

#06-0000392

INSTRUMENT PREPARED BY  
VIRGINIA GAS AND OIL BOARD

ORDER RECORDED UNDER CODE  
OF VIRGINIA SECTION 45.1-361.26

VIRGINIA:

BEFORE THE VIRGINIA GAS AND OIL BOARD

APPLICANTS:

Dewey Rowe; )  
Hurt McGuire Land Trust; )  
Jean Davis, Guster Clifton, Jerrell Clifton, )  
Delcia Alderson, Ruby G. Short Winesett, )  
Patsy Moore, Brenda Justice, James Osborne, )  
Phyllis W. Osborne, Charles M. Osborne, )  
Richard Osborne, Joyce Lineberry, Darlene )  
B. Osborne, Edward Keen, Homer Keen, )  
Carol Anita Davis, Richard Ball, Carl Ball, )  
William Albert Keen, Lillie Mae Cook, )  
Georgia Keen, Bonnie Absher, Sandra Hunt )  
Conner, Kimberly Hunt Kidd, Fred Gilbert, )  
William E, Stanley, Jr., James H. Stanley, )  
Victoria Webb, Shelby Jean Vandyke, )  
Frances Stella Gross, Larry Roger Keen, )  
Carnice Keen, Phillip Keen, Eddie Keen, )  
Remus Keen, Richard Keen, Inez Acklin, )  
Janice Cook, Beautii Honaker Javins, Dexter )  
Keen, Dorothy Clifton, Zelvia Keen, )  
William Keen, Jr., Della Monk Lancaster, )  
Audrey Law (Herein "O. H. Keen Heirs )  
Subject to Split Agreement") )

DOCKET NO.  
97-0318-0571-03  
and  
97-0318-0571-04

RELIEF SOUGHT:

Issuance of an Amended Supplemental )  
Order Amending Prior Orders Affecting )  
Drilling Unit W-34 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 Dewey Rowe in )  
accordance with his ownership interests )  
Those Funds Deposited by the Unit Operator )  
into Subject Drilling Unit's Escrow )  
Subaccount for VGOB Tracts 4a, 4b, 4d and )  
4e, and Disbursement to Hurt McGuire Land )  
Trust and O. H. Keen Heirs Subject to Split )  
Agreement in Accordance with their )  
Ownership Interests Those Funds )  
Deposited by the Unit Operator into )  
Subject Drilling Unit's Escrow Subaccount )  
for VGOB Tract 4f. )

## 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 April 19, 2005 and October 18, 2005 at the Southwest Virginia Higher Education Center on the campus of Virginia Highlands Community College, Abingdon, VA.
2. **Appearances:** Peter Glubiak, Esq. Appeared for applicant Dewey Rowe, 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 May 22, 1997, the Board executed its order pooling 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 June 4, 1997 in Deed Book 463 at Page 168. On August 25, 1997, the Board executed its Supplemental Order Regarding Elections which was filed with the Clerk in Deed Book 466 at page 334. On June 28, 1999, the Board executed an order, Docket number 97-0318-0571-01, re-pooling interests in the Subject Drilling Unit. The Order was filed with the Clerk July 2, 1999 in Deed Book 494 at Page 79. On November 25, 1999, the Board executed its Supplemental Order Regarding Elections, Docket Number 97-0318-0571-01, which was filed with the Clerk in Deed Book 798 at page 588. On June 15, 2005, the Board executed an order, Docket number 97-0318-0571-02, re-pooling interests in the Subject Drilling Unit. The Order was filed with the Clerk June 22, 2005 in Deed Book 620 at Page 307 (hereafter all orders 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 Dewey Rowe and coal fee owner Hurt McGuire Land Trust in an 11.22-acre tract known as VGOB Tract 4a, a 7.97-acre tract known as VGOB Tract 4b, a 9.47-acre tract known as VGOB Tract 4d and a 1.87-acre tract known as VGOB Tract 4e, and the oil and gas fee ownership of O. H. Keen Heirs Subject to Split Agreement and the coal fee ownership of Hurt McGuire Land Trust in an 11.91-acre tract known as VGOB Tract 4f in the Subject Drilling Unit were in conflict and became subject to the escrow requirements of the Pooling Order.

