

090002685

Instrument prepared by:

VIRGINIA GAS AND OIL BOARD

Order recorded under:

**CODE OF VIRGINIA
§ 45.1-361.26**

VIRGINIA:

BEFORE THE GAS AND OIL BOARD

APPLICANTS:

CNX Gas Company LLC on behalf of
Clyborne Capital, LLC and Reserve Coal
Properties.
**(Disbursement of residual balance and to
close the account.**

DOCKET NO.

99-0518-0722-01

RELIEF SOUGHT:

Issuance: A Supplemental Order for Disbursement of Escrowed Funds
Action: Amending Prior Orders Affecting Drilling P-46,
Tracts 2 (to close the account and disburse residual funds).
(Referenced herein as "the Subject Drilling Unit")

Location: Buchanan County, Virginia

Action Details:

- (1) To provide a calculation of funds, Unit Operator has deposited into the Escrow Account for Drilling Unit P-46 by Tract Subaccounts;
- (2) To provide each applicant, in simple terms, a complete month over month Royalty Accounting of unit production, costs, taxes and proceeds, depicting variables used in the calculation of royalty payments to the unit escrow account.
- (3) To disburse unit funds to the Applicants, in accordance with their Unit Ownership Interests relative to those funds deposited by the Unit Operator into Subject Drilling

REPORT OF THE BOARD

FINDINGS AND ORDER

1. **Hearing Date and Place:** This matter came on for final hearing before the Virginia Gas and Oil Board (herein "Board") at 9:00 a.m. on September 18, 2001 at the Southwest Virginia Higher Education Center on the campus of Virginia Highlands Community College, Abingdon, VA.
2. **Appearances:** , Mark A. Swartz, Esq. of the firm Swartz and Stump L. C. appeared for the 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, with tract sub accounts, 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 sub accounts. 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 tracts in question or any undivided interest therein.

4. **Prior Proceedings:**

4.1. On May 18, 1999 the Board executed its order 99-0518-0722 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 SS 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 July 2, 1999, Deed Book 494 Pages 049 to 063, Instrument Number 990001803. The Board executed its Supplemental Order Regarding Elections that was filed with the Clerk on December 13, 1999, Deed Book 499 Pages 374 to 379, Instrument Number 990003113

4.1.2 March 22, 2001 a Supplemental Affidavit RE CBM Unit P-46 was notarized and filed with the following statements:

That the Order entered on December 3, 1999 by the Virginia Gas and Oil Board (hereinafter "Board") regarding the captioned CBM Unit required the Applicant to tender the Escrow Agents funds attributable to the rights, interests, claims of the persons identified in the annexed Exhibit E as subject to escrow under the Board's Order pooling the captioned Unit, Board Regulations and the Code of Virginia;

That after the pooling hearing held in the captioned matter, Ronald Clyborne and Reserve Coal Properties entered into a royalty split agreement; that by the terms of said agreement escrow regarding the conflicting claims of Ronald Clyborne and Reserve Coal Properties is no longer required;

That annexed herto are revised Exhibits E and EE.

That the Designated Operator has heretofore filed its petition seeking the disbursement from escrow of all funds on deposit attributable to the conflicting claims of Ronald Clyborne and Reserve Coal Properties OR the Designated Operator is preparing its petition seeking disbursement from escrow of all funds on deposit attributable to the conflicting claims of said respondents and will file same at its earliest opportunity; and

That the annexed supplemental order provides that the payment of funds subject to the annexed royalty split agreement shall be made to the said parties thereto rather than to the Escrow Agent.

4.1.3 On September 18, 2001, at the Southwest Virginia Higher Education Center, Abingdon, VA, the Board heard an Issuance of an Amended Supplemental Order, Amending Prior Orders Affecting Drilling Unit P-46 located in the Oakwood Coalbed Methane Gas Field I to Provide

(1) for the calculation of those funds Unit Operator Deposited into the Escrow Account for VGOB Tracts 2 and 5 of the Subject Drilling Unit;

(2) A Royalty Accounting;

(3) Disbursement to Clyborne and Reserve in Accordance with their Royalty Agreement, Those funds deposited by the Unit Operator into subject drilling Unit's Escrow Account for VGOB Tract 2;

(4) Disbursement to Pocahontas Gas Partnership of those funds erroneously deposited by Unit Operator into Subject Drilling Unit's Escrow Account for VGOB Tract 5.

This Disbursement Order request was approved by the Board and recorded with the Clerk of the Circuit Court of Buchanan County on November 7, 2001 Deed Book 533 Pages 727 to 737, Instrument 010003439.

