

## VIRGINIA:

## BEFORE THE VIRGINIA GAS AND OIL BOARD

|                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                             |
|---------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------|
| <b>APPLICANTS:</b>        | Hugh MacRae Land Trust (herein "Trust") and Garden Realty Corporation (herein "Garden") (Trust and Garden are sometimes herein collectively referred to as "Applicants")                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | <b>DOCKET NO.</b><br>VGOB 97/04/15/-0577-01 |
| <b>RELIEF SOUGHT:</b>     | Further Accountings and Amendment of Board's Order in Docket No. VGOB 97/04/15-0577 entered May 23, 1997, and recorded June 4, 1997, in Deed Book 463, Page 197 the Office of the Clerk of the Circuit Court of Buchanan County, VA (herein "Disbursement Order")                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                             |
| <b>LEGAL DESCRIPTION:</b> | Drilling Unit Number SLW8 as Created by Board Order Effective as of February 18, 1992, Docket No. VGOB 92/01/21-0180 as amended by Board Orders in VGOB Docket Nos., 93/06/22-0385 and 95/04/18-0498 (herein "Subject Drilling Unit") in the Hurricane Magisterial District, Buchanan County, Virginia (herein "Subject Lands") which Drilling Unit Was Pooled by : (1) Board Order in VGOB Docket No. 92-0421-0216 entered July 27, 1992, and recorded July 30, 1992, in Deed Book 396, Page 75 as amended by Amended Pooling Order entered August 14, 1992, and recorded August 19, 1992 in Deed Book 396, Page 764 and as amended by Modification Order entered in VGOB Docket No. 93-0817-0392 entered October 25, 1993 and recorded October 29, 1993 in Deed Book 415, Page 195 (herein collectively "Pooling Order"); and (2) Board's Supplemental Order Regarding Elections in VGOB 92-0421-0216 Entered July 11, 1996, and Recorded July 18, 1996 in Deed Book |                                             |

451, Page 183 (herein "Supplemental Order") )

## **REPORT OF THE BOARD**

### **FINDINGS AND ORDER**

1. **Hearing Date and Place:** This matter originally came on for hearing before the Virginia Gas and Oil Board (herein "Board") at 9:00 a.m. on May 20, 1997, and as a result of action taken by the Board on that date, the Board entered the Disbursement Order. Pursuant to Paragraph 6 of the Disbursement Order, the Applicants filed with the Board a Request for Hearing regarding the accountings which were provided by the Escrow Agency and/or the Unit Operator to the Applicants by letters dated July 9, 1997 and September 12, 1997 from the Board's counsel. The Board, on its own motion, scheduled said further hearing for 9:00 a.m. on January 20, 1998, Dickenson Conference Room, Southwest Virginia Education 4-H Center, Abingdon, Virginia at which time Applicants' Request for Hearing came on before the Board.
2. **Appearances:** S. T. Mullins, Esquire, of the firm Street, Street, Street, Scott & Bowman, appeared in behalf of the Applicants; and Mark Swartz, Esquire, appeared in behalf of Pocahontas Gas Partnership, the Operator of Subject Drilling Unit appointed by the Board pursuant to the terms of the Pooling Order (herein "Unit Operator").
3. **Jurisdiction and Notice:** Pursuant to Va. Code Ann. § 45.1-361.1 *et seq.*, the Board finds that it has jurisdiction over the subject matter. Notice of the hearing of this matter was published in a local paper of general circulation as required by Va. Code Ann. § 45.1-361.19(B). Whereupon, the Board hereby finds that the notices given hereby satisfy all statutory requirements, Board rule requirements, and the minimum standards of state due process.
4. **Prior Proceedings:** At the Board's hearing on April 21, 1992, in Docket No. VGOB 92-0421-0216 and on August 17, 1993 in Docket No. VGOB 93-0817-0392, the Board granted the relief sought by Pocahontas Gas Partnership (herein "Unit Operator") and pooled the interests in the Subject Drilling Unit for the production of coalbed methane gas from active gob areas (hereinafter collectively referred to as "Coalbed Methane Gas" or "Gas") pursuant to §§ 45.1-361.21 and 45.1-361.22, Code of Virginia and named the Unit Operator, all pursuant to the terms of the Pooling Order. The Supplemental Order was entered by the Board *sua sponte* on July 11, 1996, to comply with the requirements of the Board's Regulation 4 VAC 26-160.70.C. by supplementing the Pooling Order to complete the record regarding elections. By their application to the Board for the Disbursement Order, the Applicants warranted and represented to the Board that: (1) Garden is the oil and gas owner of Tract 57, a 1.266-acre tract representing 0.70 percent of Subject Drilling Unit, that Trust is coal owner of said tract, and that together they have and own in the aggregate 0.70 percent conflicting Gas royalty interest in Subject Drilling Unit and are the sole claimants to said 0.70 percent interest; (2) that both Garden and Trust had theretofore entered into voluntary leases