- 4.3 Applicant Dewey Rowe's Affidavit Regarding Supplemental Order and Disbursement of Forced Pooling Unit Funds, a copy of which is attached to and made a part hereof, states under oath that Applicant was party to a Motion for Judgment filed in April, 2005 in the Circuit Court of Buchanan County, Virginia styled Dewey Rowe v. Hurt-McGuire Heirs, et al, Chancery Number CH05-000138-00, and that the Court ruled in favor of plaintiffs in an agreed Final Order entered on August 30, 2005.
- 4.4 The Unit Operator's Miscellaneous Petition regarding VGOB Tract 4f, a copy of which is attached to and made a part hereof, states under oath that O. H. Keen Heirs Subject to Split Agreement and Hurt McGuire Land Trust have entered into a royalty split agreement; and that by the terms of that agreement escrow regarding the conflicting claims of said parties is no longer required. By sworn testimony before the Board on April 19, 2005, the Unit Operator testified that VGOB Tract 4f and the interests of O. H. Keen Heirs Subject to Split Agreement and Hurt McGuire Land Trust are subject to the split agreement.
- 4.5 Applicants gave notice to O. H. Keen Heirs Subject to Split Agreement, Hurt McGuire Land Trust and CNX Gas Company, LLC that the Board would take the petition referred to in Paragraph 4.3 above under consideration and consider whether to: (1) amend the Pooling Order to provide for the disbursement of funds on deposit in the Escrow Account attributable to Tracts 4a, 4b, 4d and 4e and the interests of Dewey Rowe and Hurt McGuire Land Trust, and funds on deposit in the Escrow Account attributable to Tract 4f and the interests of O. H. Keen Heirs Subject to Split Agreement and Hurt McGuire Land Trust, (2) delete the requirement that the Unit Operator place future royalties attributable to Tract 4a, 4b, 4d and 4e and the interests of Dewey Rowe and Hurt McGuire Land Trust, and tract 4f and the interests of O. H. Keen Heirs Subject to Split Agreement and Hurt McGuire Land Trust 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.
- 4.6 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) Dewey Rowe is the owner of 100% of oil and gas estate underlying VGOB Tracts 4a, 4b, 4d and 4e of the Subject Drilling Unit;
- (2) Dewey Rowe is a prevailing Plaintiff in Case Number CH05-000138-00 described in the attached affidavit and in Paragraph 4.3, above,
- (3) Tracts 4a, 4b, 4d and 4e of unit W-34 are 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) O. H. Keen Heirs Subject to Split Agreement are fee owners of a portion of the oil and gas rights in Tract 4f, and Hurt McGuire Land Trust is fee owner of coal rights in Tract 4f of the Subject Unit.
- (5) O. H. Keen Heirs Subject to Split Agreement and Hurt McGuire Land Trust have entered into a royalty split agreement specifying that escrowed funds are to be divided with 50% going to the gas owner and 50% going to the coal owner, and also specifying that future royalties be paid directly to the owners according to the split agreement.
- (6) Net interests attributable and to be disbursed to Applicants are shown in Table 1, Below.

Owners	Tract #	Net Acres	% interest in 97-0318-0571 sub-account
Dewey Rowe	4a	11.22	22.8188%
Dewey Rowe	4b	7.97	16.2091%
Dewey Rowe	4d	9.47	19.2597%
Dewey Rowe	4e	1.87	3.8031%
Hurt McGuire Land Trust (50%)	4f	11.91	9.9679%
O. H. Keen Heirs Subject to			
Split Agreement (50%)			
Jean Davis	4f	11.91	0.4037%
Guster Clifton			0.4037%
Jerrell Clifton			0.4037%
Delcia Alderson			0.4037%
Ruby G. Short Winesett			0.4037%
Patsy Moore			0.0204%
Brenda Justice			0.0204%
James Osborne			0.0204%
Phyllis W. Osborne			0.0204%
Charles M. Osborne			0.0204%
Richard Osborne			0.0204%
Joyce Lineberry			0.0204%
Darlene B. Osborne			0.0204%
Edward Keen			0.2523%
Homer Keen			0.2523%
Carol Anita Davis			0.0841%

