

VIRGINIA:

BEFORE THE VIRGINIA GAS AND OIL BOARD

APPLICANTS: Hugh MacRae Land Trust (herein)
"Trust") and Garden Realty Corporation)
(herein "Garden") (Trust and Garden) DOCKET NO.
are sometimes herein collectively) VGOB 97/05/20-0582
referred to as "Applicants"))
)

RELIEF SOUGHT: Issuance of an Amended Supplemental)
Order Amending all Prior Orders Affecting)
NELW9 Drilling Unit to Provide: (1) for the)
Calculation of Those Funds Attributable)
To the Conflicting Claims, in the Aggregate,)
Of Trust and Garden Pursuant to the Terms)
Of Trust's and Garden's Voluntary)
Lease Agreements with Pocahontas Gas)
Partnership (herein "PGP"), (2) to Provide)
a Royalty Accounting, and)
(3) Disbursement To Trust and Garden of)
Funds on Deposit in the NELW9 Escrow)
Account Which are Attributable to Trust's)
and Garden's Conflicting Coalbed Methane)
Gas Claims in Tract 40 of the NELW9)
Drilling Unit)

1. **Hearing Date and Place:** This matter came on for further and final hearings before the Virginia Gas and Oil Board (herein "Board") at 9:00 a.m. on February 2 and 16, 1999 at the Dickenson Conference Room, Southwest Virginia Education 4-H Center, Abingdon, VA.
2. **Appearances:** Jill Harrison of the firm Penn Stuart appeared in behalf of the Applicants; Mark A. Swartz of the firm Swartz & Stump appeared on behalf of PGP; 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 for each of the coalbed methane gas drilling units established by the Board through its pooling orders, and that 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 account. Further, the Board finds: (1) that 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, (2) that it does not have jurisdiction to interpret voluntary agreements by and between the Gas claimants and/or the Unit Operators or to abridge or contravene the provisions of such agreements, and (3) that pursuant to Va. Code § 45.1-361.22.A.5, it does have jurisdiction and authority to disburse funds from the Escrow Account provided there has first been either a legal determination of claimants' entitlement thereto or there is an agreement by all the claimants.
4. **Prior Proceedings:**
 - 4.1. Drilling Unit Number NELW9 was created by Board Order effective as of November 19, 1991, Docket No. VGOB 92/11/19-0160 as amended by Board Orders in VGOB Docket No. 93/06/22-0384 executed October 1, 1993 and filed October 8, 1993 in Deed Book 414 at Page 419 (herein "Subject Drilling Unit") in the Hurricane Magisterial District, Buchanan County, Virginia (herein "Subject Lands"). At the Board's hearing on January 21, 1992, for Docket

No. VGOB 91/12/17-0169, in accordance with the provisions of Va. Code §§ 45.1-361.21 and 45.1-361.22, the Board granted the relief sought by PGP and executed an Order dated April 29, 1992 and filed with the Clerk of the Circuit Court of Buchanan County on May 1, 1992 in Deed Book 390 at Page 646 pooling all interests in the Subject Drilling Unit for the production of gas produced from coalbeds and rock strata associated therewith (herein "Coalbed Methane Gas" or "Gas") below the Tiller seam from active gob areas from a longwall panel and its surrounding area in Consolidation Coal Company's Buchanan No. 1 Mine (herein "Subject Formations") all pursuant to: (1) the permit provisions contained in Section 45.1-361.27 *et seq.*, Code of Virginia, 1950 as amended; (b) the Oakwood Coalbed Gas Field Order No. OGCB 3-90 dated May 18, 1990; (c) the Board's Order No. VGOB No. 91/11/19-0160 dated as of November 19, 1991; (d) §§480-05-22.1 *et seq.*, Gas and Oil Board Regulations; and (e) §§ 480-05-22.2 *et seq.*, Virginia Gas and Oil Board Regulations, all as amended from time to time (herein "Pooling Order"). The Pooling Order was modified by Order executed January 15, 1999 in VGOB Docket No. 91-1119-0161-01 and filed February 1, 1999 in Deed Book 487 at Page 316. The Pooling Order was amended and supplemented by the Board's Supplemental Order Regarding Elections executed on July 11, 1996 and filed on July 18, 1996 in Deed Book 451, Page 147 (herein "Supplemental Order"). The Board named PGP as the Unit Operator of Subject Drilling Unit.

