

080004218

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:

Edith G. Street, Frederick H. Combs, II Testamentary
Trust c/o Kelly Necessary, Martha E. Combs and Carol
and John Irvin.

DOCKET NO.

01-0515-0890-01

RELIEF SOUGHT:

Issuance: A Supplemental Order for Disbursement of Escrowed Funds
Action: Amending Prior Orders Affecting Drilling J-38, Tract 1
(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 J-38 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 July 15, 2008 at the Southwest Virginia Higher Education Center on the campus of Virginia Highlands Community College, Abingdon, VA.
2. **Appearances:** Mark A. Swartz, Esq. and Leslie K Arrington CNX 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 October 3, 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 Buchanan County on October 4, 2001, Instrument Number 010002928. The Board executed its Supplemental Order Regarding Elections that was filed with the Clerk on March 8, 2002, Instrument number 020001051 (hereafter all orders are collectively referred to as the "Pooling Orders").
- 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, the oil and gas ownership interests of Edith G. Street, Frederick H. Combs, II Testamentary Trust c/of Kelly Necessary, Martha E. Combs and Carol and John Irvin in Tract 1 were in conflict in the Subject Drilling Unit and became subject to the escrow requirements of a Pooling Order.
- 4.3 The Unit Operator's Miscellaneous Petition regarding Tract 1, a copy of which is attached to and made a part hereof, states under oath that there was originally a conflict with the P3 seam between the aforementioned parties and Island Creek Coal Company. Island Creek Coal Company has decided that interest to the above parties and this order is to payout based on the deed to the aforementioned parties. That by the terms of the deed, the parties Tract 1 requires no further escrowing.
- 4.4 The Unit Operator gave notice to the applicants that the Board would consider its disbursement authorization at its hearing on July 15., 2008 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 1 identified in the attached miscellaneous petition (2) delete the requirement that the Unit Operator place future royalties attributable to Tract 1 plus the interests of Applicants 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 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:

Edith G. Street, Frederick H. Combs, II Testamentary Trust c/o Kelly Necessary, Martha E. Combs and Carol and John Irvin are the owners of the coal, oil and gas in Tract 1 based on a deed from Island Creek Coal Company.

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

VGOB Approved Disbursement
VGOB 01-0515-0890-01

	Acreage Interest	Split Agreement	Acreage	% of Escrowed Funds	Disbursement \$
Tract 1 (A portion of)					
Disbursement Table					
Island Creek Coal Company (ICCC-Coal) (Deeded Interest)					
Caroline Cole Heirs - Oil and Gas			1.964	31.5510%	
1 Edith G. Street; PO Box 792, Grundy Virginia, 24614	1/18 of 17.68		0.982	15.7755%	
2 Frederick H. Combs, II Testamentary Trust, c/o Kelly Combs Necessary; PO Box 841, Tazewell, Virginia 24651	1/54 of 17.68		0.327	5.2585%	
3 Martha E. Combs; PO Box 1404, Abingdon, VA 24212	1/54 of 17.68		0.327	5.2585%	
4 Carol & John Irvin; 4710 Hunterwood Circle, Richmond Texas, 77469	1/54 of 17.68		0.327	5.2585%	
Sum Total			1.964	31.5511%	

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:

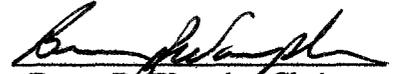
Therefore, the requested relief and all terms and provisions set forth above in Paragraph 6 above be and hereby are granted and **IT IS SO ORDERED.**

8. Appeals:

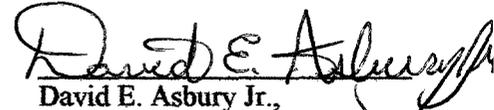
Appeals of this Order are governed by the provisions of Va. Code § 45.1-361.9 which provides that any order or decision of the Board may be appealed to the appropriate circuit court and that whenever a coal owner, coal operator, gas owner, gas operator, or operator of a gas storage field certificated 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 6th day of November, 2008, by a majority of the Virginia Gas and Oil Board.


Benny R. Wampler, Chairman

DONE AND PERFORMED this 6th day of November, 2008, by an Order of this Board.


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

**COMMONWEALTH OF VIRGINIA)
COUNTY OF WASHINGTON**

Acknowledged on this 6th day of November, 2008, 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 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, and that they executed the same and were authorized to do so.