Richard Ball	0.0841%	✓
Carl Ball	0.0841%	✓
William Albert Keen	0.2523%	✓
Lillie Mae Cook	0.2523%	✓
Georgia Keen	0.2523%	✓
Bonnie Absher	0.2523%	✓
Sandra Hunt Conner	0.0252%	✓
Kimberly Hunt Kidd	0.0252%	✓
Fred Gilbert	0.0505%	✓
William E. Stanley, Jr.	0.0505%	✓
James H. Stanley	0.0505%	✓
Victoria Webb	0.0505%	✓
Shelby Jean Vandyke	1.0093%	✓
Frances Stella Gross	1.0093%	✓
Larry Roger Keen	0.2243%	✓
Carnice Keen	0.2243%	✓
Phillip Keen	0.2243%	✓
Eddie Keen	0.2243%	✓
Remus Keen	0.2243%	✓
Richard Keen	0.2243%	✓
Inez Acklin	0.2243%	✓
Janice Cook	0.2243%	✓
Beautii Honaker Javins	0.2243%	✓
Dexter Keen	0.2884%	✓
Dorothy Clifton	0.2884%	✓
Zelvia Keen	0.2884%	✓
William Keen, Jr.	0.2884%	✓
Della Monk Lancaster	0.2884%	✓
Audrey Law	0.2884%	✓

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 4a, being 22.8188 percent of funds on deposit in the escrow sub-account on the date of disbursement, 100% of the funds attributable to VGOB Tract 4b, being 16.2091 percent of funds on deposit in the escrow sub-account on the date of disbursement, 100% of the funds attributable to VGOB Tract 4d, being 19.2597 percent of funds on deposit in the escrow sub-account on the date of disbursement, and 100% of the funds attributable to VGOB Tract 4e, being 3.8031 percent of funds on deposit in the escrow sub-account on the date of disbursement, a total of 62.0907 per cent of the funds on deposit in the escrow sub-account to:

Peter Glubiak Law Offices and Dewey Rowe  
C/O Glubiak Law Office  
P. O. Box 144  
Aylett, VA 23009

(2) disburse fifty percent (50%) of the funds attributable to VGOB Tract 4f and the interests of O. H. Keen Heirs Subject to Split Agreement and Hurt McGuire Land Trust, bring 9.9679 percent of funds on deposit in the escrow sub-account, on the date of: disbursement to:

Hurt McGuire Land Trust  
C/O Charles Green  
P. O. Box 1067  
Bluefield, VA 24605

(3) disburse fifty percent (50%) of the funds attributable to VGOB Tract 4f and the interests of O. H. Keen Heirs Subject to Split Agreement and Hurt McGuire Land Trust to individual heirs according to Table 2, Below:

