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SENATE BILL NO. 1398

Offered January 18, 2011

A BILL to amend and reenact § 45.1-361.22 of the Code of Virginia, relating to coalbed methane gas; conflicting claims to ownership.

Patron—Puckett

Referred to Committee on Agriculture, Conservation and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That § 45.1-361.22 of the Code of Virginia is amended and reenacted as follows:

§ 45.1-361.22. Pooling of interests for coalbed methane gas wells; conflicting claims to ownership.

A. When there are conflicting claims to the ownership of coalbed methane gas, the Board, upon application from any claimant, shall enter an order pooling all interests or estates in the coalbed methane gas drilling unit for the development and operation thereof. *In order to establish a conflicting claim to the ownership to coalbed methane gas pursuant to this section, a claimant who is not the surface owner shall submit the document by which the interest in coalbed methane gas was severed from the surface estate and identify with specificity the writing that conveys such interest. Pursuant to § 45.1-361.21:1, the Board shall not find a conflicting claim to the ownership to coalbed methane gas pursuant to this section if the writing identified by such claimant fails to show a severance of mineral interests other than coal. An affirmative determination by the Board to find a conflicting claim to the ownership of coalbed methane gas pursuant to this subsection and to place the royalties attributable to such claims into an escrow account shall be considered a case decision as defined in § 2.2-4001.*

B. In addition to the provisions of § 45.1-361.21, the following provisions shall apply to pooling orders entered by the Board under this section:

1. Simultaneously with the filing of such application, the gas or oil owner applying for the order shall provide notice pursuant to the provisions of § 45.1-361.19 to each person identified by the applicant as a potential owner of an interest in the coalbed methane gas underlying the tract which is the subject of the hearing.

2. The Board shall cause to be established an escrow account into which the payment for costs or proceeds attributable to the conflicting interests shall be deposited and held for the interest of the claimants.

3. The coalbed methane gas well operator shall deposit into the escrow account any money paid by a person claiming a contested ownership interest as a participating operator's share of costs pursuant to the provisions of § 45.1-361.21 and the order of the Board.

4. The coalbed methane gas well operator shall deposit into the escrow account one-eighth of all proceeds attributable to the conflicting interests plus all proceeds in excess of ongoing operational expenses as provided for under § 45.1-361.21 and the order of the Board attributable to a participating or nonparticipating operator.

5. The Board shall order payment of principal and accrued interest, less escrow account fees, from the escrow account to conflicting claimants only after (i) a final decision of a court of competent jurisdiction adjudicating the ownership of coalbed methane gas as between them; (ii) a determination reached by an arbitrator pursuant to § 45.1-361.22:1; ~~or~~ (iii) *a finding by the Board issued pursuant to subsection C that claimants to the ownership of the coalbed methane gas prior to July 1, 2011, failed to sufficiently establish a conflicting claim; or* (iv) an agreement among all claimants owning conflicting estates in the tract in question or any undivided interest therein. Upon receipt of an affidavit from conflicting claimants affirming such decision, determination, or agreement, the designated operator shall, within 30 days, file with the Board a petition for disbursement of funds on behalf of the conflicting claimants. The petition shall include a detailed accounting of all funds deposited in escrow that are subject to the proposed disbursement. 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 petition for disbursement shall be placed on the first available Board docket. Funds shall be disbursed within 30 days after the Board decision and receipt by the Department of all documentation required by the Board. The interests of any cotenants that have not been resolved by the agreement or by judicial decision shall remain in the escrow account.

6. Any person who does not make an election under the pooling order shall be deemed, subject to a

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59 final legal determination of ownership, to have leased his gas or oil interest to the coalbed methane gas
60 well operator as the pooling order may provide.

61 *C. Upon the request of a claimant, the Board or a hearing officer appointed by the Board shall*
62 *review any pooling order entered pursuant to this section prior to July 1, 2011, to ensure that a*
63 *conflicting claim to the ownership of coalbed methane gas meets the threshold requirements set forth in*
64 *subsection A. The Board shall order payment of principal and accrued interest, less escrow account*
65 *fees, from the escrow account to the owner of the surface estate if, upon its own review or the*
66 *recommendation of a hearing officer, it finds that the claims to ownership fail to meet the threshold*
67 *requirements set forth in subsection A to establish such a conflict with the surface estate. An affirmative*
68 *determination by the Board to confirm a finding of a conflicting claim to the ownership of coalbed*
69 *methane gas shall be considered a case decision as defined in § 2.2-4001.*
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