

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;)

RELIEF SOUGHT: Issuance of an Amended Supplemental)
Order Amending Prior Orders Affecting)
Drilling Unit V-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 Tract 3.)

DOCKET NO.
99-0216-0710-01

(With reference to
expired order
92-0317-0191)

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 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 28, 1992, the Board executed under Docket Number 92-0317-0191 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 5, 1992 in Deed Book 392 at Page 74. Because operations were not commenced within the allowable time period, the order expired although an escrow account had been established to accept bonus payments. On May 3, 1999, the Board executed under Docket Number 99-0216-0710 its order pooling interests in the Subject Drilling Unit. The Pooling Order was filed with the Clerk of the Circuit Court of Buchanan County on May 12, 1999 in Deed Book 491 at Page 657. On July 19, 1999, the Board executed its Supplemental Order Regarding Elections which was filed with the Clerk on July 21, 1999 in Deed Book 494 at page 545 (hereafter all orders are collectively referred to as the "Pooling Orders"). All escrowed funds were consolidated under Docket Number 99-0216-0710. 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 16.96-acre tract known as VGOB Tract 3 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. Court proceedings and testimony before the Board confirmed that Dewey Rowe is the fee owner of Tract 3 of the Subject Unit, owner of said tract having been shown in the Pooling Orders as Curtis Thurman Davis.
- 4.4 Applicants gave notice to Hurt McGuire Land Trust and CNX Gas Company, LLC that the Board would take the application 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 Tract 3 and the interests of Dewey Rowe and Hurt McGuire Land Trust, (2) delete the requirement that the Unit Operator place future royalties attributable to Tract 3 and the interests of Dewey Rowe 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.
- 4.5 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) Dewey Rowe is the owner of 100% of oil and gas estate underlying VGOB Tract 3 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) Tract 3 of unit V-34 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.

TABLE 1			
Owners	Tract #	Net Acres	% interest in 99-0216-0710 sub-account
Dewey Rowe	3	16.96	98.8345%

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 3, being 98.8345 percent of funds on deposit in the escrow sub-account on the date of disbursement to:

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

Exhibit E 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 Tract 3 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 2nd day of February, 2006, by a majority of the Virginia Gas and Oil Board.

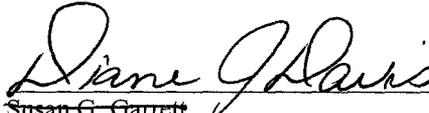

Chairman, Benny R. Wampler

DONE AND PERFORMED this 6th 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 6th 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)

1st
Acknowledged on this 1st 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

VIRGINIA:

AFFIDAVIT

BEFORE THE VIRGINIA GAS AND OIL BOARD

IN RE: Pertaining to Applicant/Plaintiff Dewey Rowe v. Hurt-McGuire Heirs Land Trust (626.41 acre Tract), which includes Unit V-34 (Tracts (2A Surface and 3A), created by Board Order as VGOB 99-0216-0710-0

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 V-34 (626.41 acre Tract), VGOB Docket No. 99-0216-0710-0__ in the Garden Magisterial District, Buchanan County, Virginia (Tracts (2A Surface) and 3A)

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 V-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;

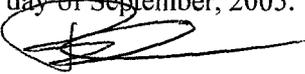
7. The interest in claims of all persons involved in the funds currently held in escrow by the Virginia Gas and Oil Board have been determined by a final non-appealable Order of Court and the ownership of the escrowed funds has also been the subject of a Circuit Court Order. It is Affiant's position 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 V-34, (Tracts (2A Surface) and 3A) created by Board Order as VGOB 99-0216-0710-0__, is subject to disbursement of funds due to the Court's Decision regarding ownership and Final Order entered by Judge Williams, (Hurt-McGuire Heirs – 626.41 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 14 day of September, 2005.

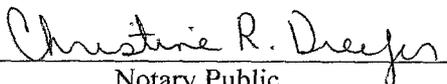


Peter G. Glubiak, Affiant

COMMONWEALTH OF VIRGINIA:
CITY/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 14 day of September, 2005.



Notary Public

My commission expires: October 31, 2008

Exhibit A
Tract-by-Tract Escrow Calculation
Account Balances as of 9/30/05

Unit V-34
 VGOB 99-0216-0710-01 (& 92-0317-0191)
 Acres Escrowed: 17.16

Owners	Tract #	Acres	Total Tract Percent of Escrow	Interest	Owners' Percent of Escrow	Amount Due Owners \$106,416.92
Hurt McGuire Land Trust - Coal Dewey Rowe - O&G	3	16.96	98.8345%	100%	98.8345%	\$105,176.63
					0.2331%	\$248.06
	4	0.08	0.4662%	—	0.2331%	\$248.06
					0.3497%	\$372.09
	5	0.12	0.6993%	—	0.3497%	\$372.09

Information presented here is for reference use only, CNX is not responsible for determinations made using the data represented here.

This information is for estimation purposes only.

UNIT V-34
Docket # VGOB-99-0216-0710
Exhibit E
List of Conflicting Owners/Claimants that require Escrow

	Acres in Unit	Percent of Unit
Tract #4, 0.08 acres		
<u>COAL FEE OWNERSHIP</u>		
(1) Hurt McGuire c/o Charles Green 1805 1/2 Jefferson Avenue Bluefield, WV 24701	0.08 acres	0.10000%
<u>OIL & GAS FEE OWNERSHIP</u>		
Vonda Mae Davis Rt. 1 Raven, VA 24639	0.08 acres	0.10000%

Tract #5, 0.12 acres		
<u>COAL FEE OWNERSHIP</u>		
(1) Hurt McGuire c/o Charles Green 1805 1/2 Jefferson Avenue Bluefield, WV 24701	0.12 acres	0.15000%
<u>OIL & GAS FEE OWNERSHIP</u>		
Carl Davis Box 343 Doran, VA 24612	0.12 acres	0.15000%

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 11 day of February, 2006 12:54 P. M.
Deed Book No. _____ and Page No. _____.
Returned to: Amh E TESTE: James M. Bevins, Jr., Clerk
TESTE: Jessie S. Miller Deputy Clerk

BL
#18

ENTERED

PROPERTY TAX
COUNTY CLERK
BUCHANAN COUNTY

INSTRUMENT #060000409
RECORDED IN THE CLERK'S OFFICE OF
BUCHANAN COUNTY ON
FEBRUARY 7, 2006 AT 12:54PM
JAMES M. BEVINS, CLERK
RECORDED BY: AKT