

STATE OF NEW MEXICO

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION

IN THE MATTER OF THE HEARING CALLED BY)
THE OIL CONSERVATION DIVISION FOR THE)
PURPOSE OF CONSIDERING:)

APPLICATION OF LANCE OIL AND GAS)
COMPANY FOR COMPULSORY POOLING)
INCLUDING OPTIONAL INFILL WELL)
PROVISIONS, SAN JUAN COUNTY, NEW MEXICO)

CASE NOS. 13,537

APPLICATION OF SYNERGY OPERATING, LLC,)
FOR COMPULSORY POOLING, SAN JUAN COUNTY,)
NEW MEXICO)

and 13,539

(Consolidated)

ORIGINAL

2005 OCT 20 AM 9 07

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

BEFORE: RICHARD EZEANYIM, Hearing Examiner

October 6th, 2005

Santa Fe, New Mexico

This matter came on for hearing before the New Mexico Oil Conservation Division, RICHARD EZEANYIM, Hearing Examiner, on Thursday, October 6th, 2005, at the New Mexico Energy, Minerals and Natural Resources Department, 1220 South Saint Francis Drive, Room 102, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

* * *

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October 6th, 2005
 Examiner Hearing
 CASE NOS. 13,537 and 13,539 (Consolidated)

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* * *

A P P E A R A N C E S

FOR THE DIVISION:

GAIL MacQUESTEN
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FOR LANCE OIL AND GAS COMPANY:

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 By: WILLIAM F. CARR

FOR SYNERGY OPERATING:

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 Attorney at Law
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* * *

1 WHEREUPON, the following proceedings were had at
2 8:22 a.m.:

3 EXAMINER EZEANYIM: Okay, at this point I call
4 Cases Number -- I'm going to call these two cases at the
5 same time, because we also heard this case on August 25th,
6 and it's a contested case, but for one reason or another,
7 due to public notice, we need to move it to today to be
8 able to collect the notification and some more information
9 which the Division requested and to be able to make this.

10 This is Case Number 13,537 and Case Number
11 13,539. They are all compulsory pooling cases. Case
12 Number 13,537 is the Application of Lance Oil and Gas
13 Company, and Case 13,539 is the Application of Synergy
14 Operating.

15 Call for appearances, and if you have any other
16 briefs you want to state, and then later I'm going to
17 collect the information that I requested from both the
18 attorneys.

19 MR. CARR: May it please the Examiner, my name is
20 William F. Carr with the Santa Fe office of Holland and
21 Hart, L.L.P. We represent Lance Oil and Gas Company in
22 this matter.

23 MR. BRUCE: Mr. Examiner, Jim Bruce of Santa Fe,
24 representing Synergy Operating in these cases.

25 EXAMINER EZEANYIM: Okay, thank you. I

1 understand that you have some brief statements in this
2 case, so who wants to go first.

3 MR. CARR: You'd better go first.

4 MR. BRUCE: Okay. Mr. Examiner, there were
5 questions about notice -- Take a step back.

6 In this particular half-section well unit there
7 are -- both sides testified that there are dozens and
8 dozens and dozens of interest owners, a number of whom were
9 not locatable or who refused to pick up the certified
10 notice that was mailed by each of the parties to the
11 various interest owners. And although I think Synergy had
12 published notice as against certain people, there were
13 additional people they needed to publish notice. And also
14 Lance -- Mr. Carr has informed me that Lance has published
15 notice of its pooling Application. So this matter was
16 continued to provide that publication notice, which both
17 Mr. Carr and I will present.

18 Secondly, I have provided Mr. Carr with the
19 second exhibit I wish to present. Submitted as Exhibit A
20 is Synergy's affidavit of publication or newspaper
21 affidavit of publication, showing that it did publish
22 notice as against the unlocatable or other interest owners
23 in the well unit.

24 One of the issues raised at the prior hearing
25 which the parties disagreed over was whether the proposed

1 location by Lance in the northwest quarter of this section
2 was drillable.