Table 2					
Owner	Address	% of Escrow sub-account	Owner	Address	% of Escrow sub-account
Jean Davis	Rt. 1 Box 175B Raven, VA 24639	0.4037%	Sandra Hunt Conner	P. O. Box 9 Axton, VA 24053	0.0252%
Guster Clifton	RR 1 Box 184 Raven, VA 24639	0.4037%	Kimberly Hunt Kidd	127 Susan Dr. Collinsville, VA 24078	0.0252%
Jerrell Clifton	P. O. Box 668 John Clifton Rd. Oakwood, VA 24631	0.4037%	Fred Gilbert	P. O. Box 204 Doran, VA 24612	0.0505%
Delcia Alderson	4701 Florist Road NW Roanoke, VA 24012	0.4037%	William E. Stanley, Jr.	400 Clearview Rd. Martinsville, VA 24112	0.0505%
Ruby G. Short Winesett	1341 Johnsbury Court NE Roanoke, VA 24109	0.4037%	James H. Stanley	25 Raceway Dr Bassett, VA 24055	0.0505%
Patsy Moore	HC62 Box 114 raven, VA 24639	0.0204%	Victoria Webb	325 Grayson St. Martinsville, VA 24112	0.0505%
Brenda Justice	P. O. Box 522 Keen Mountain, VA 24624	0.0204%	Shelby Jean Vandyke	4767 Red Root Ridge Rd. Raven, VA 24639	1.0093%
James Osborne	P. O. Box 484 Keen Mountain, VA 24624	0.0204%	Frances Stella Gross	P. O. Box 295 Richoands, VA 24640	1.0093%
Phyllis W. Osborne	Rt. 1 Box 157E Raven, VA 24639	0.0204%	Larry Roger Keen	P. O. Box 635 Keen Mountain, VA 24638	0.2243%
Charles M. Osborne	216 Plantation Rd. Richlands, VA 24641	0.0204%	Carnice Keen	HCR Box 116B Pilgrims Knob, VA 24633	0.2243%
Richard Osborne	P. O. Box 585 Keen Mountain, VA 24624	0.0204%	Phillip Keen	P. O. Box 215 Wytheville, VA 24382	0.2243%
Joyce Lineberry	110 Barn View Lane Woodleaf, NC 27054	0.0204%	Eddie Keen	Rt. 1 Box 96 Raven, VA 24638	0.2243%
Darlene B. Osborne	Rt. 1 Box 157 Raven, VA 24639	0.0204%	Remus Keen	P. O. Box 70 Doran, VA 24611	0.2243%
Edward Keen	Rt. 4 Box 159 Bluefield, WV 24701	0.2523%	Richard Keen	P. O. Box 431 Oakwood, VA 24623	0.2243%
Homer Keen	1771 Heidelbach School Rd. Stuart, VA 24171	0.2523%	Inez Acklin	331 Mary St. Bristol, VA 24201	0.2243%
Carol Anita Davis	208 Cliff St. Richlands, VA 24641	0.0841%	Janice Cook	Rt. 1 Box 649 Swords Creek, VA 24648	0.2243%
Richard Ball	147 Chestnut St. Fieldale, VA 24089	0.0841%	Beautii Honaker Javins	5592 Hayes Rd. Groveport, OH 45125	0.2243%
Carl Ball	1162 Longview Dr. Bassett, VA 24055	0.0841%	Dexter Keen	Rt. 2 Box 1 North Tazewell, VA 24629	0.2884%
William Albert Keen	6091 Red Root Ridge Rd. Raven, VA 24639	0.2523%	Dorothy Clifton	P. O. Box 123 Springdale, WV 25985	0.2884%
Lillie Mae Cook	424 Moreland Dr. Kingsport, TN 37660	0.2523%	Zelvia Keen	Rt. 1 Box 622 Tazewell, VA 24650	0.2884%
Georgia Keen	Rt. 1 Box 76 Powells Point, NC 27966	0.2523%	William Keen, Jr.	P. O. Box 481 Mabscot, WV 25870	0.2884%
Bonnie Absher	P. O. Box 635 Richlands, VA 24641	0.2523%	Della Monk Lancaster	624 Prater DR Richlands, VA 24641	0.2884%
			Audrey Law	101 Lob Lolly Lane Stafford, VA 22554	0.2884%

Exhibits to the Pooling Orders, 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 Dewey Rowe and Hurt McGuire Land Trust in VGOB Tracts 4a, 4b, 4d and 4e, and the conflicting coalbed methane ownership interests of O. H. Keen Heirs Subject to Royalty Split Agreement and Hurt McGuire Land Trust in VGOB Tract 4f be deposited by the Unit Operator into the Escrow Account, 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:**

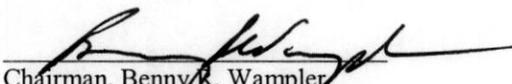
Therefore, the requested relief and all terms and provisions set forth above in Paragraph 6 above be and hereby are granted and IT IS SO ORDERED.

8. **Appeals:**

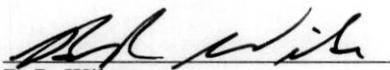
Appeals of this Order are governed by the provisions of Va. Code § 45.1-361.9 which provides that any order or decision of the Board may be appealed to the appropriate circuit court and that whenever a coal owner, coal operator, gas owner, gas operator, or operator of a gas storage field certificated 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 2<sup>nd</sup> day of February, 2006, by a majority of the Virginia Gas and Oil Board.

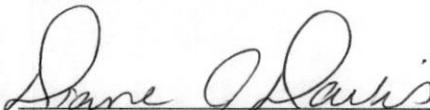
  
Chairman, Benny R. Wampler

DONE AND PERFORMED this 10<sup>th</sup> day of February, 2006, 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 )

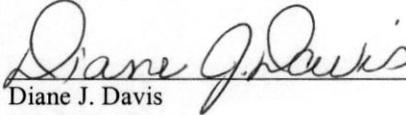
Acknowledged on this 2<sup>nd</sup> day of February, 2006, personally before me a notary public in and for the Commonwealth of Virginia, appeared Benny R. Wampler, being duly sworn did depose and say that he is Chairman of the Virginia Gas and Oil Board, that he executed the same and was authorized to do so.