with the Unit Operator with respect to their respective conflicting Gas royalty interests in Subject Drilling Unit; (3) that at the time of entry of the Pooling Order, Applicant's interests in Subject Drilling Unit constituted conflicting claims to royalties paid for Gas produced by the Unit Operator from Subject Drilling Unit, but that subsequent to the entry of the Pooling Order, Applicants executed with each other an agreement with respect to the division and apportionment of royalties attributable to their conflicting interests in Subject Drilling Unit (herein "Settlement Agreement") by which each of them is entitled to receive a sum equal to fifty percent (50%) of said royalties and bonuses (herein "Stipulated Gas Royalty Interest"); and (4) Applicants requested that the Board disburse to each of them those moneys held in the Escrow Account for Subject Drilling Unit (herein "Escrow Account") which are attributable to each of their Stipulated Gas Royalty Interest. The Board granted the relief sought by the Applicants by entering the Disbursement Order. By letters dated July 9, 1997 and September 12, 1997, to the attorneys for the Applicants and the Unit Operator, counsel for the Board forwarded the accounting filed pursuant to the Disbursement Order by the Unit Operator (See Exhibit A hereto for Unit Operator's Accounting dated August 29, 1997 for deposits into escrow through April 30, 1997, herein referred to as "Unit Operator's Accounting") and the Escrow Agent (See Exhibit B hereto for the Escrow Agent's accounting through June 30, 1997, herein referred to as "Escrow Agent's Accounting"). On September 26, 1997, Applicants filed their Request for Hearing before the Board with respect to the Unit Operator's Accounting and the Escrow Agent's Accounting.

5. **Relief Requested:** By letter dated December 31, 1997, from Applicants' counsel to Unit Operator's counsel, they agreed to a statement of the issues before the Board with regard to Applicants' Request for Hearing as being:

"[a]dequacy of the accountings and information provided. The accountings do not provide any information concerning any deduction, expenses, allocations, etc., but simply give a "raw" number or numbers without any ability on the part of the royalty owner to correlate that information with the particular well or wells in question vis-a-vis production, etc.... would like to have a full accounting and not just an abbreviated statement of what is purportedly due them.

By letter dated January 16, 1998, the Unit Operator's counsel responded to Applicants' counsel by providing a sample of the type of information that Unit Operator routinely provides to the escrow agent when royalty payments are made and stated "I would assume that the escrow agent has all of these items available for inspection.

6. **Relief Granted:** Pursuant to Va. Code Ann. § 45.1-361.1 *et seq.*, and more particularly Va. Code Ann. § 45.1-361.15.A, the Unit Operator is hereby directed to:

6.1. Immediately upon receipt of this Order determine and file with the Board:

- (1) an historical, chronological and itemized accounting of all funds deposited by the Unit Operator into the Escrow Agent which are uniquely attributable to each of the Applicants' Stipulated Gas Royalty Interest, with said accounting to cover the period from commencement of production of Gas from Subject Drilling Unit and

continuing through the last date the Unit Operator deposited into the escrow account moneys which were attributable to Applicants' interests, and after which date the Unit Operator commenced paying the Applicants directly pursuant to the terms of their voluntary leases, the Settlement Agreement and the Disbursement Order. Said accountings shall contain for each Applicant the type and quality of information that is reflected in the Gas Royalty/Revenue Statement filed by the Unit Operator with the Escrow Agent as backup for deposits made into the Escrow Account, shall be unique to the interest of each Applicant, and shall only cover those payments attributable to each of the Applicant's interests that were actually deposited by the Unit Operator into the Escrow Account;

- (2) a certification of the total amount deposited into the Escrow Account which is attributable to each of the Applicants' Stipulated Gas Royalty Interest (herein "Principal"); and
- (3) a certified verification that each of the Applicants' Stipulated Gas Royalty Interest is equal to .54644 (.50 X 1.09268) percent of the balance which was on deposit upon the posting of the last deposit of royalties attributable to Applicants' aggregate interest into the Escrow Account.

6.2 File an updated affidavit and seek from the Board an amended supplemental order to properly reflect by tract number the identity and percentage of interests within the Subject Drilling Unit of each conflicting claimant who may have or claim an interest in the funds remaining and/or to be placed on deposit by the Unit Operator with the Escrow Agent once disbursement is made to the Applicants' of those funds attributable to their Stipulated Gas Royalty interests.

6.3 Commencing immediately and continuing for so long as there is a need for the Escrow Account, contemporaneously with the deposit of any funds into the Escrow Account, in addition to filing with the Escrow Agent a copy of the Gas Royalty/Revenue Statement for such escrowed sums, the Unit Operator shall file, by mail, a copy of each such statement with the Virginia Gas and Oil Inspector so that such statements are available for inspection by claimants in accordance with the provisions of Va. Code 45.1-361.21.C.6.

7. **Special Findings:** The Board specifically and specially finds:

7.1 The Board has been made aware through these proceedings that with the commencement of production attributable to the Subject Drilling Unit and continuing through the date hereof, it has not been the Unit Operator's practice to mail to conflicting Gas claimants in Subject Drilling Unit a copy of the Gas Revenue/Royalty Statements applicable to their conflicting interests, but instead the Unit Operator has forwarded said statements to the Escrow Agent as backup documentation for each of its deposits into the Escrow Account. A review of the royalty statements filed by the Unit Operator with the Escrow Agent indicate that the last deposit made into the

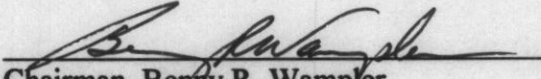


Escrow Account and attributable to Applicants' interests was the August 25, 1997 Deposit, and thereafter the Unit Operator purportedly commenced making payment of the Applicants' Stipulated Gas Royalty Interests directly to each of them in accordance with the terms of each of their voluntary leases with the Unit Operator, the Settlement Agreement and the Disbursement Order.