3 Submitted as Exhibit B is a photo taken by
4 Synergy of Lance's proposed location, showing what Synergy
5 asserts is an undrillable location.

6 And I would move the admission of Exhibits A or B
7 and turn it over to Mr. Carr.

8 MR. CARR: May it please the Examiner, we object
9 to Exhibit B.

10 EXAMINER EZEANYIM: Exhibit B.

11 MR. CARR: The purpose of the hearing was to
12 correct notice errors, and if it is your decision to admit
13 Exhibit B, I will call a witness.

14 EXAMINER EZEANYIM: Mr. Bruce and Mr. Carr, I
15 don't know whether you guys want us to reopen this case to
16 be able to discuss this new Exhibit B, because it wasn't in
17 that -- at the first hearing. And I think to give due
18 process, if you guys wish, we might reopen this case and
19 maybe hear it off-docket so that we could, you know, find
20 out, you know, more about this exhibit before we admit it.
21 What do you think on this case?

22 I would like to -- My preference would be to
23 continue this case to some other date that is not a hearing
24 date so that we could -- you could call witnesses on this
25 issue, so we can take more transcript on this. So what do

1 you think?

2 MR. BRUCE: I don't have any objection to a
3 continuance, Mr. Examiner. I mean, I think this was one of
4 the issues originally addressed, and the case was never
5 taken under advisement, so it is still open.

6 MR. CARR: I do object to a continuance. We've
7 been trying to drill this well for over two years. We've
8 had a title opinion, we're ready to go forward. We were
9 ready to go forward two weeks ago. The case wasn't on the
10 docket. And I would even prefer to let Mr. Bruce at this
11 moment call a witness just to identify and admit this
12 exhibit so we can get the case taken under advisement and
13 have it continued again, because we're looking at issues
14 with a drilling rig, and we need to get the property
15 developed.

16 MS. MacQUESTEN: Mr. Carr, do you need to present
17 any evidence on your own to address this?

18 MR. CARR: I can address it with one witness in
19 about five questions.

20 MS. MacQUESTEN: And can you do that today?

21 MR. CARR: I'm ready to do that right now. We
22 have had --

23 MR. BRUCE: I can do it in a couple of questions.

24 EXAMINER EZEANYIM: Could you do it today?

25 MR. BRUCE: Right now.

1 EXAMINER EZEANYIM: Okay, if you present your
2 witnesses, we can go ahead and go.

3 MR. BRUCE: Okay. Swear in the witness.

4 EXAMINER EZEANYIM: May the witnesses stand to be
5 sworn?

6 MR. CARR: Will you stand up to be sworn?

7 (Thereupon, the witnesses were sworn.)

8 PATRICK HEGARTY,

9 the witness herein, after having been first duly sworn upon
10 his oath, was examined and testified as follows:

11 DIRECT EXAMINATION

12 BY MR. BRUCE:

13 Q. Would you please state your name for the record?

14 A. Patrick Hegarty.

15 MR. BRUCE: Mr. Examiner, if we could just have
16 the record reflect Mr. Hegarty was the witness who
17 testified for Synergy in the prior case and was qualified
18 as an expert landman.

19 EXAMINER EZEANYIM: Yeah.

20 Q. (By Mr. Bruce) Mr. Hegarty, I've handed you
21 what's been marked Synergy Exhibit B. What is that?

22 A. This is a picture of the Lance location and a
23 picture of Mike Sullivan that is standing right next to the
24 fence.

25 Mike Sullivan is the Farmington City Planner, and

1 he's the individual that pointed this location out to me.
2 You will note the arrow, and that is basically, from what
3 Mike Sullivan told me, rocks that were piled up on one
4 another with some fluorescent paint on top, and that was
5 the proposed drilling location for the Lance well.