  
~~Susan G. Garrett~~  
Notary Public

My Commission expires: 9/30/09

COMMONWEALTH OF VIRGINIA )  
COUNTY OF WASHINGTON )

Acknowledged on this 16<sup>th</sup> day of February, 2006, 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: 9/30/09

BEFORE THE VIRGINIA GAS AND OIL BOARD

PETITIONER: CNX Gas Company LLC

DIVISION OF GAS AND OIL  
DOCKET NO: VGOB 98-0318-0571-03

RELIEF SOUGHT: (1) DISBURSEMENT FROM  
ESCROW REGARDING TRACT(S) 4F  
(2) AND AUTHORIZATION FOR DIRECT  
PAYMENT OF ROYALTIES

HEARING DATE: April 19, 2005

DRILLING UNIT: W-34

BUCHANAN COUNTY, VIRGINIA



MISCELLANEOUS PETITION

1. **Petitioner and its counsel:** Petitioner is CNX Gas Company LLC, P. O. Box 947, Bluefield, Virginia 24605, 276/988-1000. Petitioner's counsel is Mark A. Swartz, **SWARTZ & STUMP, L.C.**, P.O. Box 517, Abingdon, VA 24212.

2. **Relief sought:** (1) the disbursement of escrowed funds heretofore deposited with the Board's Escrow Agent(s) attributable to portions of Tract(s) 4F as depicted upon the annexed Exhibit A; and (2) authorization to begin paying royalties directly to the parties to the royalty split between Hurt McGuire Land Trust and certain individuals of the O.H. Keen heirship property (see attached Exhibit A for details).

3. **Legal Authority:** Va. Code Ann. § 45.1-361.1 et seq., 4 VAC 25-160-140., and relevant Virginia Gas and Oil Board Orders ("Board") heretofore promulgated pursuant to law.

4. **Type of well(s):** Coalbed methane.

5. **Factual basis for relief requested:** Hurt McGuire Land Trust and certain individuals of the O.H. Keen heirship property (see attached Exhibit A for details), have entered into a royalty split agreement. Said royalty split agreement allows the Applicant and Designated Operator to pay royalties directly to the persons identified in Exhibit EE annexed hereto and the annexed Exhibit A, further, specifies how said royalties are to be divided and paid.

6. **Attestation:** The foregoing Petition to the best of my knowledge, information, and belief is true and correct.

CNX GAS COMPANY LLC  
BY IT'S PROFESSIONAL MANAGER  
CNX GAS COMPANY LLC, PETITIONER

By: A handwritten signature in black ink, appearing to read "Leslie K. Arrington".

**Leslie K. Arrington**  
Manager - Environmental / Permitting  
CNX Gas Company LLC  
P.O. Box 947  
Bluefield, Virginia 24605  
276/988-1000

**VIRGINIA:**

**AFFIDAVIT**

**BEFORE THE VIRGINIA GAS AND OIL BOARD**

**IN RE: Pertaining to Applicant/Plaintiff Dewey Rowe v. Hurt-McGuire Heirs Land Trust (628.41 acre Tract), which includes Unit W-34 (Tracts 4A, 4B, 4D and 4E, created by Board Order as VGOB 97-0318-0571-03**

**Application of Dewey Rowe, Plaintiff/Applicant, resulting from action brought before the Buchanan County Circuit Court, styled Dewey Rowe v. Hurt-McGuire Heirs, et al, for disbursement of escrowed funds on behalf of the Plaintiff/Applicant in Unit W-34 (628.41 acre Tract), VGOB Docket No. 97-0318-0571-03 in the Garden Magisterial District, Buchanan County, Virginia (Tracts 4A, 4B, 4D and 4E))**

**AFFIDAVIT OF PETER G. GLUBIAK, COUNSEL FOR APPLICANT 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 Applicant listed above and has been the attorney of record for Applicant throughout the judicial proceedings described below;
2. That pursuant to Order, Amended Order, and Supplemental Order certain funds have been escrowed with regard to the Applicant above for Unit W-34 with the Virginia Gas and Oil Board;
3. Conflicting claim as shown on Order, Amended Order and Supplemental Order for the escrowed funds for above-referenced unit arose between Applicant and Hurt-McGuire Heirs (Charles Green, Trustee), coal owner underlying Applicant's 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 in April, 2005 by Applicant listed above in the Circuit Court of Buchanan County, Virginia, Styled Dewey Rowe v. Hurt-McGuire Heirs, et al, Chancery Number: CH05-000138-00;
5. Pursuant to trial and Order of the Court, resulting from the Ratliff, et al v. Harrison-Wyatt, LLC case, 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 Plaintiffs. 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 Applicant, represented by Affiant, apply for the distribution of funds held on escrow for the above-referenced Unit;

