

STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION COMMISSION

2005 FEB 2 PM 2 24

**IN THE MATTER OF THE HEARING CALLED
BY THE OIL CONSERVATION COMMISSION FOR
THE PURPOSE OF CONSIDERING:**

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

Case No. 13,486 (*de novo*)

PRE-HEARING STATEMENT

This pre-hearing statement is submitted by Synergy Operating, LLC as required by the Oil Conservation Commission.

APPEARANCES

APPLICANT

Synergy Operating, LLC
Post Office Box 5513
Farmington, New Mexico 87499
(505) 334-4993

Attention: Patrick Hegarty

APPLICANT'S ATTORNEY

James Bruce
Post Office Box 1056
Santa Fe, New Mexico 87504
(505) 982-2043

OPPONENTS

Edwin Smith, LLC

Jerry Walmsley, Trustee

OPPONENTS' ATTORNEYS

Derek V. Larson

J. Scott Hall

STATEMENT OF THE CASE

APPLICANT

Applicant has obtained an order from the Division pooling all mineral interests from the surface to the base of the Fruitland Coal formation underlying the W½ of 8, Township 29 North, Range 11 West, NMPM, to form a standard 320-acre gas spacing and proration for any pools or formations developed on 320-acre spacing within that vertical extent, including the Basin-Fruitland Coal Gas Pool. The unit is to be dedicated to the Duff 29-11-8 Well No. 104, to be drilled at an orthodox location in the NW/4 of Section 8. Also to be considered will be the cost of drilling and completing the well and the allocation of the cost thereof, as well as actual

operating costs and charges for supervision, designation of applicant as operator of the well, and a 200% charge for the risk involved in drilling and completing the well.

Applicant requests that the order be affirmed by the Commission.

OPPONENTS

Edwin Smith, LLC and Jerry Walmsley, Trustee each filed an application for hearing *de novo*.

PROPOSED EVIDENCE

APPLICANT

WITNESSES

EST. TIME

EXHIBITS

Patrick Hegarty
(landman)

20 min. (direct)

Approx. 8

OPPONENTS

WITNESSES

EST. TIME

EXHIBITS

PROCEDURAL MATTERS

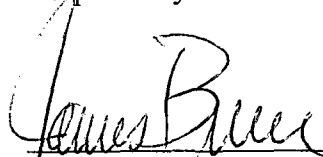
Synergy Operating, LLC has filed a motion to dismiss the applications for hearing *de novo* filed by Edwin Smith, LLC and Jerry Walmsley, Trustee. The motion is based upon the following facts:

1. Edwin Smith, LLC: Edwin Smith, LLC was not a party of record at the Division hearing. Thus, under NMSA 1978 §70-2-13, it had no right to file the *de novo* application.
2. Jerry Walmsley, Trustee: The Trustee signed an operating agreement before the Division hearing, and Synergy Operating, LLC did not seek to pool the Trustee. Thus, the Trustee is not subject to the pooling order, and, therefore, cannot be adversely affected by the order, as required by NMSA 1978 §70-2-13.

These issues are discussed in detail in the motion to dismiss filed by Synergy Operating, LLC.

Applicant requests that this motion be decided before the case is re-presented.

Respectfully submitted,



James Bruce
Post Office Box 1056
Santa Fe, New Mexico 87504
(505) 982-2043

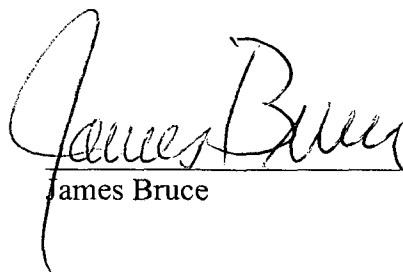
Attorney for Synergy Operating, LLC

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served upon the following counsel of record, via facsimile transmission, this 2nd day of February, 2006:

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