

BOOK 049 PAGE 0113
#06-0000765

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: Swords Creek Land Partnership)
Clell Edward Metcalf, et al.)

DOCKET NO.
03-0415-1142-01

RELIEF SOUGHT: Issuance of an Amended Supplemental)
Order Amending Prior Orders Affecting)
Drilling Unit FF-33 Located in the Oakwood)
Coalbed Methane Gas Field I in the New)
Garden Magisterial District, Buchanan &)
Russell Counties, 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 Applicants)
in Accordance with Their Ownership)
Interests Those Funds Deposited by the)
Unit Operator into Subject Drilling Unit's)
Escrow Subaccount for VGOB Tracts II and 1J

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") on October 18, 2005 at the Southwest Virginia Higher Education Center on the campus of Virginia Highlands Community College, Abingdon, VA.
2. **Appearances:** Mark Swartz, Esq. of the firm Swartz and Stump L.C. 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 12, 2003, the Board executed its order pooling all 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 May 29, 2003 in Deed Book 570 at page 766 and also filed with the Clerk of the Circuit Court of Russell County on June 19, 2003 in Deed Book 585 at page 46. The Board designated Pocahontas Gas Partnership, predecessor of CNX Gas Company LLC, as the Unit Operator of the Subject Drilling Unit. The Pooling Order was amended and supplemented by the Board's Supplemental Order regarding elections executed on November 7, 2003 that was filed with the Buchanan County Circuit Court Clerk's Office on November 17, 2003 in Deed Book 581 at page 344 and also recorded with the Russell County Circuit Court Clerk's Office on November 17, 2003 in Deed Book 596 at page 916 ("Supplemental Order")(hereafter the Pooling Order and the Supplemental Orders are collectively referred to as the Pooling Order).
- 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/interests were ordered deposited by the Unit Operator into the escrow account established by the Pooling Order (herein "Escrow Account"). According to the Pooling Order, the coal fee ownership of Swords Creek Land Partnership and the oil and gas fee ownership of Clell Edward Metcalf et. al. or their predecessors in title in a 1.01 acres tract known as VGOB Tract 1I and a 4.17 acres tract known as VGOB Tract 1J in Subject Drilling Unit were in conflict and became subject to the escrow requirements of the Pooling Order.
- 4.3. The Unit Operator's Miscellaneous Petition to the Board, received September 16, 2005 by the Division of Gas and Oil, a copy of which is attached to and made a part hereof, and sworn testimony attested that Swords Creek Land Partnership and Clell Edward Metcalf et. al. have entered into a royalty split agreement and that by terms of that agreement escrow regarding the conflicting claims of said parties is no longer required. By sworn testimony, the Unit Operator notified the Board that VGOB Tracts 1I and 1J of the Subject Drilling Unit and the interests of Swords Creek Land Partnership and Clell Edward Metcalf et. al. are subject to the split agreement.
- 4.4. Petitioner gave notice to Swords Creek Land Partnership and Clell Edward Metcalf et. al. that the Board would take the petition referred to in Paragraph 4.3 above under consideration at its hearing. Notice stated that the Board would consider whether to: (1) amend the Pooling Order to provide for the disbursement of funds on deposit in the Escrow Account attributable to Tracts 1I and 1J; (2) delete the requirement that the Unit Operator place future royalties attributable to the above-named parties in Tracts 1I and 1J 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 accountings for Subject Drilling Unit's Escrow Account with the Board ("Accountings").

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 The Petitioner has certified and represented to the Board that:

- (1) Swords Creek Land Partnership is the owner of 100% of the coal estate underlying VGOB Tracts 1I and 1J of the subject Drilling Unit.
- (2) Clell Edward Metcalf et. al. is the owner of 100% of the oil and gas estate underlying VGOB Tracts 1I and 1J of the subject Drilling Unit.
- (3) Swords Creek Land Partnership and Clell Edward Metcalf et. al. have entered into a royalty split agreement specifying that escrowed funds attributable to their conflicting interests are to be divided with 50% going to the gas owner and 50% going to the coal owner, and also specifying that future royalties be paid directly to the owners according to the split agreement.
- (4) The net interests attributable and to be disbursed to Swords Creek Land Partnership and Clell Edward Metcalf et. al. in Tracts 1I and 1J are shown in Table 1, below.

