

BEFORE THE VIRGINIA GAS AND OIL BOARD

PETITIONER: CNX Gas Company LLC

DIVISION OF GAS AND OIL

DOCKET NO: VGOB 12-0619-3074-01

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

HEARING DATE: August 18, 2015

DRILLING UNIT: F46

BUCHANAN COUNTY, VIRGINIA

PETITION FOR ORDER OF DISBURSEMENT OF ESCROW FUNDS

1. Petitioner and its counsel

Petitioner is CNX Gas Company LLC, 627 Claypool Hill Mall Road, Cedar Bluff, VA 24609, (276) 596-5075. Petitioner's counsel is Mark A. Swartz, Hillard & Swartz, LLP, 122 Capital Street, Suite 201, Charleston, WV 25301.

2. Relief Sought

(1) the disbursement of escrowed funds heretofore deposited with the Board's Escrow Agent, attributable to Tract 2, as depicted upon the annexed table; and (2) authorization to begin paying royalties directly to the parties to the prevailing plaintiffs; T.G. Rogers, III, Derek Browning Rogers, Kevin Rogers, Shaun Rogers, Gregory Poulos, Jason Poulos, and Pamela Poulos.

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

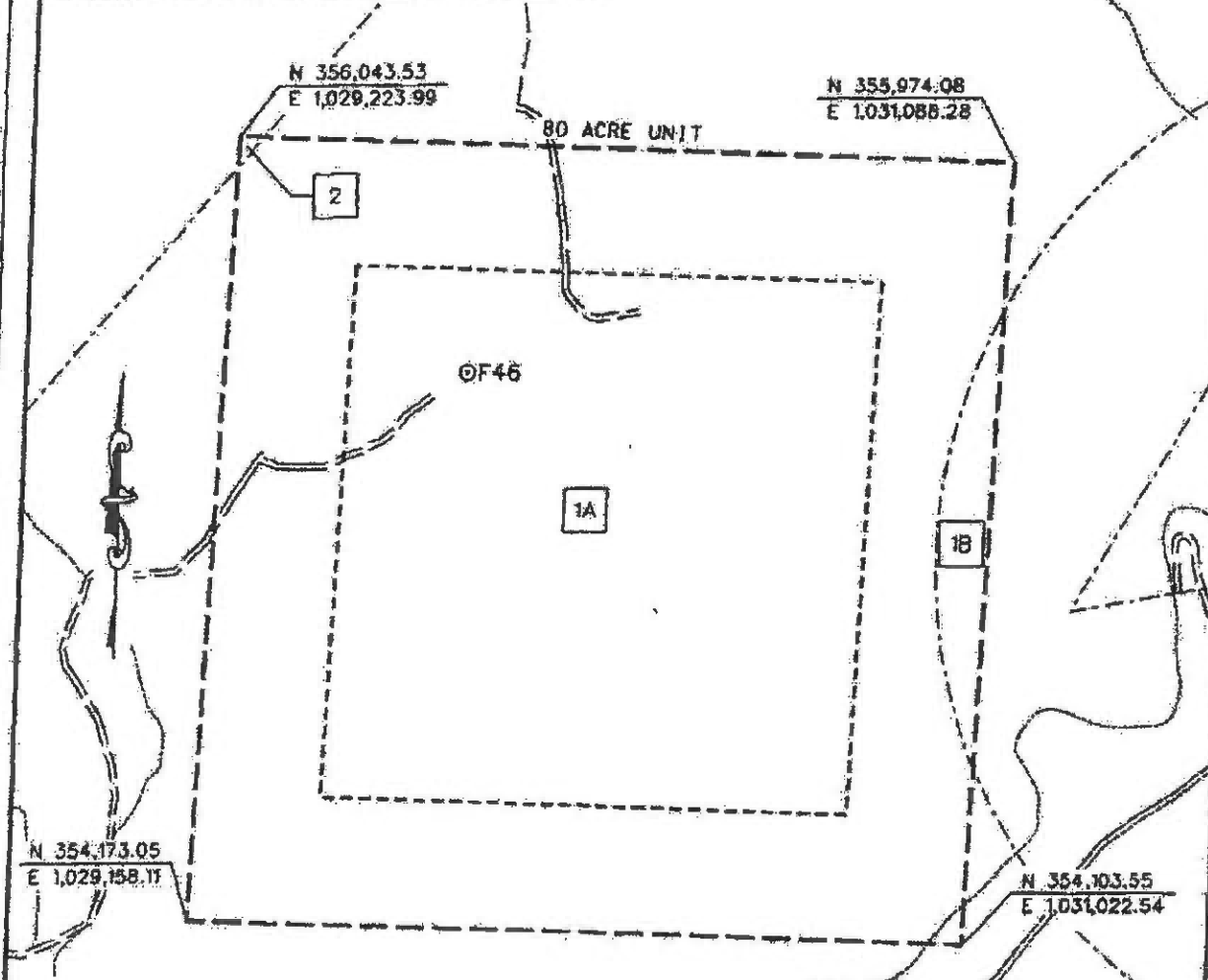
T.G. Rogers, III, Derek Browning Rogers, Kevin Rogers, Shaun Rogers, Gregory Poulos, Jason Poulos, and Pamela Poulos is entitled to 100% of the CBM royalties awarded under Case No. 550-13, Opinion dated July 10, 2014, Said decision allows the Applicant and Designated Operator to pay royalties directly to the person(s) identified in Exhibit EE annexed hereto and the annexed Table, further, specifies how said royalties are to be paid.

