

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 on behalf of Mr. Michael Hughes of 4565 Bohana Drive, Catawba, NC 28609 (previously an unlocatable party in escrow)

DOCKET NO.**01-0116-0858-02****RELIEF SOUGHT:**

Issuance: A Supplemental Order for Disbursement of Escrowed Funds

Action: Amending Prior Orders Affecting Drilling **Unit AW-116, Tract 4 (a portion thereof)** (Referenced herein as "the Subject Drilling Unit")Location: Russell County, Virginia**Action Details:**

- (1) To provide a calculation of funds, Unit Operator has deposited into the Escrow Account for Drilling Unit **AW-116** 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 Unit's Escrow Subaccount for **VGOB Tract(s) identified in Table 1.**

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 February 15, 2011, at the Russell County Government Conference Center, 139 Highland Drive Lebanon, VA
2. **Appearances:** Mark A. Swartz of Swartz Law Offices appeared for the Applicant; 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 tracts in question or any undivided interest therein or a decision from a court appointed Arbitrator.

4. **Prior Proceedings:**

- 4.1 (a) On June 19, 2001, 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 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 Russell County on November 14, 2001, in Deed Book 539, Pages 598 to 628 Instrument 0004234. The Supplemental Order was executed and recorded in with the Clerk of the Court, Russell County on April 2, 2003, in Deed Book 578, Pages 0562 to 0587 Instrument 0001345.
- (b) On February 16, 2010, the Board approved disbursement to Jack Hughes for his gas acreage ownership in a portion to Tract 4 of unit AW-116. After board approval, it was learned that there were circumstances which prevented the operator from obtaining a W-9 Federal Tax Form. Absent the W9 tax form, disbursement to Jack Hughes did not take place. The circumstances regarding Jack Hughes were placed on record at the February 16, 2011 board hearing indicating that the funds would remain escrowed until a valid address and W9 tax form is received.
- 4.2 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, Michael Hughes was an unlocatable party with unknown address in the Subject Drilling Unit with an interest of 1/660 parts of 4.93 acres or 0.00747 acres in Tract 4 became subject to the escrow requirements of the Pooling Order.
- 4.3 The Unit Operator's Miscellaneous Petition regarding Tract 4, a copy of which is attached to and made a part hereof, states under oath that Michael Hughes as an unlocatable party has been located and should be disbursed his portion of Tract 4,. Escrowing regarding this individual claim detailed herein is no longer required and monthly royalty payments are to be made direct to Michael Hughes.
- 4.4 The Unit Operator gave notice to Mr. Michael Hughes that the Board would consider a disbursement authorization at its hearing on Febaury 15, 2011, 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 Tract 4, as identified in the attached miscellaneous petition (2) delete the requirement that the Unit Operator place future royalties attributable to a portion of said Tract 4, the interests of Applicant identified in the miscellaneous petition 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 continued payments in the escrow.
- 4.5 The Unit Operator filed the attached accounting (Exhibit A) 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:

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- (1) Michael Hughes, originally an unlocatable party, has been located at 4565 Bohana Drive, Catawba, NC 28609 and is the owners of the gas and oil acreage estate underlying a 1/660 portion of 4.93 acres in VGOB Tract 4, of the Subject Drilling Unit; AW-116.
- (2) Net interests attributable and to be disbursed to Applicants are shown in Table 1.

VGOB Approved Disbursement
 VGOB-01-0116-0858-02
 AW-116

	As Given				
	Acreage	Acreage	Split		%
	Fraction	Interest	Agreement	Acres	Escrowed

Table 1

						Funds	
Tract 4 (a portion thereof)							
Item	Tract	Disbursement Table					
			4.93			4.046903	
						-	0.0000%
1	4	Michael Hughes, 4565 Bohana Drive, Catawba, NC 28609	1/660	0.00747	100.0%	0.0075	0.1846%

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 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 4th day of March, 2011, by a majority of the Virginia Gas and Oil Board.

Bradley C. Lambert
Bradley C. Lambert, Chairman

DONE AND PERFORMED this 4th day of March, 2011, 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 4th day of March, 2011, 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: 09/30/2013



BEFORE THE VIRGINIA GAS AND OIL BOARD

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PETITIONER: CNX Gas Company LLC

DIVISION OF GAS AND OIL
DOCKET NO: VGOB 01-0116-0858-02

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

HEARING DATE: February 15, 2011

DRILLING UNIT: AW-116

RUSSELL COUNTY, VIRGINIA

MISCELLANEOUS PETITION

1. **Petitioner and its counsel:** Petitioner is CNX Gas Company LLC, 2481 John Nash Boulevard, Bluefield, West Virginia 24701, 304/323-6500. Petitioner's counsel is Mark A. Swartz, **SWARTZ LAW OFFICES, PLLC.**, 601 Sixth Avenue, Suite 201, P.O. Box 1808, St. Albans, WV 25177-1808.