6. The Rowe v. Hurt-McGuire Heirs, et al case being specific in content, therefore resulted in an agreed Final Order being entered by Judge Williams on August 30, 2005, and pursuant to statute, the Virginia Gas and Oil Board was Ordered to distribute the funds held in escrow attributable to the Applicant listed above;

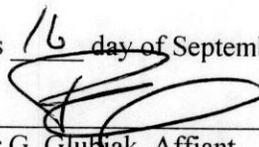
7. The interest in claims of all persons involved in the funds currently held in escrow by the Virginia Gas and Oil Board have been determined by a final non-appealable Order of Court and the ownership of the escrowed funds has also been the subject of a Circuit Court Order. It is Affiant's position that the matter has finally been determined and that therefore as the attorney on behalf of the Applicant 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.

8. Unit W-34, (Tracts 4A, 4B, 4D and 4E) created by Board Order as VGOB 97-0318-0571-03, is subject to disbursement of funds due to the Court's Decision regarding ownership and Final Order entered by Judge Williams, (Hurt-McGuire Heirs - 628.41 coal Tract); and

9. There are no other parties interested in these funds other than those who have previously been notified, including Hurt-McGuire Heirs (Charles Green, Trustee), by its Attorney, J. Scott Sexton, and Island Creek Coal Company/Consolidation Coal Co. and Buchanan Production Company and Consol Energy, Inc./CNX Gas Company, LLC, by their attorney, Stephen M. Hodges, pursuant to the Orders, Amended Orders and Supplemental Orders on file with the board.

Further saith Affiant not.

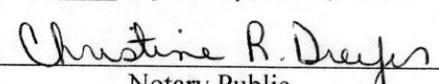
Dated at Aylett, Virginia, this 16 day of September, 2005.

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

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

I, the undersigned, 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 16<sup>th</sup> day of September, 2005.

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

My commission expires: October 31, 2008

**Exhibit A**  
**Tract-by-Tract Escrow Calculation**  
**Account Balances as of 1/31/05**

Unit W-34  
 VGOB 98-0318-0571-03  
 Acres Escrowed: 49.17

Owners	Tract #	Acres	Total Tract Percent of Escrow	Fractional Interest	Owners' Percent of Escrow (50%)	Amount Due Owners \$66,339.70
Hurt McGuire Land Trust	4a	11.22	22.8188%	---	11.4094%	\$7,568.96
Dewey Rowe - O&G					11.4094%	\$7,568.96
Hurt McGuire Land Trust	4b	7.97	16.2091%	---	8.1045%	\$5,376.52
Dewey Rowe - O&G					8.1045%	\$5,376.52
Hurt McGuire Land Trust	4c	5.47	11.1247%	---	5.5623%	\$3,690.04
Carl Davis - O&G					5.5623%	\$3,690.04
Hurt McGuire Land Trust	4d	9.47	19.2597%	---	9.6299%	\$6,388.42
Dewey Rowe - O&G					9.6299%	\$6,388.42
Hurt McGuire Land Trust	4e	1.87	3.8031%	---	1.9016%	\$1,261.49
Dewey Rowe - O&G					1.9016%	\$1,261.49
Hurt McGuire Land Trust	4f	11.91	24.2221%		12.1110%	\$8,034.43
O.H. Keen Heirs					12.1110%	\$8,034.43
Jean Davis				1/30	0.4037%	\$267.81
Guster Clifton				1/30	0.4037%	\$267.81
Jerrell Clifton				1/30	0.4037%	\$267.81
Delcia Alderson				1/30	0.4037%	\$267.81
Ruby G. Short Winesett				1/30	0.4037%	\$267.81
Patsy Moore				1/594	0.0204%	\$13.53
Brenda Justice				1/594	0.0204%	\$13.53
James Osborne				1/594	0.0204%	\$13.53
Phyllis W. Osborne				1/594	0.0204%	\$13.53
Ronnie Osborne				1/594	0.0204%	\$13.53
Charles M. Osborne				1/594	0.0204%	\$13.53
Richard Osborne				1/594	0.0204%	\$13.53
Joyce Lineberry				1/594	0.0204%	\$13.53
Darlene B. Osborne				1/594	0.0204%	\$13.53
Edward Keen				1/48	0.2523%	\$167.38
Homer Keen				1/48	0.2523%	\$167.38
Carol Anita Davis				1/144	0.0841%	\$55.79
Richard Ball				1/144	0.0841%	\$55.79
Carl Ball				1/144	0.0841%	\$55.79
William Albert Keen				1/48	0.2523%	\$167.38
Lillie Mae Cook				1/48	0.2523%	\$167.38
Georgia Keen				1/48	0.2523%	\$167.38
Bonnie Absher				1/48	0.2523%	\$167.38
Sandra Hunt Conner				1/480	0.0252%	\$16.74
Kimberly Hunt Kidd				1/480	0.0252%	\$16.74
Fred Gilbert				1/240	0.0505%	\$33.48
William E. Stanley, Jr.				1/240	0.0505%	\$33.48
James H. Stanley				1/240	0.0505%	\$33.48
Victoria Webb				1/240	0.0505%	\$33.48
Shelby Jean Vandyke				1/12	1.0093%	\$669.54
Frances Stella Gross				1/12	1.0093%	\$669.54
Larry Roger Keen				1/54	0.2243%	\$148.79
Carnice Keen				1/54	0.2243%	\$148.79
Phillip Keen				1/54	0.2243%	\$148.79
Eddie Keen				1/54	0.2243%	\$148.79
Remus Keen				1/54	0.2243%	\$148.79
Richard Keen				1/54	0.2243%	\$148.79
Inez Acklin				1/54	0.2243%	\$148.79
Janice Cook				1/54	0.2243%	\$148.79
Beautii Honaker Javins				1/54	0.2243%	\$148.79
Dexter Keen				1/42	0.2884%	\$191.30
Dorothy Clifton				1/42	0.2884%	\$191.30
Zelvia Keen				1/42	0.2884%	\$191.30
William Keen, Jr.				1/42	0.2884%	\$191.30
Della Monk Lancaster				1/42	0.2884%	\$191.30
Audrey Law				1/42	0.2884%	\$191.30
Hurt McGuire Land Trust	4g	1.26	2.5625%	---	1.2813%	\$849.99
Johnnie B. Keen, et ux. - O&G					1.2813%	\$849.99