4.1 To the extent claims to the Gas were in conflict, pursuant to Va. Code S 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 Orders (herein "Escrow Account"). According to the Pooling Orders and testimony, the coal estate ownership interests of Reserve Coal Properties; and the gas ownership interests of Clayborne Capital

LLC **Tract 2** in the Subject Drilling Unit were in conflict and became subject to the escrow requirements of the Pooling Order. Further, that funds were deposited into the escrow account erroneously for **Tract 5**, proven to be 100% owned by Pocahontas Gas Partnership.

- 4.2 The Unit Operator's Miscellaneous Petition regarding Reserve Coal Properties; and the gas ownership interests of Clayborne Capital LLC **Tract 2** in the Subject Drilling Unit were in conflict and became subject to the escrow requirements of the Pooling Order. Further, that funds were deposited into the escrow account erroneously for **Tract 5**, proven to be 100% owned by Pocahontas Gas Partnership and should be disbursed. A copy of this Order and Statement is attached to and made a part hereof, states under oath that and the Applicants have entered into an agreement with regards to **Tracts 2** and that by the terms of the agreements, Reserved Coal Properties and Clayborne Capital LLC has entered into a split agreement (50% / 50%) regarding this tract and escrow regarding these individual conflicting claims detailed herein, is no longer required for these parties.
- 4.3 The Unit Operator gave notice to Reserve Coal Properties and Clayborne Capital LLC that the Board would consider its disbursement authorization at its hearing on September 18, 2001 and consider whether to: (1) amend the Pooling Order to provide for the disbursement a portion of funds on deposit in the Escrow Account attributable to **Tracts 2** identified in the attached miscellaneous petition (2) delete the requirement that the Unit Operator place future royalties attributable to **Tract 2** the interests of Applicants identified in the miscellaneous petition in the Escrow Account, and (3) close the escrow account under this docket number because there are other parties under this order subject to continued payments in the escrow under **Tract 2** or **Tract 5**.
- 4.4 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 tracts 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) The coal estate ownership interests of Reserve Coal Properties; and the gas ownership interests of Clayborne Capital LLC **Tract 2** in the Subject Drilling Unit were in conflict and became subject to the escrow requirements of the Pooling Order. Further, that funds were deposited into the escrow account erroneously for **Tract 5**, proven to be 100% owned by Pocahontas Gas Partnership.

(2) Net interests attributable and to be disbursed to Applicants are shown in Table 1,

VGOB-99-0518-0722-01 (First Disbursement from the Unit) P-46		Frac Interest	Acreage Interest Disbursed	Split Agreement	Escrowed Acres Total	% of Escrowed Funds
Table 1						
Disbursement Table						
Totals					41.9700	
2	Reserve Coal Properties / PO Box 947 / Bluefield, VA 24605		41.9700	50.0%	20.985	50.0000%
2	Ronald A. Clyborne / Clyborne Capital LLC / 9325 Olympic View Drive / Edmonds, WA 98020		41.9700	50.0%	20.985	50.0000%

6. Relief Granted:

For the reasons set forth in Paragraph 4 and 5 above, and based upon the Accounting and Table 1 above, the Escrow Agent is ordered to, within 10 days of receipt of this executed order to disburse funds for the unit and applicants detailed in Table 1 above.

Exhibit E to the Pooling Order, showing owners subject to escrow, is deleted 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 those applicants indicated in Table 1 be deposited by the Unit Operator into the Escrow Account, **and**, because there are no other owners subject to escrow under the Supplemental Order, the Escrow Agent is directed to close 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 31 day of August, 2009 by a majority of the Virginia Gas and Oil Board.

Bradley C. Lambert
Bradley C. Lambert, Chairman

DONE AND PERFORMED this 31st day of August, 2009 by an Order of this Board.

David E. Asbury Jr.
David E. Asbury Jr.,
Principal Executive to the Staff
Virginia Gas and Oil Board

COMMONWEALTH OF VIRGINIA)
COUNTY OF RUSSELL

Acknowledged on this 31st day of August, 2009, personally before me a notary public in and for the Commonwealth of Virginia, appeared **Bradley C. Lambert**, being duly sworn did depose and say that he is the Chairman of the Virginia Gas and Oil Board and **David E. Asbury Jr.**, 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 #174394

My commission expires: 09 / 30 / 2009



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INSTRUMENT #090002685
RECORDED IN THE CLERK'S OFFICE OF
BUCHANAN COUNTY ON
SEPTEMBER 10, 2009 AT 01:38PM

BEVERLY S. TILLER, CLERK
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