirs, Devisees,					
(a) Harold Webb 298 Morrell Town Rd. Bristol, TN 37620	0.06 acres 1/35 of 2.14 acres	0.0764%	0.0026%	0.0073%	0.0009%
(b) Harman Webb 106 3rd Avenue Richlands, VA 24641	0.06 acres 1/35 of 2.14 acres	0.0764%	0.0026%	0.0073%	0.0009%
(c) John Webb P. O.Box 577 Keen Mountain, VA 24624	0.06 acres 1/35 of 2.14 acres	0.0764%	0.0026%	0.0073%	0.0009%
(d) Virginia W. Cole P. O. Box 59 Whitewood, VA 24657	0.06 acres 1/35 of 2.14 acres	0.0764%	0.0026%	0.0073%	0.0009%
(e) Emma R. Hurbert 7001 Union Avenue Cleveland, OH 44105	0.06 acres 1/35 of 2.14 acres	0.0764%	0.0026%	0.0073%	0.0009%
(f) Ruby W. Wells 6004 Engel Avenue Cleveland, OH 44127	0.06 acres 1/35 of 2.14 acres	0.0764%	0.0026%	0.0073%	0.0009%
(g) Robert W. Casey P. O. Box 45 Shortt Gap, VA 24647	0.06 acres 1/35 of 2.14 acres	0.0764%	0.0026%	0.0073%	0.0009%

Tract No. 4, 0.010 Acre Tract

COAL FEE OWNERSHIP

(1) Hugh MacRae Land Trust Tr. 6 P. O. Box 29 Tazewell, VA 24651	0.010 acres	0.0125%	0.0004%	0.0012%	0.0002%
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OIL & GAS FEE OWNERSHIP

(1) Roscoe Deskins Rt. 1, Box 107 Raven, VA 24639	0.010 acres	0.0125%	0.0004%	0.0012%	0.0002%
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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 21st day of October, 19 97.
 Deed Book No. 409 and Page No. 27.
 Returned this date to: Sept 17 1997
 TESTE: James M. Bevins, Jr., Clerk
 TESTE: Patricia L. Daniel, Deputy Clerk

U27
 VGOB #97-0218-0863
 RSC #

Tract #	1	2.1	4	Check Total	Net Income	Royalty Bonus	Balance	Net Change	Tract Balance	Net Change	Tract Balance	Net Change	Tract Balance
Tract Acres	72.62	1.28	0.01		+/								
Check Date													
4/24/98	\$1,234.87	\$21.80	\$0.17	\$1,256.84	\$0.00	\$1.13	\$1,257.97	\$1,234.87	\$1,234.87	\$21.80	\$21.80	\$0.17	\$0.17
6/1/98					\$7.28		\$1,265.25	\$7.15	\$1,242.02	\$0.13	\$21.93	\$0.00	\$0.17
6/25/98	\$619.52	\$10.94	\$0.08	\$630.54	\$42.73		\$1,308.52	\$687.47	\$1,803.48	\$11.98	\$33.61	\$0.09	\$0.26