2. **Relief sought:** (1) the disbursement of escrowed funds heretofore deposited with the Board's Escrow Agent(s) attributable to a portion of Tract(s) 4 as depicted upon the annexed Exhibit A-1; and (2) authorization to begin paying royalties directly to the party/parties previously listed as unlocatable: Michael Hughes

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:** Royalties attributable to Michael Hughes' interest can be released due to the fact he has been recently located at: 2565 Bohana Drive, Catawba, NC 28609. The Applicant and Designated Operator are also requesting that they be allowed to pay royalties directly to Michael Hughes. The annexed Exhibit A-1, further specifies how said royalties are to be paid.

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

CNX GAS COMPANY LLC
BY ITS PROFESSIONAL MANAGER
CNX GAS COMPANY LLC, PETITIONER

By: _____

Anita D. Duty
Pooling Supervisor
CNX Land Resources, Inc.
2481 John Nash Blvd.
Bluefield, West Virginia 24701



Exhibit E
Unit AW-116
Docket #VGOB-01-0116-0858-02
List of Conflicting Owners/Claimants that require escrow

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	Acres in Unit	Interest in Unit
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Tract #4 - 4.93 acres

Escrow due to Unknown / Unlocatable

COAL OWNERSHIP

Fred Dye, et al <i>(Dora Dye Heirs)</i>	4.93 acres	8.3986%
<p>(2) Fred Dye Heirs, Devisees, Successors or Assigns</p> <p>(d) Hestor Dye Horton Heirs, Devisees, Successors or Assigns</p>		
(d.5) Jack Hughes * <i>Address Unknown</i>	0.00747 1/660 of 4.93 acres	0.0127%
(k) Darlene Dye <i>Address Unknown</i>	0.03735 1/132 of 4.93 acres	0.0636%

OIL & GAS OWNERSHIP

Fred Dye, et al <i>(Dora Dye Heirs)</i>	4.93 acres	8.3986%
<p>(2) Fred Dye Heirs, Devisees, Successors or Assigns</p> <p>(d) Hestor Dye Horton Heirs, Devisees, Successors or Assigns</p>		
(d.5) Jack Hughes * <i>Address Unknown</i>	0.00747 1/660 of 4.93 acres	0.0127%
(k) Darlene Dye <i>Address Unknown</i>	0.03735 1/132 of 4.93 acres	0.0636%

* Disbursement of funds were approved under docket VGOB 01-0116-0858-01 on February 16, 2010. When the W9 was requested, CNX was notified that Jack Hughes had recently been incarcerated. To date, CNX has not been able to locate an address for Mr. Hughes, therefore the funds will need to remain in escrow.

Tract #5, 5.77 acres

COAL OWNERSHIP

(1) Swords Creek Land Partnership <i>(M. P. Whited 72.53 Acre Tract)</i> P.O. Box 29 Tazewell, VA 24651	5.77 acres	9.8296%
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OIL & GAS OWNERSHIP

(1) Jeraldine Whited et al. <i>(formerly - M.P. Whited et ux. Heirs, Devisees, Successors or Assigns)</i>	5.77 acres	9.8296%
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Exhibit E
Unit AW-116
Docket #VGOB-01-0116-0858-02
List of Conflicting Owners/Claimants that require escrow

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	Acres in Unit	Interest in Unit
(b) Pauline & Manuel McPherson Heirs, Devisees, Successors or Assigns		
(b.1) Roger McPherson P.O. Box 1222 Wise, VA 24293	0.11096 1/52 of 5.77 acres	0.1890%
(c) Audrey Franklin 146 Johnson Street Weber City, VA 24290		
	0.11096 1/52 of 5.77 acres	0.1890%
(d) Eveline Whited & John Franklin Heirs, Devisees, Successors or Assigns		
(d.1) John Glen Franklin 250 Click Town Road Church Hill, TN 37642	0.11096 1/52 of 5.77 acres	0.1890%
(e) Roby & Naomi Whited Heirs, Devisees, Successors or Assigns		
(e.1) Linkous Whited Rt.2 Box 100 Honaker, VA	0.44385 1/13 of 5.77 acres	0.7561%
(e.2) McKinley Whited P.O. Box 1079 Raven, VA 24639	0.44385 1/13 of 5.77 acres	0.7561%
(e.3) Virginia Phipps HCR 63 Box 53 Jewell Ridge, VA 24622	0.44385 1/13 of 5.77 acres	0.7561%
(e.4) Hubert Whited 3120 St. Rt.98 Bucyurs, OH 44820	0.44385 1/13 of 5.77 acres	0.7561%
(f) Thelma Whited Heirs, Devisees, Successors or Assigns <i>Verbally was verified she is deceased without children, confirmation to be forthcoming</i>		
	0.11096 1/52 of 5.77 acres	0.1890%
(g) Lucy Whited & W.H. Brown Heirs, Devisees, Successors or Assigns		
(g.1) Kyle Brown Rt.1 Box 231 Swords Creek, VA 24649	0.22192 1/26 of 5.77 acres	0.3781%
(g.2) Beulah Brown 4723 Lynn Springs Road Swords Creek, VA 24649	0.22192 1/26 of 5.77 acres	0.3781%
(g.3) Ada Reedy Heirs, Devisees, Successors or Assigns		
(g.3.1) Ralph Reedy PO Box 159 Davin, WV 25617	0.11096 1/52 of 5.77 acres	0.1890%