- 4.2. As instructed by the Board through the Pooling Order and the Supplemental Order, the Escrow Agent established an escrow account for Subject Drilling Unit (herein "Escrow Account"), and thereafter the Escrow Agent periodically received from the Unit Operator for deposit into the Escrow Account proceeds which were designated by the Operator through its royalty statements and through its Further Accounting as being attributable to various tracts within Subject Drilling Unit, including but not limited to Tract 40.
- 4.3. In Applicants' application herein for royalty accountings, determination of the funds on deposit in the Escrow Account for Tract 40 of Subject Drilling Unit, and disbursement to them of all such Escrowed Funds attributable to Tract 40 pursuant to their written agreement with each other (herein referred to as "Split Agreement"), the Applicants warranted and represented to the Board that: (1) Garden is the sole oil and gas owner within Tract 40 and that Trust is the sole coal owner within Tract 40 (2) that Tract 40 represents 54.3141 percent of Subject Drilling Unit (3) that together Applicants have and own in the aggregate a 54.3141 percent conflicting Gas royalty interest in Subject Drilling Unit by virtue of their respective ownership interests in Tract 40 and the terms of their voluntary leases with PGP pertaining to same; and (4) that while at the time of the entry of the Pooling Order, Applicant's had conflicting claims of ownership in Tract 40, subsequent to the entry of the Pooling Order, Applicants entered into the Split Agreement whereby each Applicant is entitled to receive a sum equal to fifty percent (50%) of funds due from PGP to the Applicants pursuant to the terms of their voluntary leases. Applicants have represented to the Board that notice of their Application was given in accordance with Va. Code 45.1-361.19, and the Board received no objections to it.
- 4.4. With respect to the relief sought by the Applicants herein, the Board has entered two prior orders whose provisions are incorporated herein by reference: (a) an order executed June 16, 1997 (herein "Accounting Order"), and (b) an order executed April 15, 1998 (herein "Further Accounting Order"). As recited in the these accounting orders, Applicants seek a disbursement of the Escrowed Funds which are attributable to Trust's and Garden's conflicting coalbed methane gas interests in Tract 40 of Subject Drilling Unit based on their Split Agreement.
- 4.5. By letters dated August 12, 1998, December 9, 1998 and December 31, 1998, PGP filed a further accounting in compliance with the Further Accounting Order, and at the Board's hearing on February 2, 1998 PGP presented to the Board further refinements to said further accounting to reflect interest accruing on funds deposited into the Escrow Account and fees charged to the Escrow Account on a tract-by-tract basis, including funds attributable to Tract

40 and a reconciliation of PGP's records of Escrowed Funds to the records of the Escrow Agent, a copy of which further and final accounting is attached hereto as Exhibit A (herein "Further Accounting").

- 4.6. The Applicants represented to the Board on February 2, 1998 that they had been provided with an advance copy of the Further Accounting, have had their experts review same, and that Trust and Garden are in agreement that the Further Accounting accurately reflects their Entitlement to the Escrowed Funds for Tract 40 of Subject Drilling Unit.

5. **Findings:**

Va. Code 45.1-361.22.5 provides that "*The Board shall order payment of principal and accrued interest from the escrow account to all persons legally entitled thereto pursuant to the provisions of § 45.1-361.21 and the Order of the Board. Such order shall be issued within thirty days of receipt of notification of the final legal determination of entitlement thereto or upon agreement of all claimants*". The term "entitlement" is not defined by law or regulation; therefore, the Board applies its common meaning as set forth in *Black's Law Dictionary* to be "*Right or benefits, income or property which may not be abridged without due process*". Thus, the Board defines the term "entitlement" as used in Va. Code § 45.1-361.22.A.5. to mean "the liquidated dollar amount of that portion of the Escrowed Funds which are attributable to Applicant's/Claimant's Nonconflicting Gas interest in Subject Drilling Unit". The Escrowed Funds are comprised of the Principal deposited by PGP into the Escrow Account, plus interest accruing on the Principal while on deposit in the Escrow Account, less Escrow Agent fees charged to the Escrow Account. In determining that Trust and Garden have established their Entitlement to the Escrowed Funds, the Board finds that:

- 5.1. The Board lacks the statutory authority to supercede, impair, abridge or affect any contractual rights or other obligations existing between the Operator and the Applicants. The Operator and the Applicants have acknowledged such limitation and have, therefore, agreed that no such party will argue or contend in other pending or future proceedings or actions inter se (including without limitation Levisa Coal Company, et al. v. Consolidation Coal Company, et al., Civil Action No. 97-0117-A pending in the United States District Court at Abingdon) that the findings and/or order of the Board herein bar their assertion of any claims or defenses, including payment, or otherwise constitute a waiver or an estoppel in such other proceedings or actions.
- 5.2. Notwithstanding the fact that Trust is challenging PGP's royalty calculations and/or payments under the terms of its voluntary lease with PGP, Trust and Garden have entered into the Split Agreement with each other whereby they have agreed to split on a 50/50 basis royalties attributable to their conflicting claims to coalbed methane gas, purportedly including but not limited to their conflicting claims to ownership of coalbed methane gas underlying Tracts 40 of Subject Drilling Unit and their conflicting claims to bonuses and/or royalties deposited by PGP in the Escrow Account which are attributable to Tract 40. Based upon the Split Agreement, the Applicants, through their application herein, seek among other things for the Board to determine their respective Entitlement, an accounting of royalties due under the terms of their voluntary leases with PGP, and disbursement to them in accordance with the terms of the Split Agreement those funds on deposit in the Escrow Account which are attributable to Tract 40.
- 5.3. According to the Pooling Order, the Supplemental Order, the accounting, and the Further Accounting filed in this matter: (a) the funds deposited by PGP into the Escrow Account for Subject Drilling Unit consists of payments calculated by PGP to be due those persons identified in Exhibit E hereto, (b) PGP has identified the Applicants as the sole Gas owners/claimants of coalbed methane gas within Tract 40 of Subject Drilling Unit and thus as the sole claimants to the funds on deposit in the Escrow Account attributable to said Tract 40, (c) PGP has represented to the Board through the Further Accounting that as of December 1, 1998 \$197,565.96 of the funds on deposit in the Escrow Account are attributable to Tract 40,

and (d) Applicants have made the warranties and representations to the Board set forth in Paragraph 4.3 above.

6. **Relief Granted:**

For the reasons set forth in Paragraph 5 above, and based upon the Further Accounting and the Applicants' agreements to same, the Escrow Agent is ordered to disburse via wire transfer in accordance with instructions provided to the Escrow Agent by Applicants' counsel's letter dated February 15, 1999, copy attached hereto: (1) the sum of \$98,782.98 together with any interest which accrues thereon from the date of the Further Accounting through the date of disbursement to Trust and (2) the sum of \$98,782.98 together with any interest accruing thereon from the date of the Further Accounting through the date of disbursement to Garden. Further, the Amended Supplement Order filed in this cause is hereby modified to delete the requirement that funds attributable to Applicants' conflicting coalbed methane gas ownership interests in Tract 40 be deposited by PGP into the Escrow Account. To the extent not specifically granted herein, any other or further relief requested by the Applicants in their application filed herein or in their objections to the accountings heretofore provided is denied.

7. **Conclusion:**

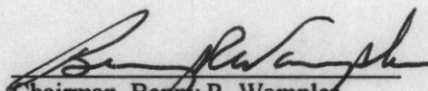
Therefore, the requested relief and all terms and provisions set forth above in Paragraph 6 above be and hereby are granted and IT IS SO ORDERED.

8. **Appeals:**

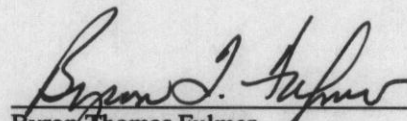
Appeals of this Order are governed by the provisions of Va. Code § 45.1-361.9 which provides that any order or decision of the Board may be appealed to the appropriate circuit court and that whenever a coal owner, coal operator, gas owner, gas operator, or operator of a gas storage field certificated by the State Corporation Commission is a party in such action, the court shall hear such appeal de novo. Such appeals must be taken in the manner prescribed in the Administrative Process Act, Va. Code §§ 9-6.14:1 *et seq.*

9. **Effective Date:** This Order shall be effective on the date of its execution.

DONE AND EXECUTED this 17th day of February, 1999, by a majority of the Virginia Gas and Oil Board.

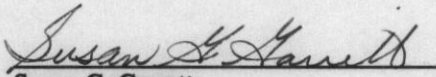

Chairman, Berry R. Wampler

DONE AND PERFORMED THIS 22nd DAY OF February, 1999, by an Order of this Board.


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

COMMONWEALTH OF VIRGINIA)
COUNTY OF WISE)

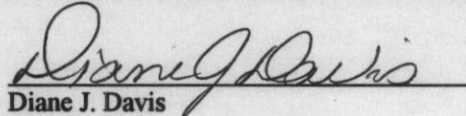
Acknowledged on this 17th day of February 1999, personally before me a notary public in and for the Commonwealth of Virginia, appeared Benny R. Wampler, being duly sworn did depose and say that he is Chairman of the Virginia Gas and Oil Board, that he executed the same and was authorized to do so.