There are no remaining conflicts after the disbursement, escrow is no longer required and account is to be closed after disbursement.

6. Attestation

The foregoing Petition to the best of my knowledge, information, and belief is true and correct.

Property lines shown on this plot were provided by CNX Gas Company LLC and were taken from deed descriptions and chains of title of record. This does not represent a current boundary survey. This certification is as to the size, shape and location of the proposed well.



BEARINGS AND DISTANCES TO OTHER WELLS WITHIN 2,500' RADIUS OF CBM-F46
 ROGERS 202 N 82° 7' 41" W 1873.72'
 CBM-G45B S 38° 16' 38" W 2139.76'
 CBM-F47A S 73° 12' 47" E 1801.11'

○ CBM WELL
 ⊙ PROPOSED CBM WELL

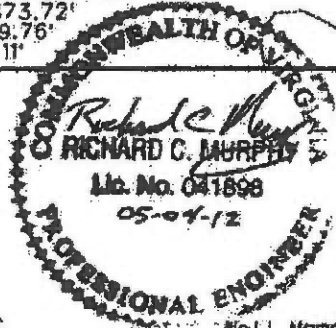


EXHIBIT A
 OAKWOOD FIELD
 UNIT F46
 FORCE POOLING
 VGOB-12-0619-3074

Company CNX Gas Company LLC Well Name and Number UNIT F46
 Tract No. _____ Elevation _____ Quadrangle BRADSHAW
 County BUCHANAN District GARDEN Scale: 1" = 400' Date _____
 This plat is a new plat ; an updated plat _____ ; or a final plat _____

Form D60-GO-7 Richard C. Murphy (Affix Seal)
 Rev. 9/91 Licensed Professional Engineer or Licensed Land Surveyor

CNX Gas Company LLC

UNIT F48

Tract Identifications

- 1A. **Pocahontas Mining Limited Liability Company Tr. 64 (1568.15 Acre Tract) – Fee**
Reserve Coal Properties Company - P-3 Seam and 250' Above Leased
Jewell Smokeless Coal Corp. – Red Ash, Jawbone and Tiller Seam Leased
Revelation Energy, LLC – Coal Above the Red Ash Seam Leased
CNX Gas Company LLC - Oil, Gas and CBM Leased
77.91 acres 87.3875%
- 1B. **Pocahontas Mining Limited Liability Company Tr. 64 (1568.15 Acre Tract) – Fee**
Reserve Coal Properties Company - P-3 Seam and 250' Above Leased
Jewell Smokeless Coal Corp. – Red Ash, Jawbone and Tiller Seam Leased
Revelation Energy, LLC – Coal Above the Red Ash Seam Leased
Cabot Oil & Gas Corporation - Oil and Gas Leased
CNX Gas Company LLC - CBM Leased
2.04 acres 2.5500%
2. **LBR Holdings, LLC (1027.50 Acre Tract) – All Coal**
Island Creek Coal Company/Consol Energy, Inc. – Coal Below Jawbone Seam Leased
Reserve Coal Properties Company – P-3 Seam Subleased
Jewell Smokeless Coal Corporation – Coal in Jawbone Seam and Above Leased
LBR Holdings, LLC, et al – Oil and Gas
EQT Production Company – Oil and Gas Leased (87.50%)
CNX Gas Company LLC – CBM Leased (Geomet Farmout) (87.50%)
Unknown Surface Owner
0.06 acres 0.0625%

(This title block is for general informational purposes only and does not reflect an analysis of the severance deed and its effect upon coalbed methane ownership and should not be relied upon for such purpose.)

