

**VIRGINIA:****BEFORE THE VIRGINIA GAS AND OIL BOARD****APPLICANTS:**

Hugh MacRae Land Trust (herein "Trust") and Garden Realty Corporation (herein "Garden") (Trust and Garden are sometimes herein collectively referred to as "Applicants")

**DOCKET NO.:**  
VGOB 97/05/20-0582

**RELIEF SOUGHT:**

Accountings, Disbursements from Escrow Account, and Amendment of Board's Pooling Orders for Drilling Unit NELW9 in Docket No. VGOB-91-1217-0169 entered April 29, 1992 and recorded May 1, 1992 in Deed Book 390, Page 646, and of the Board's Supplemental Order Regarding Elections entered July 11, 1996 and recorded July 18, 1996 in Deed Book 451, Page 147, all in the Office of the Clerk of the Circuit Court of Buchanan County, Virginia (herein collectively "Pooling Order")

**LEGAL DESCRIPTION:**

Drilling Unit Number NELW9 as Created by Board Order Dated as of November 19, 1991, Docket No. VGOB-91/11/19-0160 as amended by Board Orders in VGOB Docket No. 93/06/22-0384 (herein "Subject Drilling Unit") in the Hurricane 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 20, 1997, Dickenson Conference Center, Southwest Virginia Education 4-H Center, Abingdon, Virginia.

2. **Appearances:** Jill M. Harrison, of PennStuart, appeared for the Applicant; and 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. Based upon the evidence presented by Applicant, the Board also finds that the Applicants: (1) have given notice of their application to the parties identified in the Pooling Order as the same are entitled by Va. Code Ann. §§ 45.1-361.19 and 45.1-361.22; and (2) have caused a notice of this hearing to be 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 a previous Board hearing on January 21, 1992 in Docket No. VGOB 91-1217-0169, the Board granted the relief sought by the Pocahontas Gas Partnership (herein "Unit Operator") and pooled the interests in the Subject Drilling Unit for the production of coalbed methane gas and coalbed methane gas from active gob areas (hereinafter collectively referred to as "Coalbed Methane Gas" or "Gas") pursuant to §§ 45.1-361.21 and 45.1-361.22, Code of Virginia. The Board entered its order on April 29, 1992, and recorded said Order in Deed Book 390, Page 646, in the Office of the Clerk of the Circuit Court of Buchanan County, Virginia, on May 1, 1992. A Supplemental Board Order Regarding Elections was entered by the Board *sua sponte* on July 11, 1996, and recorded in Deed Book 451, Page 147, in the Office of the Clerk of the Circuit Court of Buchanan County, Virginia, on July 18, 1996.
5. **Relief Requested:** Pursuant to Va. Code Ann. § 45.1-361.22.A.5., the Applicants herein seek (1) an accounting from the Escrow Agent of all sums attributable to Subject Drilling Unit which have been deposited by the Unit Operator into the Escrow Account pursuant to the requirements of the Pooling Order, together with any interest accruing thereon and credited thereto and (2) an accounting from the Unit Operator of all royalties attributable to Applicants' aggregate 54.3141 percent conflicting Gas royalty interest within Subject Drilling Unit, including any of such sums which have been escrowed with the Escrow Agent, escrowed and held by the Unit Operator pursuant to its voluntary agreements with the Applicants, and/or heretofore paid directly to the Applicants. Further, Applicants request that: (3) in accordance with the voluntary agreement of Garden and Trust dated November 18, 1996, the Board direct the Escrow Agent to disburse fifty percent (50%) of the funds held by it which are attributable to Applicants' aggregate 54.3141 percent conflicting royalty interest in the Gas in Subject Drilling Unit to Garden, as the oil and gas owner/lessor, and to disburse fifty percent (50%) of the funds held by it which are attributable to Applicants' aggregate 54.3141 percent conflicting royalty interest in the Gas in Subject Drilling Unit to Trust, as the coal owner/lessor, and (4) the Board modify the Pooling Order to reflect that the Applicants' aggregate 54.3141 percent royalty interest in Subject Drilling Unit no longer constitutes a conflicting claim which is

subject to the escrow provisions of the Pooling Order, but instead is to be paid to Applicants in accordance with the terms of Applicants' respective leases and the voluntary agreement of the Applicants with respect to their conflicting claims as set forth at Paragraph 7.1 below.