TABLE-1		
Tract # 1I Owner Names	Net acres in Unit	% interest in VGOB 03-0415-1142 balance
Swords Creek Land Partnership P.O. Box 187 Tazewell, VA 24651	1.01	.72735%
Clell Edward Metcalf, et al. c/o J. C. Franks, Agent 621 Peavler Street Marion, VA 24354	1.01	.72735%
Tract # 1J Owner Names	Net acres in Unit	% interest in VGOB 03-0415-1142 balance
Swords Creek Land Partnership P.O. Box 187 Tazewell, VA 24651	4.17	3.0030%
Clell Edward Metcalf, et al. c/o J. C. Franks, Agent 621 Peavler Street Marion, VA 24354	4.17	3.0030%
TOTALS		
		% interest in VGOB 02-0415-1142 balance
Swords Creek Land Partnership (Tracts 1I & 1J)		3.7304%
Clell Edward Metcalf, et al. c/o J. C. Franks, Agent (Tracts 1I & 1J)		3.7304%

6. **Relief Granted:**

For the reasons set forth in Paragraphs 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 escrowed funds attributable to VGOB Tracts 1I and 1J and the interests of Swords Creek Land Partnership and Clell Edward Metcalf et. al. according to the percentages shown in Table 1, above, and mail attributable proceeds to the addresses shown in the table. Exhibit E to the Pooling Order, showing owners subject to escrow, is deleted in toto and replaced with the

Exhibit E attached hereto. 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 Swords Creek Land Partnership and Clell Edward Metcalf et. al. in Tracts 1I and 1J 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 9th day of March, 2006, by a majority of the Virginia Gas and Oil Board.


Chairman, Benny R. Wampler

DONE AND PERFORMED this 13th day of March, 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)

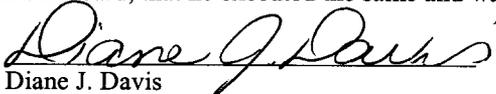
Acknowledged on this 9th day of March 2006, personally before me a notary public in and for the Commonwealth of Virginia, appeared Benny R. Wampler, being duly sworn did depose and say that he is Chairman of the Virginia Gas and Oil Board, that he executed the same and was authorized to do so.


~~Susan G. Garrett~~ Diane Davis
Notary Public

My Commission expires:
9/30/09

COMMONWEALTH OF VIRGINIA)
COUNTY OF WASHINGTON)

Acknowledged on this 13th day of March, 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

BEFORE THE VIRGINIA GAS AND OIL BOARD

5304 040110118

PETITIONER: CNX Gas Company LLC

**DIVISION OF GAS AND OIL
DOCKET NO: VGOB 03-0415-1142-01**

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

HEARING DATE: October 18, 2005

DRILLING UNIT: FF-33

BUCHANAN & RUSSELL COUNTIES, VIRGINIA



MISCELLANEOUS PETITION

1. **Petitioner and its counsel:** Petitioner is **CNX Gas Company LLC**, P. O. Box 947, Bluefield, Virginia 24605, 276/988-1000. Petitioner's counsel is Mark A. Swartz, **SWARTZ & STUMP, L.C.**, P.O. Box 517, Abingdon, VA 24212.

2. **Relief sought:** (1) the disbursement of escrowed funds heretofore deposited with the Board's Escrow Agent(s) attributable to Tract(s) 1I and 1J as depicted upon the annexed Exhibit A; and (2) authorization to begin paying royalties directly to the parties to the royalty split between Swords Creek Land Partnership and Clell Edward Metcalf, et al. c/o J.C. Franks, Agent.

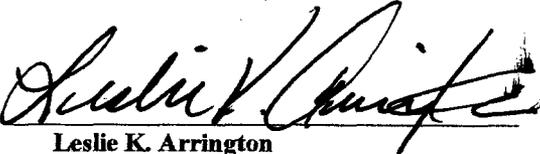
3. **Legal Authority:** Va. Code Ann. § 45.1-361.1 et seq., 4 VAC 25-160-140., and relevant Virginia Gas and Oil Board Orders ("Board") heretofore promulgated pursuant to law.

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

5. **Factual basis for relief requested:** Swords Creek Land Partnership and Clell Edward Metcalf, et al. c/o J.C. Franks, Agent, have entered into a royalty split agreement. Said royalty split agreement allows the Applicant and Designated Operator to pay royalties directly to the persons identified in Exhibit EE annexed hereto and, further, specifies how said royalties are to be divided and paid, to-wit: 3.73035 total percent of escrow to Swords Creek Land Partnership and 3.73035 total percent of escrow to Clell Edward Metcalf, et al. c/o J.C. Franks, Agent.