This information is for estimation purposes only.

Exhibit E  
Unit W-34  
Docket # VGOB-97-0318-0571-02  
List of Conflicting Owners/Claimants that require escrow

	Acres in Unit	Percent of Unit	4 Right 0.67104%	Division of Interest in 11 East 0.1695%	12 East 7.5514%	13 East 4.2421%
<u>Tract #4C, 5.47 acres</u>						
<u>COAL FEE OWNERSHIP</u>						
(1) Hurt McGuire Land Trust c/o Charles Green P.O. Box 1067 Bluefield, VA 24605	5.47 acres	6.83750%	0.04588%	0.01159%	0.51633%	0.29005%
<u>OIL &amp; GAS FEE OWNERSHIP</u>						
(1) Carl Davis P.O. Box 343 Doran, VA 24612	5.47 acres	6.83750%	0.04588%	0.01159%	0.51633%	0.29005%
<u>Tract #4F, 11.91 acres</u>						
<u>COAL FEE OWNERSHIP</u>						
(1) Hurt McGuire Land Trust c/o Charles Green P.O. Box 1067 Bluefield, VA 24605	11.91 acres	14.88750%	0.09990%	0.02523%	1.12421%	0.63154%
<u>OIL &amp; GAS FEE OWNERSHIP</u>						
O.H. Keen Heirs, Devises, Successors or Assigns	11.91 acres	14.88750%	0.09990%	0.02523%	1.12421%	0.63154%
(2) Mary Elizabeth Horn Heirs, Devises, Successors or Assigns						
(a) Arizona Osborne Heirs, Devises, Successors or Assigns						
(a.1) Martha Gulliams 1911 McViety Salem, VA 24153	0.07 acres 1/162 of 11.91 acres	0.09190%	0.00062%	0.00016%	0.00694%	0.00390%
(a.2) Sidney Smith 1977 McViety Salem, VA 24153	0.07 acres 1/162 of 11.91 acres	0.09190%	0.00062%	0.00016%	0.00694%	0.00390%
(a.3) Kenneth Osborne 848 Peyton Street Roanoke, VA 24019	0.07 acres 1/162 of 11.91 acres	0.09190%	0.00062%	0.00016%	0.00694%	0.00390%
(b) Lydia Bell Osborne Deel Blankenship Heirs, Devises, Successors or Assigns						
(b.1) Mary Keen Rt.1 Box 154 Raven, VA 24639	0.02 acres 1/594 of 11.91 acres	0.02506%	0.00017%	0.00004%	0.00189%	0.00106%
(b.2) Shirley Keen Rt.1 Box 159M Raven, VA 24639	0.02 acres 1/594 of 11.91 acres	0.02506%	0.00017%	0.00004%	0.00189%	0.00106%
(c) Henry Horn Heirs, Devises, Successors or Assigns						
(c.1) Patricia Horton 1 Birch Street Raven, VA 24639	0.04 acres 1/324 of 11.91 acres	0.04595%	0.00031%	0.00008%	0.00347%	0.00195%