6 Mike Sullivan also told me that this is at the
7 base of a city reservoir for fresh water that they pump
8 from the San Juan River, and that this location was in the
9 bottom of that reservoir and would be, you know, at some
10 point in the future filled. And so therefore it could not
11 be --

12 MR. CARR: Objection --

13 THE WITNESS: -- the location --

14 MR. CARR: -- objection --

15 THE WITNESS: -- could not be drilled.

16 MR. CARR: Objection, stop. This is just rank
17 hearsay, a city official who isn't here to testify about
18 whether a location is drillable or not. I object to the
19 testimony, it's inadmissible, and it has to be stricken.

20 THE WITNESS: Well, you know, I can --

21 MR. CARR: Now, wait a minute.

22 MS. MacQUESTEN: Please stop.

23 EXAMINER EZEANYIM: Objection sustained.

24 MR. BRUCE: Okay, and I'll ask just a couple
25 other questions.

1 Q. (By Mr. Bruce) Mr. Hegarty, who took this
2 picture?

3 A. I did.

4 Q. Okay. And do you of your own personal knowledge
5 know that this arrow points out Lance's proposed location
6 in the northwest quarter, northwest quarter of Section 22?

7 A. Yes, I do.

8 Q. And does this picture form the basis of -- and
9 there is water on site already, is there?

10 A. It's -- The location is surrounded by water.

11 Q. As a manager, as a principal of Synergy
12 Operating, you've been in charge of drilling a number of
13 wells, have you not?

14 A. Yes, I have.

15 Q. In your opinion, is this location drillable?

16 A. No, it is not.

17 MR. BRUCE: That's all I have, Mr. Examiner, I'd
18 move the admission of Exhibit A.

19 EXAMINER EZEANYIM: Any objections?

20 CROSS-EXAMINATION

21 BY MR. CARR:

22 Q. Just a couple of questions, Mr. Hegarty. When
23 did you take this picture?

24 A. This picture was taken -- I can -- I'd have to
25 reference my calendar.

1 Q. Do you know approximately?

2 A. About three weeks ago.

3 Q. After the last hearing?

4 A. Yes.

5 Q. And you've met with Mr. Sullivan?

6 A. Yes.

7 Q. Who else have you met with?

8 A. Mike Sullivan is the only individual that --

9 Q. And was that three weeks ago?

10 A. It was three weeks ago and prior to the hearing
11 as well. This backs up the statements that I made at the
12 hearing.

13 Q. But you've only met with Mr. Sullivan?

14 A. Yes.

15 MR. CARR: That's all. I don't object to the
16 admission of the exhibit.

17 EXAMINER EZEANYIM: Okay, at this point Exhibits
18 1 and 2 [sic] will be admitted into evidence.

19 Mr. Carr?

20 MR. CARR: At this time, Mr. Examiner, we'd call
21 Paul Lehrman.

22 EXAMINER EZEANYIM: You've been sworn.

23 MR. CARR: May the record reflect the witness has
24 been sworn and that Mr. Lehrman is the witness who
25 testified on behalf of Lance at the hearing six weeks ago.

PAUL LEHRMAN,

the witness herein, after having been first duly sworn upon his oath, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CARR:

Q. State your name for the record.

A. Paul Lehrman.

Q. And Mr. Lehrman, you're the -- what is your position with Lance?

A. I'm a landman with Lance Oil and Gas Company.

Q. In your role as a landman with Lance, is it also -- do your responsibilities include negotiations in dealing with the City of Farmington for wells drilled in this area?

A. That's correct.

Q. And have you seen the picture that has been --

A. I saw it briefly earlier, but I'd like to look at it again, please.

Q. That arrow does point to the proposed location, does it not?

A. That's correct.

Q. You have met with the City, have you not?

A. Yes, we've met with the City on several occasions, and different people with the City.

Q. Concerning this location?

A. Yes.

1 Q. And have you not prepared an agreement that is
2 now before the City for a cost-sharing arrangement to fill
3 in at this location?

4 A. That's correct.

5 Q. And doesn't that agreement also provide for
6 certain berms to protect the site from water if, in fact,
7 there is additional water in the area?