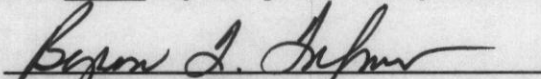
- 7.2 By letter dated March 13, 1998, to counsel for the Applicants, the attorney for the Board forwarded copies of each of the Gas Royalty/Revenue Statements applicable to Applicants' interest in Subject Drilling Unit which were on file with the Escrow Agent.
  - 7.3 Notwithstanding the facts that Paragraph 6 of the Unit Operator's affidavit attached as Exhibit A to the Supplemental Order represented to the Board that: (1) only the interests of those parties listed in Exhibit B-3 to said affidavit were subject to the escrow requirements of the Virginia Gas and Oil Act and the Pooling Order; and (2) the Applicants' conflicting Gas interests in Subject Drilling Unit were not reflected on Exhibit B-3 attached to Exhibit A of the Supplemental Order, the accounting attached hereto as Exhibit A reflects that funds have nonetheless been placed on deposit with the Escrow Agent by the Unit Operator.
  - 7.4 Applicants represented to the Board in their application for the Disbursement Order that their aggregate interest in Subject Drilling Unit is .70 percent of Subject Drilling Unit. The Unit Operator's Accounting indicates that said aggregate interests represents 1.09268 percent of funds on deposit with the Escrow Agent, and that through April 30, 1997, the principal sum of \$217.21 of the funds placed on deposit by the Unit Operator, exclusive of interest and fees, were attributable to Applicants' aggregate interests. It appears from the Gas Royalty/Revenue Statements that the last deposits attributable to Applicants' conflicting interests were made to the Escrow Account by Unit Operator on October 25, 1996.
  - 7.5 Based on information filed by the Unit Operator with the Board and/or its Escrow Agent, the Board and its Agents are unable to determine the dates and amounts of each Principal deposit made by the Unit Operator into the Escrow Account attributable to Applicants' respective Stipulated Gas Royalty Interest, the total of such Principal deposits, the interest accruing on the Escrow Account which is allocable to Applicants' respective interests or the fees chargeable to the Escrow Account which are allocable to Applicants' respective interests.
8. **Conclusion:** Therefore, the requested relief and all terms and provisions set forth in Paragraph 6 above be and hereby are granted and IT IS SO ORDERED.
  9. **Appeals:** Appeals of this Order are governed by the provisions of Va. Code Ann. § 45.1-361.9 which provides that any order or decision of the Board may be appealed to the appropriate circuit court. Such appeals must be taken in the manner prescribed in the Administrative Process Act, Va. Code Ann. §§ 9-6.14:1 *et seq.*

10. **Effective Date:** This Order shall be effective as of the date of its execution.

**DONE AND EXECUTED** this 16<sup>th</sup> day of April, 1998, by a majority of the Virginia Gas and Oil Board.

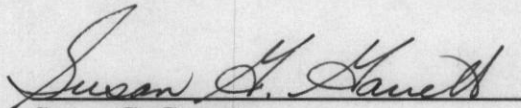
  
Chairman, Benny R. Wampler

**DONE AND PERFORMED** this 22<sup>nd</sup> day of April, 1998, by Order of this Board.

  
Byron Thomas Fulmer  
Principal Executive to the Staff  
Virginia Gas and Oil Board

COMMONWEALTH OF VIRGINIA     )  
COUNTY OF WISE                    )

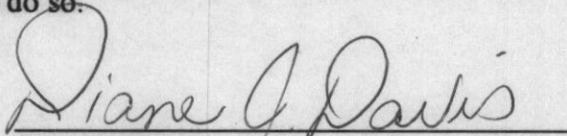
Acknowledged on this 16<sup>th</sup> day of April, 1998, personally before me a notary public in and for the Commonwealth of Virginia, appeared Benny R. Wampler, being duly sworn did depose and say that he is Chairman of the Virginia Gas and Oil Board, that he executed the same and was authorized to do so.

  
Susan G. Garrett  
Notary Public

My commission expires 7/31/98

COMMONWEALTH OF VIRGINIA     )  
COUNTY OF WASHINGTON            )

Acknowledged on this 16<sup>th</sup> day of April, 1998, personally before me a notary public in and for the Commonwealth of Virginia, appeared Byron Thomas Fulmer, 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 September 30, 2001



**HUGH MACNAUL/GARDEN REALTY**  
**Frederick Bank Escrow**

28-Aug-97 08:13 AM

[illegible]

**[Note]**

1. Dollar amounts for PGP royalties furnished by Conaco.
2. Dollar amounts for BPC royalties furnished by I. L. M. Systems.