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
Manager – Environmental / Permitting
CNX Gas Company LLC
P.O. Box 947
Bluefield, Virginia 24605
276/988-1000

Exhibit EE
Unit FF-33
Docket #VGOB 03-0415-1142
List of Conflicting Owners/Claimants with Royalty Split Agreements
(89.51 Acre Unit)

	Acres in Unit	Interest in Unit	Percent of Escrow
69.43			
<u>Tract #1D, 0.54 acres</u>			
<u>COAL FEE OWNERSHIP</u>			
(1) Swords Creek Land Partnership, Tr.21 P.O. Box 187 Tazewell, VA 24651	0.54 acres	0.6033%	n/a
<u>OIL & GAS FEE OWNERSHIP</u>			
(1) Pocahontas Gas Partnership P.O. Box 947 Bluefield, VA 24605	0.54 acres	0.6033%	n/a
<u>Tract #1E, 19.05 acres</u>			
<u>COAL FEE OWNERSHIP</u>			
(1) Swords Creek Land Partnership, Tr.21 P.O. Box 187 Tazewell, VA 24651	19.05 acres	21.2825%	n/a
<u>OIL & GAS FEE OWNERSHIP</u>			
(1) Edith R. Plaster, et al.	19.05 acres	21.2825%	n/a
(a) Edith Plaster RR1 Box 371 Swords Creek, VA 24649	9.525 acres 1/2 of 19.05 acres	10.6413%	n/a
(b) Rose Jackson 101 Cole Street Richlands, VA 24641	9.525 acres 1/2 of 19.05 acres	10.6413%	n/a
<u>Tract #1I, 1.01 acres</u>			
<u>COAL FEE OWNERSHIP</u>			
(1) Swords Creek Land Partnership, Tr.21 P.O. Box 187 Tazewell, VA 24651	1.01 acres	1.1284%	1.4547%
<u>OIL & GAS FEE OWNERSHIP</u>			
(1) Clell Edward Metcalf, et al. c/o J.C. Franks, Agent 621 Peavler Street Marion, VA 24354	1.01 acres	1.1284%	1.4547%

Exhibit EE
Unit FF-33
Docket #VGOB 03-0415-1142
List of Conflicting Owners/Claimants with Royalty Split Agreements
(89.51 Acre Unit)

BOOK 049 PAGE 0129

	Acres in Unit	Interest in Unit	Percent of Escrow
			69.43
<u>Tract #1J, 4.17 acres</u>			
<u>COAL FEE OWNERSHIP</u>			
(1) Swords Creek Land Partnership, Tr.21 P.O. Box 187 Tazewell, VA 24651	4.17 acres	4.6587%	6.0060%
<u>OIL & GAS FEE OWNERSHIP</u>			
(1) Clell Edward Metcalf, et al. c/o J.C. Franks, Agent 621 Peavler Street Marion, VA 24354	4.17 acres	4.6587%	6.0060%

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

Unit EE-33
 VGOB 02-0820-1054-01
 Acres Escrowed: 18.63

Owners	Tract #	Total Acres	Owners' Acres	Total Tract Percent of Escrow	Owners' Percent of Escrow	Amount Due Owners \$10,207.18
Swords Creek Land Partnership - Coal	2a	10.770	5.385	57.8100%	28.9050%	\$2,950.38
Clell E. Metcalf, et al. - O&G			5.385		28.9050%	\$2,950.38
Swords Creek Land Partnership - Coal	2b	0.470	0.235	2.5228%	1.2614%	\$128.75
Clell E. Metcalf, et al. - O&G			0.235		1.2614%	\$128.75
	2c	0.080	0.040	0.4294%	0.2147%	\$21.92
			0.040		0.2147%	\$21.92
	2d	4.130	2.065	22.1685%	11.0843%	\$1,131.39
			2.065		11.0843%	\$1,131.39
Coal Mountain Mining - Coal	3b	3.180	1.590	17.0692%	8.5346%	\$871.14
Clell E. Metcalf, et al. - O&G			1.590		8.5346%	\$871.14

Unit FF-33
 VGOB 03-0415-1142-01
 Acres Escrowed: 69.43

Owners	Tract #	Total Acres	Owners' Acres	Total Tract Percent of Escrow	Owners' Percent of Escrow	Amount Due Owners \$11,887.94
	1a, 1g	37.320	18.660	53.7520%	26.8760%	\$3,195.00
			18.660		26.8760%	\$3,195.00
	1b	1.430	0.715	2.0596%	1.0298%	\$122.42
			0.715		1.0298%	\$122.42
	1c	2.870	1.435	4.1337%	2.0668%	\$245.70
			1.435		2.0668%	\$245.70
	1f	20.520	10.260	29.5549%	14.7775%	\$1,756.74
			10.260		14.7775%	\$1,756.74
	1h	2.110	1.055	3.0390%	1.5195%	\$180.64
			1.055		1.5195%	\$180.64
Swords Creek Land Partnership - Coal	1i, 1j	5.180	2.590	7.4608%	3.7304%	\$443.46
Clell E. Metcalf, et al. - O&G			2.590		3.7304%	\$443.46

Exhibit E
Unit FF-33
Docket #VGOB 03-0415-1142
List of Conflicting Owners/Claimants that require escrow
(89.51 Acre Unit)