Diane J. Davis
Notary Public #174394

My commission expires: 09/30/08



BEFORE THE VIRGINIA GAS AND OIL BOARD

PETITIONER: CNX Gas Company LLC

DIVISION OF GAS AND OIL
DOCKET NO: VGOB 01-0515-0890-01

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

HEARING DATE: July 15, 2008

DRILLING UNIT: J-38

BUCHANAN COUNTY, VIRGINIA

MISCELLANEOUS PETITION

1. **Petitioner and its counsel:** Petitioner is CNX Gas Company LLC, 2481 John Nash Blvd., 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 Tract(s) 1 as depicted upon the annexed Exhibit A; and (2) authorization to begin paying royalties directly to the parties Edith G. Street, Frederick H. Combs, II Testamentary Trust c/o Kelly Necessary, Martha E. Combs and Carol & John Irvin.

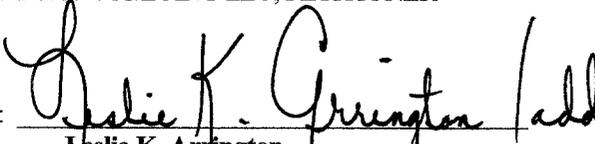
3. **Legal Authority:** Va. Code Ann. § 45.1-361.1 et seq., 4 VAC 25-160-140., and relevant Virginia Gas and Oil Board Orders ("Board") heretofore promulgated pursuant to law.

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

5. **Factual basis for relief requested:** Edith G. Street, Frederick H. Combs, II Testamentary Trust c/o Kelly Necessary, Martha E. Combs and Carol & John Irvin., have been deeded the 1/9 conflicting interest in the Pocahontas No.3 seam (previously shown as Island Creek Coal Company). Said deed allows the Applicant and Designated Operator to pay royalties directly to the persons identified in Exhibit EE annexed hereto, 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: 
Leslie K. Arrington
Director - Environmental Permitting
CNX Gas Company LLC
2481 John Nash Blvd.
Bluefield, West Virginia 24701



PROPERTY LINES SHOWN WERE IN FIELD MAPS PROVIDED BY CONSOL Inc. AND WERE NOT SURVEYED.

