

done JAR Thurs 2/5/09

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:

Hurt McGuire Land Trust;
and Hassell Davis, Guster Clifton,
Consolidated Coal Company, Daisy Burke,
Robert Elder, Hershel Keen, et. ux.

DOCKET NO.
98-0324-0627-04
and
98-0324-0627-05

RELIEF SOUGHT:

Issuance: **A Supplemental Order for Disbursement of Escrowed Funds**
Action: **Amending Prior Orders Affecting Drilling Unit W-35, Tracts 1B, 1C, 1D, 1E, 1F, a portion of 1G, and 1H (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 **W-35** 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 18, 2006, and June 19, 2007**, at the Southwest Virginia Higher Education Center on the campus of Virginia Highlands Community College, Abingdon, VA.
2. **Appearances:** Mark A. Swartz of Swartz Law Offices appeared for the Applicant; 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 tracts in question or any undivided interest therein.

4. **Prior Proceedings:**

- 4.1 (a) On June 10, 1998, 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 June 16, 1998 in Deed Book 477, page 580. The Supplemental Order was executed on August 28, 1998, and recorded in with the Clerk of the Court, Buchanan County on September 2, 1998, in Deed Book 481, page 167.
- (b) On June 15, 2005, the Board executed an order, Docket number 98-0324-0627-01, re-pooling interests in the Subject Unit. The Order was filed with the Clerk of the Circuit Court of Buchanan County on June 22, 2005, in Deed Book 620, page 286.
- (b) On February 2, 2006, the Board executed an order, Docket number 98-0324-0627-02 and 98-0324-0627-03, disbursing escrowed funds from Tract 1A and a portion of Tract 1G in the Subject Unit. The Order was filed with the Clerk of the Circuit Court of Buchanan County on February 7, 2006, as Instrument Number 060000409.
- 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 Hurt McGuire Land Trust, and the gas and oil ownership interests of Hassell Davis in tract known as 1B, Guster Clifton in tract known as 1C, Consolidated Coal Company in tract known as 1D, Daisy Burke in tract known as 1E, Consolidated Coal Company in tract known as 1F, Robert Elder in a portion of tract known as 1G, and Hershel Keen, et. ux. in tract known as 2H 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 Tracts 1B, 1C, 1D, 1E, 1F, a portion of 1G, and 1H, a copy of which is attached to and made a part hereof, states under oath that Hurt McGuire Land Trust and the Applicants have entered into an agreement with regards to Tracts 1B, 1C, 1D, 1E, 1F, a portion of 1G, and 1H, and that by the terms of the agreements, Hurt McGuire Land Trust has entered into a split agreement regarding this Tract and escrow regarding these individual conflicting claims detailed herein, is no longer required.
- 4.4 The Unit Operator gave notice to Hurt McGuire Land Trust and the applicants that the Board would consider its disbursement authorization at its hearing on July 18, 2006, and June 19, 2007, 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 Tracts 1B, 1C, 1D, 1E, 1F, a portion of 1G, and 1H as identified in the attached miscellaneous petition (2) delete the requirement that the Unit Operator place future royalties attributable to a portion of said Tracts 1B, 1C, 1D, 1E, 1F, a portion of 1G, and 1H and 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 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) Hurt McGuire Land Trust; and Hassell Davis, Guster Clifton, Consolidated Coal Company, Daisy Burke, Robert Elder, and Hershel Keen, et. ux., respectively, are the owners of the coal estate, gas and oil acreage estate underlying VGOB Tracts 1B, 1C, 1D, 1E, 1F, a portion of 1G, and 1H, of the Subject Drilling Unit;
- (2) Net interests attributable and to be disbursed to Applicants are shown in Table 1,

VGOB Approved Disbursement
VGOB 98-0324-0627-04 and -05

Table 1

	Fractional Interest in Tract	Acreage Interest in Unit	Split Agreement %	Equivalent Acres Acres	% of Remaining Escrowed Funds
Tracts 1C, 1D, 1E (-04)					
Tracts 1B, 1E, a portion of 1G, and 1H (-05)					
Disbursement Table					
				62.5300	
1B Hassell Davis, General Delivery, Shortt Gap, VA 24647		15.5300	50.0%	7.765	12.4180%
Hurt McGuire Land Trust, c/o Charles Green, P.O. Box 1067, Bluefield, VA 24605		15.5300	50.0%	7.765	12.4180%
1C Guster Clifton, RR1, Box 184, Raven, VA 24639		6.4300	50.0%	3.215	5.1415%
Hurt McGuire Land Trust, c/o Charles Green, P.O. Box 1067, Bluefield, VA 24605		6.4300	50.0%	3.215	5.1415%
1D Consolidated Coal Company, P.O. Box 947, Bluefield, VA 24605		0.1300	50.0%	0.065	0.1040%
Hurt McGuire Land Trust, c/o Charles Green, P.O. Box 1067, Bluefield, VA 24605		0.1300	50.0%	0.065	0.1040%
1E Daisy Burke, Box 354, Raven, VA 24639		33.5600	50.0%	16.780	26.8351%
Hurt McGuire Land Trust, c/o Charles Green, P.O. Box 1067, Bluefield, VA 24605		33.5600	50.0%	16.780	26.8351%
1F Consolidated Coal Company, P.O. Box 947, Bluefield, VA 24605		3.1000	50.0%	1.550	2.4788%
Hurt McGuire Land Trust, c/o Charles Green, P.O. Box 1067, Bluefield, VA 24605		3.1000	50.0%	1.550	2.4788%
1G O. H. Keen Heirs, Devisees, Successors or Assigns		15.21			
- Robert Elder, 100 Oxford Square, Apt. #48, Richlands, VA 24641	1/324	0.0469	50.0%	0.023	0.0375%
- Hurt McGuire Land Trust, c/o Charles Green, P.O. Box 1067, Bluefield, VA 24605		0.0469	50.0%	0.023	0.0375%
1H Hershel Keen, et. ux., P.O. Box 26, Shortt Gap, VA 24647		1.0900	50.0%	0.545	0.8716%
Hurt McGuire Land Trust, c/o Charles Green, P.O. Box 1067, Bluefield, VA 24605		1.0900	50.0%	0.545	0.8716%

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. Prior to this disbursement, the Escrow agent is to ensure a corrected one-time payment has been made relative to an error in calculation and disbursement in VGOB-91-0430-0116-02, made on February 14, 2008.