Susan G. Garrett
Notary Public

My Commission expires: July 31, 2002

COMMONWEALTH OF VIRGINIA)
COUNTY OF WASHINGTON)

Acknowledged on this 22nd day of February 1999, 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

UNIT NELW9
Docket # VGOB-91-1217-169-000K
Exhibit E

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EXHIBIT

List of Conflicting Owners/Claimants that require escrow

	Net Acres in Unit	Interest in Unit
<u>Tract #38 - 53.00 Acre Tract</u>		
<u>COAL FEE OWNERSHIP</u>		
(1) Hugh MacRae Land Trust P. O. Box 29 Tazewell, VA 24651	53.00 acres	32.69882%
<u>OIL & GAS FEE OWNERSHIP</u>		
(1) Consolidation Coal Company P. O. Box 947 Bluefield, VA 24605	49.79 acres	30.90834%
(1) Janet Weatherford (1/8 Royalty Interest) P. O. Box 22483 Alexandria, VA 22304	3.2067 acres 1/3 of 9.62 acres	1.99048%
<u>Tract #40 - 87.50 Acre Tract</u>		
<u>COAL FEE OWNERSHIP</u>		
(1) Hugh MacRae Land Trust P. O. Box 29 Tazewell, VA 24651	87.50 acres	54.31409%
<u>OIL & GAS FEE OWNERSHIP</u>		
(1) Garden Realty Corporation c/o Betty Boyd King 2370 Lyndhurst Avenue Winston-Salem NC 27103	87.50 acres	54.31409%

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, submitted to record this 23rd day of July 1998, at 2:30 P.M.
Deed Book No. 718 and Page No. 698
Returned this date to: David Davis
TESTE: James M. Bevens, Jr. Clerk
TESTE: Beverly S. Allen Deputy Clerk

PennStuart

Geo. E. Penn (1895-1931)
Wm. A. Stuart (1922-1976)

Wm. W. Eskridge
John B. Hemmings
Stephen M. Hodges
W. Challen Walling
Wade W. Massie **
Daniel H. Caldwell
Michael F. Blair
William M. Moffet
Mark L. Esposito
Elizabeth A. McClanahan **
Timothy W. Gresham *
H. Ashby Dickerson
Byrum L. Geisler

Jill Morgan Harrison **
Richard E. Ladd, Jr. *
W. Bradford Stallard
Ramesh Murthy *
Kenneth R. Russell, Jr. **
Mark E. Frye *
Laura E. Wilson +
Elizabeth Roussel Walters
Eric R. Thiessen
Richard A. Mahevich
David W. Rodstein
Leslie S. Blanchard

PENN. STUART & ESKRIDGE
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Offices in Abingdon
and Bristol, Virginia

* Va & Tn bar
** Va & WV bar
** Ga, Tn & Va bar
+ Va, Tn & Ky bar
++ Va, Tn, WV & NC bar
++ Va, Tn, Ky, WV, Md & DC bar

February 15, 1999

HAND-DELIVERED

Mr. Dale Dietz
First Virginia Bank
P.O. Box 429
Bristol, TN 37621

Re: Applications by Hugh MacRae Land Trust and Garden Realty Corporation
for the withdrawal of funds from the escrow accounts for the SLW5, SLW6,
SLW7, SLW8, NELW9 and NELW10 units
PS&E File No. 3373-3

Dear Mr. Dietz:

The wiring instructions for the portion of the funds to be paid on behalf of Garden
Realty Corporation are:

Bank Name:	Centura Bank
Bank ABA No:	053100850
Account Name:	Garden Realty Corporation
Account No:	3250011144

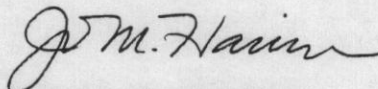
The wiring instructions for the portion of the funds to be paid on behalf of Hugh
MacRae Land Trust are:

Bank Name:	Chase Bank of Texas
Bank ABA No:	113000609
Account Name:	Torch Operating Company
Account No:	00101776293

Mr. Dale Dietz
February 15, 1999
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I would appreciate it if you would provide a letter or memorandum stating the amount wired and a breakdown by units with the portion of the funds wired attributable to that unit. My clients will need this information for their accounting records. I would also appreciate it if you would advise me when the funds are being wired so I may notify my clients. Please call me if you have any questions.

Yours truly,

A handwritten signature in cursive script, appearing to read "J.M. Harrison".

JILL M. HARRISON

cc: Mrs. Betty Boyd King
Alan Siegel, Esq.
Mr. Burt Williams
Mr. Benny Wampler
Sandra Riggs, Esq.