Revised 11/08/05

Exhibit E  
Unit W-34  
Docket # VGOB-97-0318-0571-02  
List of Conflicting Owners/Claimants that require escrow

	Acres in Unit	Percent of Unit	4 Right	Division of Interest in		
				11 East	12 East	13 East
			0.67104%	0.1695%	7.5514%	4.2421%
(c.2) Nellie Maynard Box 296 Raven, VA 24639	0.04 acres 1/324 of 11.91 acres	0.04595%	0.00031%	0.00008%	0.00347%	0.00195%
(c.3) Tammy Boyd 1005 Kents Ridge Road Richlands, VA 24641	0.04 acres 1/324 of 11.91 acres	0.04595%	0.00031%	0.00008%	0.00347%	0.00195%
(c.4) Margie Dye 784 Big Creek Road Richlands, VA 24641	0.04 acres 1/324 of 11.91 acres	0.04595%	0.00031%	0.00008%	0.00347%	0.00195%
(c.5) Danny Horn Address Unknown	0.04 acres 1/324 of 11.91 acres	0.04595%	0.00031%	0.00008%	0.00347%	0.00195%
(c.6) Bobby Horn Address Unknown	0.04 acres 1/324 of 11.91 acres	0.04595%	0.00031%	0.00008%	0.00347%	0.00195%
(d) Thelma Osborne P.O. Box 33 Raven, VA 24639	0.22 acres 1/54 of 11.91 acres	0.27569%	0.00185%	0.00047%	0.02082%	0.01170%
(e) Joseph P. Horn HC56 Box 323 Jewell Ridge, VA 24622	0.22 acres 1/54 of 11.91 acres	0.27569%	0.00185%	0.00047%	0.02082%	0.01170%
(f) Nancy Stillwell 147 Rasnake Road N. Tazewell, VA 24630	0.22 acres 1/54 of 11.91 acres	0.27569%	0.00185%	0.00047%	0.02082%	0.01170%
(g) Martha E. Smith P.O. Box 395 Max Meadows, VA 24360	0.22 acres 1/54 of 11.91 acres	0.27569%	0.00185%	0.00047%	0.02082%	0.01170%
(h) Sarah Jane Day P.O. Box 208 Peterstown, WV 24963	0.22 acres 1/54 of 11.91 acres	0.27569%	0.00185%	0.00047%	0.02082%	0.01170%
(i) Carl Horn Rt.1 Box 1445 Pounding Mill, VA 24637	0.22 acres 1/54 of 11.91 acres	0.27569%	0.00185%	0.00047%	0.02082%	0.01170%
(6) James Henry Keen Heirs, Devises, Successors or Assigns						
(g) Hester Brown Heirs, Devises, Successors or Assigns Heirs Unknown	0.28 acres 1/42 of 11.91 acres	0.35446%	0.00238%	0.00060%	0.02677%	0.01504%

Tract #4G, 1.26 acres

COAL FEE OWNERSHIP

(1) Hurt McGuire Land Trust c/o Charles Green P.O. Box 1067 Bluefield, VA 24605	1.26 acres	1.57500%	0.01057%	0.00267%	0.11893%	0.06681%
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OIL & GAS FEE OWNERSHIP

(1) Johnnie B. Keen, et ux P.O. Box 15 Pounding Mill, VA 24637	1.26 acres	1.57500%	0.01057%	0.00267%	0.11893%	0.06681%
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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 7th day of February, 2006 12:37 P.M.  
Deed Book No. \_\_\_\_\_ and Page No. \_\_\_\_\_  
Returned to: Jmm  
TESTE: James M. Bevens, Jr., Clerk  
Shirley S. Miller, Deputy Clerk