6. **Relief Granted:** Pursuant to Va. Code Ann. §§ 45.1-361.1 *et seq.*, (1) the Unit Operator is hereby directed to immediately upon receipt of this Order determine and file with the Board an accounting of all royalties attributable to Garden's and Trust's conflicting Gas royalty interest in of Subject Drilling Unit and (2) Tazewell National Bank Trust Department, c/o Premier Bankshares Corporation (herein "Escrow Agent") is hereby directed to immediately upon receipt of this Order determine and file with the Board an accounting of any and all funds deposited by the Unit Operator with the Escrow Agent for Subject Drilling Unit pursuant to the requirements of the Pooling Order, together with an accounting of any interest accruing thereon and credited to the account of Subject Drilling Unit from the Unit Operator and from the Escrow Agent. Upon receipt of the above-required accountings, the Board will provide a copy of same to the Applicants, with a copy of the Escrow Agent's accounting to the Unit Operator. Applicants and/or the Unit Operator shall have fifteen (15) days from its receipt of these accountings within which to object in writing by asking for a hearing before the Board with respect to same. In the event the Unit Operator verifies through its accounting that Applicants' aggregate conflicting Gas royalty interest within Subject Drilling Unit is in fact 54.3141 percent, and provided the Applicants do not object to the accountings by requesting a hearing before the Board with respect to same, then the Applicants will be deemed to have agreed to the accountings, and the Board will immediately thereafter: (3) give notice *sua sponte* to the Escrow Agent to disburse 50 percent (50%) of the funds held by the Escrow Agent and attributable to Applicants' aggregate 54.3141 percent conflicting Gas royalty interest in Subject Drilling Unit (i.e., 27.15705%) to Trust, and to disburse fifty percent (50%) of the funds held by the Escrow Agent and attributable to Applicants' aggregate 54.3141 percent conflicting Gas royalty interest in Subject Drilling Unit ( i.e., 27.15705%) to Garden, and (4) the giving of such notice to disburse to the Escrow Agent shall also constitute a modification of the Pooling Order to reflect that the 54.3141 percent interest in Subject Drilling Unit which represents by the aggregate of the conflicting royalty interests of Garden and Trust shall no longer constitute a conflicting claim which is subject to the escrow requirements of the Pooling Order, and shall thereafter be paid by the Unit Operator to the Applicants in accordance with their agreement as provided at Paragraph 7.1 below.. However, in the event the Unit Operator fails to verify to the Board that the Applicants' aggregate conflicting Gas royalty interest within Subject Drilling Unit is in fact 54.3141 percent, or if the Applicants object to the accounting filed by either the Unit Operator or the Escrow Agent, then the Board will on its own motion set the application filed herein down for further hearings before the Board.

7. **Special Findings:** The Board specifically and specially finds:

7.1 In their application to the Board, and at the Board hearing held on May 20, 1997, Garden and Trust warranted and represented to the Board that: (1) Garden, an oil and gas owner within Tract 40 of Subject Drilling Unit, and Trust, a coal owner within Tract 40 of Subject Drilling Unit, have and own in the aggregate 54.3141 percent conflicting Gas royalty interest in Subject Drilling Unit and that they are the sole claimants to said 54.3141 percent interest, (2) Garden has heretofore entered into a voluntary lease with respect to its conflicting Gas interest in Subject Drilling Unit, (3) Trust has heretofore entered into a voluntary lease with respect to its conflicting Gas interests in Subject Drilling Unit (4) at the time of entry of the Pooling Order, Garden's and Trust's interests in Subject Drilling Unit constituted conflicting claims to royalties paid for Gas produced by Unit Operator from Subject Drilling Unit in accordance with the provisions of the Pooling Order, and (5) subsequent to the entry of the Pooling Order, Garden and Trust executed an agreement with respect to the division and apportionment of royalties that are derived from production of Gas pursuant to the Pooling Order whereby Garden is entitled to receive a sum equal to fifty percent (50%) of all royalties which are attributable to their aggregate 54.3141 percent conflicting interest (i.e. 27.15705% of Subject Drilling Unit), and Trust shall be entitled to receive a sum equal to fifty percent (50%) of all royalties which are attributable to their aggregate 54.3141 percent conflicting interest (i.e., 27.15705% of Subject Drilling Unit).

7.2 Va. Code Ann. § 45.1-361.22.A.5. provides that "[T]he 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 agreements of all claimants.

7.3. The relief requested and granted is just and reasonable, is supported by substantial evidence, and based upon the agreement reached by the Applicants as to their aggregate conflicting Gas royalty interest in 5.662 percent of Subject Drilling Unit, is required by Va. Code Ann. § 45.1-361.22.A.5. Therefore, the Board is entering an Order granting the relief set forth in Paragraph 6 above.

9. **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.

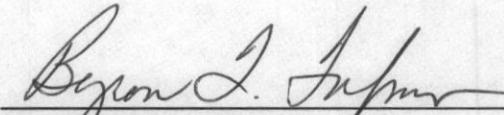
10. **Appeals:** Appeals of this Order are governed by the provisions of Va. Code Ann. § 45.1-361.9 which provides that any order or decision of the Board may be appealed to the appropriate circuit court. Such appeals must be taken in the manner prescribed in the Administrative Process Act, Va. Code Ann. §§ 9-6.14:1 *et seq.*

11. **Effective Date:** This Order shall be effective as of the date of its execution.

**DONE AND EXECUTED** this 16<sup>th</sup> day of June, 1997, by a majority of the Virginia Gas and Oil Board.

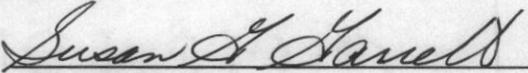
  
Chairman, Benny R. Wampler

**DONE AND PERFORMED** this 16<sup>th</sup> day of June, 1997, by a 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 16<sup>th</sup> day of June, 1997, 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 16<sup>th</sup> day of June, 1997,  
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  
Diane J. Davis  
Notary Public

My commission expires 9/30/97.

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 8<sup>th</sup> day of July, 1997, at 11:21 A. M.  
Deed Book No. 464 and Page No. 228. WITNESSES: Diane Davis James M. Bevins, Jr., Clerk  
Returned this date to: Diane Davis WITNESSES: Genevly S. Jiles Deputy Clerk