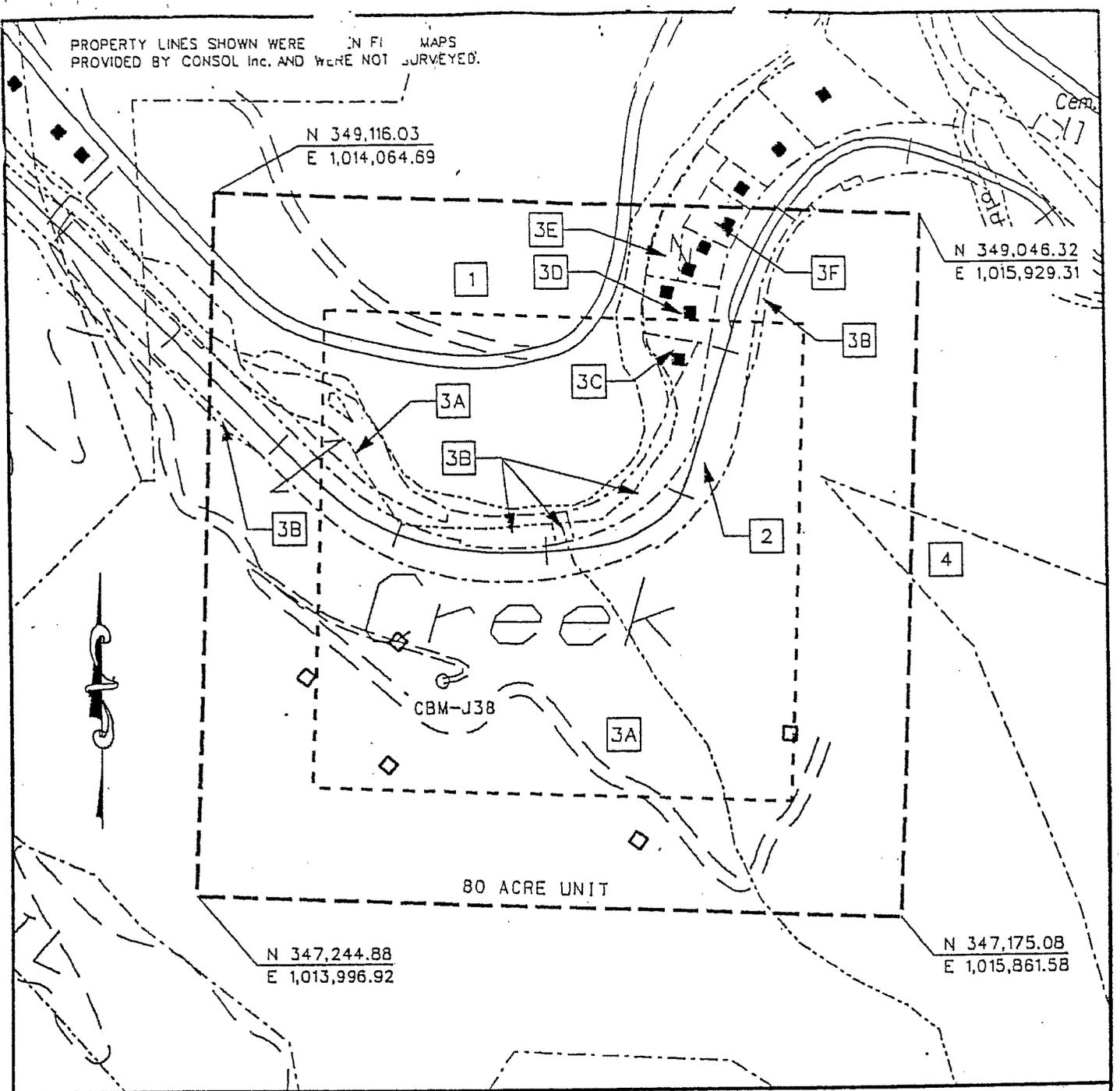


EXHIBIT A
 OAKWOOD FIELD UNIT J-38
 FORCE POOLING
 VGOB-01-0515-0890

Company CONSOL Energy Inc. Well Name and Number UNIT J38
 Tract No. _____ Elevation _____ Quadrangle Keen Mountain
 County Buchanan District Garden Scale: 1" = 400' Date 4/9/01
 This plat is a new plat ; an updated plat _____ ; or a final plat _____

Form DGO-GO-7 _____ (Affix Seal)
 Rev. 9/91 Charles D. May
 Licensed Professional Engineer or Licensed Land Surveyor

ce

CONSOL ENERGY INC.
UNIT J-38
Tract Identifications

1. Claude V. Keen, et al. - Coal (Except 1/9th Int in P-3 Seam and Jawbone Seam)
Island Creek Coal Company/Consolidation Coal Company - 1/9th Int in P-3 Seam
Jewell Smokeless Coal Corp - Jawbone Seam
Island Creek Coal Company/Consolidation Coal Company - Below Drainage Coal Leased
Jewell Smokeless Coal Corp. - Above Drainage Coal Leased (Except Jawbone Seam)
Virginia Gas Exploration Company - CBM Leased (98.7654 % Except 1/9th of P-3 Seam)
Buchanan Production Company - CBM Assignee
Claude V. Keen, et al. - Oil & Gas
Virginia Gas Exploration Company - Oil, Gas and CBM Leased (98.7654 %)
Buchanan Production Company - CBM Assignee
17.68 acres 22.1000%

2. Norfolk Southern Corp. - Fee (Except Coal Below 800')
Yukon Pocahontas Coal Company, et al. Tr 32 - Coal below 800'
Reserve Coal Properties Company - Coal below 800' Leased
Buchanan Production Company - CBM Leased Below 800'
5.34 acres 6.6750%

3. Yukon Pocahontas Coal Company, et al. Tr 32 - Coal, Oil & Gas
Reserve Coal Properties Company - Below Drainage Coal Leased
Jewell Smokeless Coal Corp. - Above Drainage Coal Leased
Buchanan Production Company - CBM Leased
Cabot Oil and Gas Corp. - Oil & Gas Leased
56.54 acres 70.6750%

- 3A. Milfred Maxwell, et al. - Surface
3B. Norfolk Southern Corp. - Surface
3C. Bernard Maxwell - Surface
3D. Robert H. White - Surface
3E. Bernard Maxwell - Surface
3F. Raymond Compton - Surface

4. C. L. Ritter Lumber Company - Tr. 41 - Coal, Oil & Gas
Reserve Coal Properties Company - Below Drainage Coal Leased
Jewell Smokeless Coal Corp. - Above Drainage Coal Leased
Buchanan Production Company - CBM Leased (Coal Seams Below Tiller Seam)
Bucky McConnell, et al. - Surface
0.44 Acres 0.5500%