8 A. Yes. Could I elaborate on that?

9 Q. Yes, go ahead.

10 A. Prior to the hearing, I met with Mr. Sullivan,
11 who's in the picture, and a gentleman from the City whose
12 name is Jeff Smaka -- he's one of the City engineers -- and
13 we discussed this location.

14 And you know, as part of the staking of -- you
15 know, with the City, what Lance does, we sent out a
16 certified letter notifying the City that, you know, the
17 staking would take place. We had no objections to the
18 location.

19 When I met with Mr. Sullivan and Mr. Smaka, we
20 discussed the proposed -- you know, what Mr. Hegarty
21 referred to as a reservoir. The City has no firm plans at
22 this time to make this a reservoir. It's something they're
23 thinking about.

24 MR. BRUCE: I would object to that. Once again,
25 he's speculating about what the City is --

1 THE WITNESS: No, that's fact --

2 MR. BRUCE: -- that's fact that we received from
3 the City.

4 EXAMINER EZEANYIM: Well, objection sustained.

5 THE WITNESS: Anyway, we met with the City, Mr.
6 Sullivan and Mr. Smaka, prior to the hearing. We also met
7 on September 20th and Mr. Jay Burnham, who's counsel for
8 the City, to discuss this cost-sharing arrangement for the
9 term.

10 At no time has the City objected to the location,
11 we're just in negotiation with the cost-sharing arrangement
12 and the agreement.

13 MR. CARR: That's all we have, thank you. Pass
14 the witness.

15 MR. BRUCE: Has the --

16 CROSS-EXAMINATION

17 BY MR. BRUCE:

18 Q. Has the city approved this location formally?

19 A. No.

20 MR. BRUCE: That's all I have.

21 EXAMINER EZEANYIM: Go ahead, Gail.

22 EXAMINATION

23 BY MS. MacQUESTEN:

24 Q. Mr. Lehrman, what is the status of this pending
25 agreement? When do you expect to have some resolution?

1 Maybe there's -- as next Tuesday. We have written
2 communication with the City, and we're finalizing the terms
3 of it, and they have proposed to bring that before the City
4 Council.

5 Q. And what is the substance of this agreement?
6 It's cost-sharing?

7 A. Well, it's a surface-use agreement for the
8 location itself and for some cost-sharing based on what
9 might happen in the future, up to a certain amount, we
10 would agree to pay a certain amount for the engineering and
11 the construction of the berm.

12 Q. And what is the plan for the berm?

13 A. Well, there is no plan at this point. That's
14 what we're working on, because they don't really have any
15 firm plans for what they want to do. There's all this
16 stuff left up in the open, so we're trying to work through
17 that.

18 Q. Is this what the area looks like normally, or --

19 A. Well, this is ground water that fluctuates
20 somewhat. This isn't water that's actually being brought
21 into this reservoir by the City at this time. That's why I
22 said it's a proposed facility.

23 This is water that -- you know, it's basically an
24 old gravel pit. It was taken down to, you know, a certain
25 substrate, so the water is going to fluctuate somewhat, not

1 a great amount.

2 It's anybody's guess as to what the City is going
3 to do in the future. They don't even really know.

4 Q. So they're not bringing any water into this
5 site --

6 A. No.

7 Q. -- at this point?

8 A. No.

9 EXAMINATION

10 BY EXAMINER EZEANYIM:

11 Q. Okay, could you tell me again who is -- Is this
12 Mr. Sullivan we're talking about?

13 A. Yes, Mr. Sullivan works for the City of
14 Farmington. He's, for lack of a better term, the City head
15 planner, city planner.

16 Q. And you met with him personally, or you sent a
17 certified mail --

18 A. No, I met with him and Mr. Smaka personally
19 before the hearing, and we have met with Mr. Sullivan and
20 Mr. Burnham on September 20th.

21 Q. And what was the nature of your discussions?
22 What did they tell you? I mean, the -- when you met with
23 them, what --

24 A. Well, the discussions prior to the hearing were
25 to discuss the location and what they had planned for this

1 in the future, which there was no definitive resolution.
2 The hearing -- or the meeting on the 20th was to discuss
3 this cost-sharing basis for the proposed berm.