Exhibit E
Unit AW-116
Docket #VGOB-01-0116-0858-02
List of Conflicting Owners/Claimants that require escrow

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	Acres in Unit	Interest in Unit
(g.3.2) Ella Ruth Cook PO Box 71 Cyclone, WV 24827	0.11096 1/52 of 5.77 acres	0.1890%
(g.4) Idinia Perkins 1003 N. Trumble Road Mansfield, OH 44906	0.22192 1/26 of 5.77 acres	0.3781%
(h) Charley Whited <i>Address Unknown</i>	0.44385 1/13 of 5.77 acres	0.7561%
(i) H.C. Bostic Coal Company P.O. Box 220 Swords Creek, VA 24649	0.44385 1/13 of 5.77 acres	0.7561%

Exhibit EE
Unit AW-116
Docket No. VGOB-01-0116-0858-02
List of Conflicting Owners/Claimants with Royalty Split Agreements

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	Acres in Unit	Interest in Unit	Percent of Escrow
<u>Tract #4, 4.93 acres</u>			
<u>COAL, OIL, & GAS OWNERSHIP</u>			
Fred Dye, et al <i>(Dora Dye Heirs)</i>	4.93 acres	8.3986%	
(2) Fred Dye Heirs, Devisees, Successors or Assigns			
(d) Hestor Dye Horton Heirs, Devisees, Successors or Assigns			
(d.4) Michael Hughes 4565 Bohana Drive Catawba, NC 28609	0.00747 1/660 of 4.93 acres	0.0127%	0.1846%
<u>Tract #5, 5.77 acres</u>			
<u>COAL OWNERSHIP</u>			
(1) Swords Creek Land Partnership P.O. Box 29 Tazewell, VA 24651	5.77 acres	9.8296%	n/a
<u>OIL & GAS OWNERSHIP</u>			
(1) Jeraldine Whited et al. <i>(formerly - M.P. Whited et ux. Heirs, Devisees, Successors or Assigns)</i>	5.77 acres	9.8296%	n/a
(a) Jeraldine Whited 4881 Lynn Springs Road Swords Creek, VA 24649	1.77538 4/13 of 5.77 acres	3.0245%	n/a

Exhibit A-1
Tract-by-Tract Escrow Calculation
Account Balances as of 11/30/10

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Unit AW-116
 VGOB 01-0116-0858-02
 Acres Escrowed: 4.046900

Owners	Tract #	Tract Acres	Owner Acres	Interest	Total Tract Percent of Escrow	Amount Due Owners \$17,955.26
Fred Dye et al - Coal, O&G	4	0.052300				
		4.93				
Michael Hughes *			0.00747	1/660	0.1846%	\$33.14

* Disbursement of funds were approved under docket VGOB 01-0116-0858-01 on February 16, 2010. When the W9 was requested, CNX was notified that Jack Hughes had recently been incarcerated. To date, CNX has not been able to locate an address for Mr. Hughes, therefore the funds will need to remain in escrow.

Wells contributing to the escrow account:

AW116

1100588

VIRGINIA: IN THE OFFICE OF THE CLERK OF THE CIRCUIT COURT OF RUSSELL COUNTY, 3-21, 2011. This deed was this day presented in said office, and upon the certificate of acknowledgment thereto annexed, admitted to record at 3:39 o'clock P M, after payment of \$ tax imposed by Sec. 58.1-802.

TESTE: ANN S. McREYNOLDS, CLERK
 BY: Jennifer Kunduck D. CLERK

Original returned this date to: VA Gas + Oil Board

Virginia Information Technologies Agency



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