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 ____ day of _____, 2009, by a majority of the Virginia Gas and Oil Board.

Bradley C. Lambert, Chairman

DONE AND PERFORMED this ____ day of _____, 2009, 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 ____ day of _____, 2009, 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: 09/30/2009__

Diane J. Davis
Notary Public #174394

**VGOB 98-0324-0627-02 and -03
UNIT W-35**

Total
Unit
Acres
80.00
% by Tract
80.00 100.00%

Check

Total unit acreage (gas ownership / VGOB Pooling Order 98-0324-0627-01, Exhibit A (Plat 11/11/2004; Book 0620, Page 0298), Tract Identifications (11/11/2004; Book 0620, Page 0299-0300), and Exhibit E (12/13/2004; Book 0620, Page 0304)).

Tract 1A	3.98	4.98%
Tract 1B	15.53	19.41%
Tract 1C	6.43	8.04%
Tract 1D	0.13	0.16%
Tract 1E	33.56	41.95%
Tract 1F	3.10	3.88%
Tract 1G (a portion)	15.21	19.01%
Tract 1H	1.09	1.36%
Tract 2	0.97	1.21%

Escrowed Acreage (VGOB Pooling Order 98-0324-0627-01, Exhibit A (Plat 11/11/2004), Tract Identifications (11/11/2004), and Exhibit E (12/13/2004); EE data from EE Exhibit (11/12/2004) in the Re-Pooling Application 98-0324-0627-01; revisions to escrow account made by Anita Dufy, personal communication, 02/02/2009.)

% of Escrow Fund
Check 79.03 100.00%

Tract 1A (3.98 acres disbursed in -03 order)	Escrowed	3.98	5.04%
Tract 1B	Escrowed	15.53	19.65%
Tract 1C [see escrow note in -01, listed in the -02 MP but not disbursed]	Escrowed	6.43	8.14%
Tract 1D [see escrow note in -01, listed in the -02 MP but not disbursed]	Escrowed	0.13	0.16%
Tract 1E	Escrowed	33.56	42.46%
Tract 1F [see escrow note in -01, listed in the -02 MP but not disbursed]	Escrowed	3.10	3.92%
Tract 1G (see escrow note in -01, 12.52 acres disbursed in -02 order)	Escrowed	15.21	19.25%
Tract 1H	Escrowed	1.09	1.38%

* Tract 1G (should be 12.51 acres disbursed in -02 order, based on 2.70 escrow carry forward in -04)

\$ 163,739.89

**VGOB Approved Disbursement
VGOB 98-0324-0627-02 and -03**

	Fractional Interest in Tract	Acreage Interest in Unit	Split Agreement %	Equivalent Acres	% of Remaining Escrowed Funds	Disbursement
Tract 1A (-03) [court ordered 100% oil and gas ownership]						
a portion of Tract 1G (-02) [1C, 1D, 1F listed in -02, but not disbursed]						
Disbursement Table						
				79.0300		
IA Dewey Rowe (court ordered 100% oil and gas ownership)		3.98	100.0%	3.980	5.0361%	\$ 8,246.04
IG O. H. Keen Heirs, Devisees, Successors or Assigns		15.21				
- Jean Davis	1/30	0.5070	50.0%	0.254	0.3208%	\$ 525.22
- Guster Clifton	1/30	0.5070	50.0%	0.254	0.3208%	\$ 525.22
- Jerrel Clifton	1/30	0.5070	50.0%	0.254	0.3208%	\$ 525.22
- Delcia Alderson	1/30	0.5070	50.0%	0.254	0.3208%	\$ 525.22
- Ruby Winesett	1/30	0.5070	50.0%	0.254	0.3208%	\$ 525.22
- Patsy Moore	1/594	0.0256	50.0%	0.013	0.0162%	\$ 26.53
- Brenda Justice	1/594	0.0256	50.0%	0.013	0.0162%	\$ 26.53
- James Osborne	1/594	0.0256	50.0%	0.013	0.0162%	\$ 26.53
- Phyllis Osborne	1/594	0.0256	50.0%	0.013	0.0162%	\$ 26.53
- Charles Osborne	1/594	0.0256	50.0%	0.013	0.0162%	\$ 26.53
- Richard Osborne	1/594	0.0256	50.0%	0.013	0.0162%	\$ 26.53
- Joyce Lineberry	1/594	0.0256	50.0%	0.013	0.0162%	\$ 26.53
- Darlene Osborne	1/594	0.0256	50.0%	0.013	0.0162%	\$ 26.53
- Edward Keen	1/48	0.3169	50.0%	0.158	0.2005%	\$ 328.26
- Homer Keen	1/48	0.3169	50.0%	0.158	0.2005%	\$ 328.26
- Carol Davis	1/144	0.1056	50.0%	0.053	0.0668%	\$ 109.42
- Richard Ball	1/144	0.1056	50.0%	0.053	0.0668%	\$ 109.42