4 Q. Okay. I wrote down here that you sent a
5 certified letter to them, to the City --

6 A. Yes.

7 Q. -- in regards to this location. Did you get any
8 reply from that letter?

9 A. No.

10 Q. And then when you met with them personally, what
11 was indicated here, you could go ahead and -- I mean, I'm
12 just -- I'm curious what the results of that meeting were.

13 A. Are you talking about the first meeting?

14 Q. Yes.

15 A. They had just discussed what they -- you know, it
16 was very difficult because they don't have any definitive
17 plans. They've never objected to the location, they've
18 just never had any definitive plans on what they want to do
19 with this -- they refer to it as --

20 MR. BRUCE: Well, I would object to him
21 testifying about the City's intent, Mr. Examiner.

22 MR. CARR: I would note that he's only responding
23 to the question that was asked.

24 THE WITNESS: Well, I'm responding to the
25 question based on my conversation with Mr. Sullivan and Mr.

1 Smaka --

2 MR. BRUCE: Yeah, which is -- which I object as
3 hearsay.

4 EXAMINER EZEANYIM: Okay --

5 (Off the record)

6 Q. (By Examiner Ezeanyim) So the next question now
7 -- I'm coming to this -- have you received any objection to
8 drilling the well in that location?

9 A. No.

10 EXAMINER EZEANYIM: Anything further?

11 MR. CARR: I just have a brief statement, and I
12 need to tender my notice affidavit. At the hearing six
13 weeks ago the case was continued to enable us, as Mr. Bruce
14 indicated, to correct notice errors. The notice of
15 publication filed on behalf of Lance was late. We have
16 republished to correct errors in that ad.

17 I have a notice affidavit confirming not only
18 that -- with an attached affidavit of publication, but also
19 identifying the interest owners subject to pooling, with
20 copies of the letters that were sent to each of those. You
21 will note that it includes the City of Farmington. They
22 have been advised of this hearing, and there is no
23 objection from the City presented here today.

24 I would also request that you expedite your
25 consideration of this Application. We've been working on

1 the project for two years.

2 Six weeks ago, we came to hearing on the matter,
3 and we continue to have these after-the-fact issues being
4 raised. But nothing that has been raised changes the fact
5 that there is only one party before you with a proper APD
6 that has a one-year duration, that we were the first to
7 propose and proposed it to people based on a title opinion,
8 and that we're the only one who's entitled to operate the
9 entire property under the terms of the new Rule 104.

10 MR. BRUCE: Mr. Examiner, Mr. Carr has said a
11 couple of times that Lance was working on this project for
12 two years, although apparently not much happened until
13 Synergy got involved. Synergy is the one who got the ball
14 rolling on this particular well and I think should be given
15 deference. They both own substantial interest in the well
16 unit.

17 Insofar as the APD is concerned, there are
18 questions about the locations of Lance's well, which
19 indicates that Synergy's location should be approved.
20 Synergy has a definite location 830 feet from the south
21 line and 790 feet from the west line, and we would just ask
22 that you take the matter under advisement and approve
23 Synergy's Application. Thank you.

24 EXAMINER EZEANYIM: Anything further?

25 MR. CARR: Nothing further.

1 EXAMINER EZEANYIM: Yeah, you -- the two
2 attorneys, you know we met after the hearing six weeks ago
3 and I requested additional information. I've obtained --
4 you have notice of publication, and I asked each of you to
5 get me the -- Synergy -- there is a well in the PC in the
6 southwest quarter. What is the location of that well?
7 What is the location of that well?

8 MR. BRUCE: 830 feet from the south line and 790
9 feet from the west line.

10 EXAMINER EZEANYIM: That is the second well, the
11 one I was asking you at the other meeting, is that the --
12 of course, the location of the other well -- I hope you're
13 not giving me the location of the other well. I'm looking
14 for the location of the second well.