BOOK 040 PAGE 0179

	Acres in Unit	Interest in Unit
<u>Tract #1A, 31.23 acres</u>		
<u>COAL FEE OWNERSHIP</u>		
(1) Swords Creek Land Partnership, Tr.21 P.O. Box 187 Tazewell, VA 24651	31.23 acres	34.8900%
<u>OIL & GAS FEE OWNERSHIP</u>		
(1) Jackie Richardson, et al.	31.23 acres	34.8900%
(a) Jackie Richardson RR1 Box 369 Swords Creek, VA 24649	15.615 acres 1/2 of 31.23 acres	17.4450%
(b) Phyllis Richardson (sister) RR1 Box 369 Swords Creek, VA 24649	15.615 acres 1/2 of 31.23 acres	17.4450%
<u>Tract #1B, 1.43 acres</u>		
<u>COAL FEE OWNERSHIP</u>		
(1) Swords Creek Land Partnership, Tr.21 P.O. Box 187 Tazewell, VA 24651	1.43 acres	1.5976%
<u>OIL & GAS FEE OWNERSHIP</u>		
(1) Dollie Belcher RR1 Box 264 Raven, VA 24639	1.43 acres	1.5976%
<u>Tract #1C, 2.87 acres</u>		
<u>COAL FEE OWNERSHIP</u>		
(1) Swords Creek Land Partnership, Tr.21 P.O. Box 187 Tazewell, VA 24651	2.87 acres	3.2063%
<u>OIL & GAS FEE OWNERSHIP</u>		
(1) Doris E. Dye P.O. Box 173 Rosedale, VA 24280	2.87 acres	3.2063%
<u>Tract #1F, 20.52 acres</u>		
<u>COAL FEE OWNERSHIP</u>		
(1) Swords Creek Land Partnership, Tr.21 P.O. Box 187 Tazewell, VA 24651	20.52 acres	22.9248%
<u>OIL & GAS FEE OWNERSHIP</u>		

Exhibit E
Unit FF-33
Docket #VGOB 03-0415-1142
List of Conflicting Owners/Claimants that require escrow
(89.51 Acre Unit)

BOOK 0490...

	Acres in Unit	Interest in Unit
(1) Jerry L. Plaster, et al.	20.52 acres	22.9248%
(a) Jerry Plaster Rt.1 Box 367 Swords Creek, VA 24649	10.260 acres 1/2 of 20.52 acres	11.4624%
*(Requests all monies be paid to his mother)		
(b) Virginia M. Plaster (Mother) Rt.1 Box 367 Swords Creek, VA 24649	10.260 acres 1/2 of 20.52 acres	11.4624%

Tract #1G, 6.09 acres

COAL FEE OWNERSHIP

(1) Swords Creek Land Partnership, Tr.21 P.O. Box 187 Tazewell, VA 24651	6.09 acres	6.8037%
--	------------	---------

OIL & GAS FEE OWNERSHIP

(1) Jackie Richardson, et al.	6.09 acres	6.8037%
(a) Jackie Richardson RR1 Box 369 Swords Creek, VA 24649	3.05 acres 1/2 of 6.09 acres	3.4019%
(b) Phyllis Richardson (sister) RR1 Box 369 Swords Creek, VA 24649	3.05 acres 1/2 of 6.09 acres	3.4019%

Tract #1H, 2.11 acres

COAL FEE OWNERSHIP

(1) Swords Creek Land Partnership, Tr.21 P.O. Box 187 Tazewell, VA 24651	2.11 acres	2.3573%
--	------------	---------

OIL & GAS FEE OWNERSHIP

(1) Randall Charles Robinette P.O. Box 2240 Cedar Bluff, VA 24609	2.11 acres	2.3573%
---	------------	---------

0600821

VIRGINIA: IN THE OFFICE OF THE CLERK OF THE CIRCUIT COURT OF RUSSELL COUNTY, 3-13, 2006. This deed was this day presented in said office, and upon the certificate of acknowledgment thereto annexed, admitted to record at 11:24 o'clock A M, after payment of \$ - tax imposed by Sec. 58.1-802.

Original returned this date to: Diane Davis

TESTE: DOLLIE M. COMPTON, CLERK
BY: Ann M. Reynolds D. CLERK

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 07 day of March, 2006 and Page No. 2154R M.
Deed Book No. AMME
Returned to: AMME
TESTE: Jessie S. Villa James M. Bevins, Jr., Clerk
Deputy Clerk

BV
RY
#21

ENTL

INSTRUMENT #060000765
RECORDED IN THE CLERK'S OFFICE OF
BUCHANAN COUNTY ON
MARCH 13, 2006 AT 02:54PM
JAMES M. BEVINS, CLERK
RECORDED BY: AKT