

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 Reserve Coal Properties and Frankes Estate et al ; Ronald A Clyborne in VGOB **Tract 4.****DOCKET NO.****93-0216-0328-01****RELIEF SOUGHT:**

Issuance: A Supplemental Order for Disbursement of Escrowed Funds
 Action: Amending Prior Orders Affecting Drilling **CBM Q-40, Tract 4.**
 (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 **Q-40** 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

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 16, 1993 at the Dickenson Conference Room, Southwest Virginia 4-H Center, Abingdon, VA.
2. **Appearances:** Elizabeth McClanahan, Penn, Stuart, Eskridge & Jones appeared for the Unit Operator Pocahontas Gas Partnership; 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

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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. (a) On February 16, 1993 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 April 8, 1993, Deed Book 406, and Pages 492 to 511, Instrument Number 000000879. The Board executed its Supplemental Order Regarding Elections that was filed with the Clerk of the Circuit Court of Buchanan County on December 16, 1993, Deed Book 416, Pages 814 to 819 Instrument Number 000003138.
- (b) On July 12, 2001, the Board executed its *Revised* Supplemental Order indicating a Royalty Split Agreement in Exhibit EE for Tract 4 between Reserve Coal Properties ("Reserve") and the Franks Estate et al, Ronald A Clyborne, executed after the original Supplemental Order on April 8, 1993. The Revised Supplemental Order also adjusted tract acreage inside the unit in the file submitted to the Clerk of the Circuit Court of Buchanan County on July 12, 2001, Deed Book 527, and Pages 1 to 9 Instrument 010001974.
- 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 coal estate ownership interests of Reserve Coal Properties and the gas ownership interests of the Franks Estate et al ; Ronald A Clyborne in Tract 4 in the 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 regarding Tract 4, a copy of which is attached to and made a part hereof, states under oath that Reserve Coal Properties and the Applicants have entered into an agreement with regards to Tract 4 and that by the terms of the agreements, Reserve Coal Properties and the Franks Estate, Ronald A Clyborne has entered into a split agreement regarding these tracts and escrow regarding these individual conflicting claims detailed herein, is no longer required for these parties.
- 4.4. The Unit Operator gave notice to Reserve Coal Properties and the Applicants that the Board would consider its disbursement authorization at its hearing on August 17, 2010 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 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 relative to the interests of Applicants identified in the miscellaneous petition in the Escrow Account, and (3) **continue** the escrow account under this docket number because there are other parties under this order subject to continued payments in the 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 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) Reserve Coal Properties and the Franks Estate et al, Ronald A Clyborne in Tract 4 are the owners of the coal and gas acreage estate underlying VGOB Tract 4 of the Subject Drilling Unit Q-40;
- (2) Net interests attributable and to be disbursed to Applicants are shown in **Table 1**,

VGOB Approved Disbursement
 VGOB-93-0216-0328-01 (Disbursement)
 Q-40

			Frac Interest	Acreage Interest Disbursed	Split Agreement	Escrowed Acres Total	% of Escrowed Funds
Table 1							
Disbursement Table							
Item	Tract	A portion of Tracts 1B and 1C					
No							
		Totals					
			3.47			8.7400	
1	4	Reserve Coal Properties / PO Box 947 / Bluefield, VA 24605		3.4700	50.0%	1.735	19.8513%
	4	Franks Estate et al					
2	4	Ronald A Clyborne / 9325 Olympic view Drive / Edmonds, WA		3.4700	50.0%	1.735	19.8513%

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 23 day of August, 2010 by a majority of the Virginia Gas and Oil Board.

Bradley C. Lambert
Bradley C. Lambert, Chairman

DONE AND PERFORMED this 23 day of August, 2010 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 WASHINGTON)

Acknowledged on this Russell 23rd day of August, 2010, 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.

My commission expires: 09 / 30 / 2013



Diane J. Davis
Diane J. Davis
Notary Public #174394

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COMMONWEALTH OF VIRGINIA



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 INSTRUMENT : 010001976 BOOK: PAGE: RECEIPT: 01000003732
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ANAN	21.30	374.69	2	314.37	19.65 ✓
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ANAN	29.85	524.39	2	439.83	54.99 ✓
ANAN	3.72	65.55	2		
ANAN	.09	1.86	2	1.57	.20 ✓
ANAN		.23	2		
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