Exhit E
Unit F-46
VGOB Docket# 12-0619-3074-01
List of Respondents that require escrow
(80.00 Acre Unit)

Acres in Unit	Percent of Unit
Escrowing not required	

Exhibit EE
Unit F-46
VGOB Docket# 12-0619-3074-01
List of Respondents with Royalty Split Agreements or Court Orders
(80.00 Acre Unit)

	Acres in Unit	Percent of Unit	Percent of Escrow
<u>Tract #2, 0.05 Acres</u>			
<u>COAL OWNERSHIP</u>			
(1) LBR Holdings, LLC Tr. 2 (1,027.50 acre tract) P. O. Box 22427 Lexington, KY 40522-2427	0.05 acres	0.0625%	<i>n/a</i>
<u>OIL & GAS OWNERSHIP</u>			
(1) LBR Holdings, LLC, et al. Tr. 2 (1,027.50 acre tract)	0.05 acres	0.0625%	
(b) T.G. Rogers, III 3014 Shalford Lane Matthews, NC 28104	0.0008 acres 1/64 of 0.05 acres	0.0010%	12.5000%
(c) Derek Browning Rogers 2300 Carmel Road Charlotte, NC 28226	0.0008 acres 1/64 of 0.05 acres	0.0010%	12.5000%
(d) Kevin Rogers 139 Wickham Road Garden City, NY 11530	0.0008 acres 1/64 of 0.05 acres	0.0010%	12.5000%
(e) Shaun Rogers 121 NE 100th Street Miami Shores, FL 33138	0.0008 acres 1/64 of 0.05 acres	0.0010%	12.5000%
(f) Gregory Poulos 1894 Glenwood Street, NE Palm Bay, FL 32907-2423	0.0010 acres 1/48 of 0.05 acres	0.0013%	16.6667%
(g) Jason Poulos 10870 SW 95 th Street Miami, FL 33176	0.0010 acres 1/48 of 0.05 acres	0.0013%	16.6667%
(h) Pamela Poulos 5000 SW 83 rd Street Miami, FL 33143-8510	0.0010 acres 1/48 of 0.05 acres	0.0013%	16.6667%

Exhibit J
Unit F46 Escrow Account Reconciliation Summary
VGOB 12-0619-3074

CNX Deposit Information		
Check Date	Check Number	Total
10/15/2013	E000015511	\$0.35
6/30/2014	E000029225	\$0.32
7/18/2014	E000030090	\$0.05
8/21/2014	E000031855	\$0.05
9/18/2014	E000033733	\$0.04
10/20/2014	E000037564	\$0.03
11/19/2014	E000039111	\$0.04
12/22/2014	E000040898	\$0.03
1/20/2015	E000042717	\$0.02
2/19/2015	E000044742	\$0.03
3/19/2015	E000046547	\$0.02
4/21/2015	E000048467	\$0.02
5/20/2015	E000051275	\$0.02