Exhibit E
Unit J-38
Docket # VGOB-01-0515-0890
List of Conflicting Owners/Claimants that require escrow

	Acres in Unit	Percent of Unit
<u>Tract #2, 5.34 Acres</u>		
<u>COAL FEE OWNERSHIP</u>		
(2) Yukon Pocahontas Coal Company et al., Tr. 32 (Coal below 800')	4.2618 acres (Conflicting acres Coal below 800')	5.3272%
(a) Yukon Pocahontas Coal Company P.O. Box 187 Tazewell, VA 24651	2.13089 acres 1/2 of 5.34 acres	2.6636%
(b) Buchanan Coal Company P.O. Box 187 Tazewell, VA 24651	0.47353 acres 1/9 of 5.34 acres	0.5919%
(c) Sayers-Pocahontas Coal Company P.O. Box 187 Tazewell, VA 24651	0.23677 acres 1/18 of 5.34 acres	0.2960%
(d) Plum Creek Timberlands, L.P. 100 Peachtree Street NW, Suite 2650 Atlanta, Ga 30303	1.42059 acres 1/3 of 5.34 acres	1.7757%
<u>OIL & GAS FEE OWNERSHIP</u>		
(1) Norfolk Southern Corporation Real Estate Department 185 Spring Street Atlanta, GA 30303	4.2618 acres (Conflicting acres Coal below 800')	5.3272%

Exhibit EE
Unit J-38
Docket # VGOB-01-0515-0890
List of Conflicting Owners/Claimants with Agreements

	Acres in Unit	Percent of Unit	Percent of Escrow
<u>Tract #1, 17.68 Acres</u>			
<u>COAL FEE OWNERSHIP</u>			
Claude V. Keen, et al. (a.k.a. Caroline Cole Heirs, Devisees, Successors or Assigns et al.) 85 Acre Tract	17.68 acres	22.1000%	
(2) Island Creek Coal Company (1/9 int. P3 seam) Drawer L Oakwood, VA 24631	1.9644 acres 1/9 of 17.68 acres	2.4556%	n/a (Deeded Interest)
<u>OIL & GAS FEE OWNERSHIP</u>			
Claude V. Keen, et al. (a.k.a. Caroline Cole Heirs, Devisees, Successors or Assigns et al.) 85 Acre Tract	17.68 acres	22.1000%	
(1) Caroline Cole Heirs, Devisees, Successors or Assigns (exc. Jawbone and 1/9 P3 seam)			
(h) Hassel Cole Heirs, Devisees, Successors or Assigns			
(h.1) Edith G. Street P.O. Box 792 Grundy, VA 24614	0.9822 acres 1/18 of 17.68 acres	1.2278%	15.77588%
(h.2) Marion S. Combs Heirs, Devisees, Successors or Assigns			
(h.2.1) F.H. Combs, II Testamentary Trust c/o Kelly Combs Necessary P.O. Box 841 Tazewell, VA 24651	0.3274 acres 1/54 of 17.68 acres	0.4093%	5.25863%
(h.2.2) Martha E. Combs P.O. Box 1404 Abingdon, VA 24210	0.3274 acres 1/54 of 17.68 acres	0.4093%	5.25863%
(h.2.3) Carol & John Irvin 4710 Hunterwood Circle Richmond, TX 77469	0.3274 acres 1/54 of 17.68 acres	0.4093%	5.25863%

Tract-by-Tract Escrow Calculation
Account Balances as of 4/30/08

Unit J-38
 VGOB 01-0515-0890-01
 Acres Escrowed: 6.2261

Owners	Tract #	Acres	Total Tract Percent of Escrow	Interest	Owners' Percent of Escrow	Amount Due Owners \$7,425.47
ICCC - Coal (Deeded Interest)			n/a			
Caroline Cole Heirs - O&G						
Edith G. Street				1/18	15.77553%	\$1,171.41
Frederick H. Combs, II Testamentary Trust				1/54	5.25851%	\$390.47
Martha E. Combs		(17.68)		1/54	5.25851%	\$390.47
Carol & John Irvin	1	1.9644	31.55105%	1/54	5.25851%	\$390.47
	2	4.2617	68.44895%		34.2245%	\$2,541.33
					34.2245%	\$2,541.33

INSTRUMENT #080004218
 RECORDED IN THE CLERK'S OFFICE OF
 BUCHANAN COUNTY ON
 NOVEMBER 12, 2008 AT 02:33PM

BEVERLY S. TILLER, CLERK
 RECORDED BY: AKT