ALLOCATION REPORT FOR  
PERIOD 1/1/97 THROUGH 6/30/97  
VIRGINIA GAS & OIL BOARD

| BEGINNING<br>BALANCE  | RECEIPTS | INTEREST | DISBURSE-<br>MENTS | TRANSFER<br>OF FUNDS | FEE<br>EXPENSE | GAIN/LOSS | ENDING<br>BALANCE |
|-----------------------|----------|----------|--------------------|----------------------|----------------|-----------|-------------------|
| 20.18                 | 0.00     | 0.52     | 0.00               | 0.00                 | -0.10          | 0.00      | 20.60             |
| 20.18                 | 0.00     | 0.52     | 0.00               | 0.00                 | -0.10          | 0.00      | 20.60             |
| [ CASH: -0.00 ]       |          |          |                    |                      |                |           |                   |
| 20871.30              | 0.00     | 740.39   | 0.00               | 292.17               | -146.86        | -0.00     | 21757.00          |
| 292.17                | 0.00     | 0.00     | 0.00               | -292.17              | 0.00           | 0.00      | 0.00              |
| 292.81                | 0.00     | 0.00     | 0.00               | 0.00                 | 0.00           | -0.37     | 292.44            |
| 113.91                | 0.00     | 0.00     | 0.00               | 0.00                 | 0.00           | 0.10      | 114.01            |
| 114.46                | 0.00     | 0.00     | 0.00               | 0.00                 | 0.00           | -0.42     | 114.04            |
| 201.41                | 0.00     | 0.00     | 0.00               | 0.00                 | 0.00           | -0.38     | 201.03            |
| 2618.44               | 0.00     | 0.00     | 0.00               | 0.00                 | 0.00           | -2.50     | 2615.94           |
| 2613.78               | 0.00     | 0.00     | 0.00               | 0.00                 | 0.00           | -5.03     | 2608.75           |
| 27118.28              | 0.00     | 740.39   | 0.00               | 0.00                 | -146.86        | -8.60     | 27703.21          |
| [ CASH: -0.01 ]       |          |          |                    |                      |                |           |                   |
| 20891.48              | 0.00     | 740.91   | 0.00               | 292.17               | -146.96        | -0.00     | 21777.60          |
| 292.17                | 0.00     | 0.00     | 0.00               | -292.17              | 0.00           | 0.00      | 0.00              |
| 292.81                | 0.00     | 0.00     | 0.00               | 0.00                 | 0.00           | -0.37     | 292.44            |
| 113.91                | 0.00     | 0.00     | 0.00               | 0.00                 | 0.00           | 0.10      | 114.01            |
| 114.46                | 0.00     | 0.00     | 0.00               | 0.00                 | 0.00           | -0.42     | 114.04            |
| 201.41                | 0.00     | 0.00     | 0.00               | 0.00                 | 0.00           | -0.38     | 201.03            |
| 2618.44               | 0.00     | 0.00     | 0.00               | 0.00                 | 0.00           | -2.50     | 2615.94           |
| 2613.78               | 0.00     | 0.00     | 0.00               | 0.00                 | 0.00           | -5.03     | 2608.75           |
| 27138.46              | 0.00     | 740.91   | 0.00               | 0.00                 | -146.96        | -8.60     | 27723.81          |
| [ TOTAL CASH: -0.01 ] |          |          |                    |                      |                |           |                   |

ROYALTY BONUS  
BENCHMARK GOVERNMENT SELECT  
TOTAL

ROYALTY INCOME  
BENCHMARK GOVERNMENT SELECT  
US TREASURY NOTE 6/30/97  
TENNESSEE VALLEY AUTHORITY  
US TREASURY NOTE 5/31/98  
US TREASURY NOTE 5/15/99  
US TREASURY NOTE SERIES H-1999  
US TREASURY SERIES F-20  
US TREASURY NOTE 12/31/00  
TOTAL

BENCHMARK GOVERNMENT SELECT  
US TREASURY NOTE 6/30/97  
TENNESSEE VALLEY AUTHORITY  
US TREASURY NOTE 5/31/98  
US TREASURY NOTE 5/15/99  
US TREASURY NOTE SERIES H-1999  
US TREASURY SERIES F-20  
US TREASURY NOTE 12/31/00  
ACCOUNT

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 29th day of April, 1998.  
Deed Book No. 29-211 and Page No. 75 TESTE: James M. Bevins, Jr., Clerk