Escrow Bank Data														Running Balance	Difference
Date	Escrow Royalty Deposits	Income	\$ Mrket Int	CDARS Int	Fees	Distributions	Audit Costs	Corrections	Gain/Loss	Royalty Bonus	Total Int. and Fees	Bank Balance			
10/31/2013	\$0.35		\$0.00	\$0.00	\$0.00						\$0.00	\$0.35	\$0.35	\$0.00	
11/30/2013			\$0.00	\$0.00	\$0.00						\$0.00	\$0.35	\$0.35	\$0.00	
12/31/2013			\$0.00	\$0.00	\$0.00						\$0.00	\$0.35	\$0.35	\$0.00	
1/31/2014			\$0.00	\$0.00	\$0.00						\$0.00	\$0.35	\$0.35	\$0.00	
2/28/2014			\$0.00	\$0.00	\$0.00						\$0.00	\$0.35	\$0.35	\$0.00	
3/31/2014			\$0.00	\$0.00	\$0.00						\$0.00	\$0.35	\$0.35	\$0.00	
4/30/2014			\$0.00	\$0.00	\$0.00						\$0.00	\$0.35	\$0.35	\$0.00	
5/31/2014			\$0.00	\$0.00	\$0.00						\$0.00	\$0.35	\$0.35	\$0.00	
6/30/2014			\$0.00	\$0.00	\$0.00						\$0.00	\$0.35	\$0.67	\$0.32	
7/31/2014	\$0.37		\$0.00	\$0.00	\$0.00						\$0.00	\$0.72	\$0.72	\$0.00	
8/31/2014	\$0.05				\$0.00						\$0.00	\$0.77	\$0.77	\$0.00	
9/30/2014	\$0.04				\$0.00						\$0.00	\$0.81	\$0.81	\$0.00	
10/31/2014	\$0.03				\$0.00						\$0.00	\$0.84	\$0.84	\$0.00	
11/30/2014	\$0.04				\$0.00						\$0.00	\$0.88	\$0.88	\$0.00	
12/31/2014	\$0.03				\$0.00						\$0.00	\$0.91	\$0.91	\$0.00	
1/31/2015	\$0.02				\$0.00						\$0.00	\$0.93	\$0.93	\$0.00	
2/28/2015	\$0.03				\$0.00						\$0.00	\$0.96	\$0.96	\$0.00	
3/31/2015	\$0.02				\$0.00						\$0.00	\$0.98	\$0.98	\$0.00	
4/30/2015	\$0.02		\$0.00		\$0.00						\$0.00	\$1.00	\$1.00	\$0.00	
5/31/2015	\$0.02				\$0.00						\$0.00	\$1.02	\$1.02	\$0.00	
Total											\$0.00				

Total Deposited	\$1.02
Interest and Fees	\$0.00
Total	\$1.02
May 2015 First Bank and Trust balance	\$1.02
Difference	\$0.00

VIRGINIA: IN THE CIRCUIT COURT OF BUCHANAN COUNTY

GREGORY G. POULOS, JASON G. POULOS,
PAMELA F. POULOS, SHAUN D. ROGERS,
KEVIN H. ROGERS, DEREK B. ROGERS and
T.G. ROGERS, III,

Plaintiffs,

v.

LBR HOLDINGS, LLC,

Defendant.

Case No. 550-13

ORDER

This matter, having come before the Court for hearing on June 2, 2014, on the parties' respective motions for summary judgment, and the Court, having reviewed the written submissions of the parties and having heard oral argument of counsel, and for good cause shown, hereby ORDERS:

1. Plaintiffs' Complaint and Defendant's Counterclaim both request that this Court, pursuant to Virginia Code § 8.01-184, declare their respective rights under the May 27, 1938, deed ("Deed") attached to Plaintiffs' Complaint as Exhibit "A."

2. The Deed includes a conveyance by T. G. Rogers and Martha F. Rogers, his wife (the "Talmage Rogers Group"), and Lloyd Rogers and Anne F. Rogers, his wife (the "Lloyd Rogers Group"), of their interests in certain parcels of property in Buchanan County, Virginia, (the "Property") and McDowell County, West Virginia, to Lon B. Rogers. The Deed specifically recites: "But there is excepted from the above-described property an undivided one-half interest in the oil and gas under said property and the same is reserved to T. G. Rogers and Lloyd Rogers,

parties of the first part, their heirs and assigns, together with the usual and necessary rights of ingress and egress and drilling rights to explore, get and remove said oil and gas.”

3. It is undisputed that Plaintiffs are the successors to the interests of the Talmage Rogers Group under the Deed, and that Defendant, LBR Holdings, LLC (“LBR”), is the successor to the interests of Lon B. Rogers and the Lloyd Rogers Group under the Deed.

4. Plaintiffs seek a declaration that the Deed’s reservation of gas under the Property includes, *inter alia*, coalbed methane gas, and that they are, therefore, the owners of 25% of the coalbed methane gas under the Property and entitled to the associated royalties. LBR, on the other hand, seeks a declaration that the Deed’s reservation of gas under the Property does not include coalbed methane gas, that the Deed, therefore, conveyed coalbed methane gas to Lon B. Rogers, and that LBR, as Lon B. Rogers’ successor-in-interest, is the owner of all the coalbed methane gas under the Property and entitled to the associated royalties.