15 MR. BRUCE: Synergy's well, that is the location,
16 the footage location, for Synergy's proposed well. And I
17 believe, Mr. Examiner -- and Mr. Lehrman can correct me if
18 I'm wrong, that if Lance -- even if Lance drilled that
19 well, it would be pretty close to that location; is that
20 correct?

21 MR. LEHRMAN: We haven't actually been down
22 there. We've spoken to Mr. Bolack but -- I don't know, do
23 you guys have an agreement with Mr. Bolack?

24 MR. BRUCE: I think...

25 MR. HEGARTY: We -- talk to that.

1 EXAMINER EZEANYIM: Okay.

2 MR. BRUCE: I think Mr. Synergy -- "Mr. Synergy"
3 -- Mr. Hegarty testified at the last hearing that they had
4 met -- that Synergy had met with Mr. Bolack regarding that
5 location, and that location was acceptable to Mr. Bolack,
6 the surface owner, but it depended on the outcome of who
7 got to pool the well. That's the status right now.

8 EXAMINER EZEANYIM: Okay. One other question is
9 that I -- you know, we discussed also whether -- when
10 Synergy applied for their APD they didn't finalize their --
11 applying for their APD, do you remember I asked that
12 question?

13 MR. BRUCE: Yes, Mr. Examiner, and I did ask Mr.
14 Hegarty, and when they applied for the APD they did not --
15 Synergy did not send written notice to Lance. And I would
16 merely state with respect to that, that Lance -- they had
17 met with Lance even before the hearing, and they were aware
18 of Synergy's plans.

19 But insofar as a written notice when the APD was
20 filed, they did not.

21 EXAMINER EZEANYIM: Okay. And related to Lance,
22 do you have the location of that second well that I
23 requested you? I have a location on the first well.
24 You're proposing two wells, in the west quarter -- the west
25 half. I have the location of the first well. The second

1 well, do you have a location on that?

2 MR. LEHRMAN: Do we have a second location?

3 EXAMINER EZEANYIM: Yeah, the location of that
4 second well?

5 MR. LEHRMAN: Well, the second location would be
6 the -- based on the Synergy location.

7 EXAMINER EZEANYIM: What?

8 MR. LEHRMAN: Second location would basically be
9 pretty close to where the Synergy location is.

10 EXAMINER EZEANYIM: Oh, so actually in the same
11 spot, so we're talking about 830 from the south line and
12 790 from the west, practically?

13 MR. LEHRMAN: Yes.

14 EXAMINER EZEANYIM: Okay.

15 MR. BRUCE: I think both wells are projected to
16 the Pictured Cliffs, Mr. Examiner.

17 EXAMINER EZEANYIM: To the PC, okay.

18 MR. BRUCE: Yeah, which is --

19 EXAMINER EZEANYIM: Yeah --

20 MR. BRUCE: -- 160-acre spacing.

21 EXAMINER EZEANYIM: -- yeah, that's right. Okay,
22 so -- Anything further?

23 MR. BRUCE: No, sir.

24 MR. CARR: No, sir.

25 EXAMINER EZEANYIM: Okay, at this point both

1 cases will be taken under advisement at this time.

2 (Thereupon, these proceedings were concluded at
3 8:45 a.m.)

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I do hereby certify that the foregoing is
a complete record of the proceedings in
the Examiner hearing of Case No. 135372
heard by me on 10/1/82 12539
[Signature]
Oil Conservation Division, Examiner

CERTIFICATE OF REPORTER

STATE OF NEW MEXICO)
) ss.
 COUNTY OF SANTA FE)

I, Steven T. Brenner, Certified Court Reporter and Notary Public, HEREBY CERTIFY that the foregoing transcript of proceedings before the Oil Conservation Division was reported by me; that I transcribed my notes; and that the foregoing is a true and accurate record of the proceedings.

I FURTHER CERTIFY that I am not a relative or employee of any of the parties or attorneys involved in this matter and that I have no personal interest in the final disposition of this matter.

WITNESS MY HAND AND SEAL October 6th, 2005.



STEVEN T. BRENNER
 CCR No. 7

My commission expires: October 16th, 2006