5. Having examined the reservation language and the “four corners” of the Deed, the Court finds that the Deed is unambiguous and that the Deed’s reservation of “the oil and gas under said property” includes a reservation of coalbed methane gas under the Property. Plaintiffs are, therefore, entitled to prevail as a matter of law.

6. Coalbed methane gas is obviously “gas,” *see Harrison-Wyatt, LLC v. Ratliff*, 593 S.E.2d at 234, 238 (Va. 2004) (coalbed methane “is a gas”); and there is nothing in the Deed that removes coalbed methane or any other type of gas from the scope of the reservation. The language at issue is unlimited, plain, and unambiguous.

7. LBR argues that “the oil and gas” does not mean “all” but only “some” gas. The Court agrees with Plaintiffs, however, that the reservation of “the” gas is not a limited reservation of only some types of gas, but an unambiguous and unlimited reservation of all gas. Such an

interpretation of “the” is in accordance with the ordinary, plain and common sense meaning of the word.

8. LBR also argues that the parties to the Deed would not have intended to include coalbed methane gas in the reservation because, according to LBR, the commercial value of coalbed methane was not known in 1938. LBR presented no evidence in support of this argument and Plaintiffs presented undisputed evidence to the contrary. Regardless, this Court is bound to uphold the unambiguous reservation language, which refers to gas without qualification or limitation, and which, as written, encompasses all types of gas, whether commercially exploitable at the time of the Deed’s execution or not.

9. The Court concludes that the arguments and authorities presented by Plaintiffs in their motion and reply brief are well-founded and correct. A ruling in LBR’s favor would require the Court to rewrite the Deed, which it will not do. Nor will the Court torture words and phrases or engage in speculation to create an ambiguity where the ordinary meaning of the words leaves no room for ambiguity.

10. There are no issues of material fact in dispute regarding Plaintiffs’ ownership of 25% of the coalbed methane gas under the Property. The Court grants Plaintiffs’ motion for summary judgment in full and denies LBR’s motion for summary judgment in full.

11. This Order constitutes a judicial determination of coalbed methane gas ownership as between Plaintiffs and LBR pursuant to Virginia Code § 45.1-361.22(5)(i) and resolves in Plaintiffs’ favor all conflicting claims of coalbed methane gas ownership between Plaintiffs and LBR relating to the Property.

12. Plaintiffs are entitled to receive all coalbed methane gas royalties attributable to their 25% gas estate interest in the Property that are being held in the Virginia Gas and Oil Board’s

escrow account or otherwise being withheld from Plaintiffs due to the conflicting claims of coalbed methane ownership between Plaintiffs and LBR. Plaintiffs are also entitled to receive all future coalbed methane gas royalties or other proceeds that are attributable to their 25% gas estate interest in the Property. All such royalties and proceeds shall be divided among the individual Plaintiffs in accordance with their respective percentages of ownership.

SO ORDERED, this the 10th day of July, 2014.


Circuit Court Judge

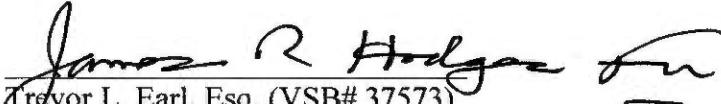

SEEN AND REQUESTED:


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jen@jenshaver.com

Counsel for Plaintiffs

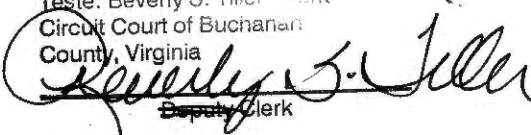
SEEN AND OBJECTED TO FOR ALL THE REASONS DETAILED IN LBR HOLDINGS, LLC'S MEMORANDUM IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT AND RESPONSE TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND AT THE HEARING; AND ON THE ADDITIONAL GROUNDS THAT TO THE EXTENT THE COURT MAY HAVE CONSIDERED SUBMISSIONS OF EXHIBITS OTHER THAN THE DEED AT

ISSUE, THE COURT SHOULD HAVE DENIED BOTH PARTIES' MOTIONS FOR SUMMARY JUDGMENT SO THAT BOTH PARTIES WOULD HAVE HAD AN OPPORTUNITY TO DEVELOP AND PROPERLY INTRODUCE SUCH EVIDENCE:


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Counsel for LBR Holdings, LLC

A Copy
Teste: Beverly S. Tiller, Clerk
Circuit Court of Buchanan
County, Virginia


Deputy Clerk