

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

2005 AUG 11 PM 12 00

IN THE MATTER OF THE APPLICATION  
SYNERGY OPERATING, LLC FOR  
COMPULSORY POOLING,  
SAN JUAN COUNTY, NEW MEXICO

Case No. 13,486  
Order No. R-12376

**JOINT MOTION FOR CONTINUANCE**

Edwin Smith, LLC, a New Mexico limited liability company, (Edwin Smith, member-manager) ("Smith"), and Jerry Walmsley, Trustee, Bypass Trust U/W June H. Walmsley, (Walmsley) request that the New Mexico Oil Conservation Commission (the Commission) grant a continuance of the *de novo* hearing of Division Order No. R-12376 scheduled for August 18, 2005 until the Commission's September, 2005 docket for the following reasons:

1. Earnest Smith, member of Edwin Smith, LLC, and part-owner of the subject mineral interests will be unable to attend the hearing because he was diagnosed with a terminal illness late last week and has been hospitalized as a result of the illness.
2. Edwin Smith, member/manager of Edwin Smith, LLC, and part-owner of the subject mineral interests will be unable to attend the hearing because he is helping care for his father, Earnest Smith. See Affidavit of Edwin Smith, attached and incorporated herein as Exhibit 1.
3. At the June 16, 2005, hearing in this matter before the OCD Hearing Examiner, Synergy promised it would provide the parties with a title opinion for the subject property. Synergy, through its counsel James Bruce, has informed the parties that due to increased drilling activity in the area in which

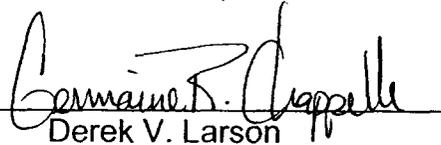
the subject property is located, professional title services have been delayed. A continuance would give Synergy time to obtain and distribute the title opinion it promised the parties at the hearing.

4. A continuance until the September docket may also afford Synergy time for the BLM to process its application to drill and subsequently to obtain a permit to drill the subject well.
5. Synergy does not object to a continuance of the *de novo* hearing of Division Order No. R-12376 scheduled for August 18, 2005 until the Commission's September 2005 docket.

For the foregoing reasons, Smith and Walmsley respectfully request that the Commission grant a continuance of the *de novo* hearing of Division Order No. R-12376 scheduled for August 18, 2005 until the Commission's September, 2005 docket.

Respectfully Submitted,

SUTIN THAYER & BROWNE,  
A Professional Corporation

By   
Derek V. Larson

Germaine R. Chappelle  
Attorneys For Edwin Smith  
Post Office Box 1945  
Albuquerque, New Mexico 87103  
(505) 883-2500

MILLER STRATVERT PA

Telephonic Approval granted 8/9/05

Scott Hall  
150 Washington Ave., Ste 300  
Santa Fe, NM 87504-1986  
(505) 989-9614

Certificate of Service

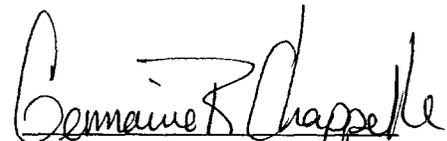
I hereby certify that a true and correct copy of the foregoing was faxed to counsel and parties of record on the 10th day of August, 2005, as follows:

James Bruce, Esq.  
Post Office Box 1056  
Santa Fe, New Mexico 87504  
VIA FACSIMILE: (505) 982-2151

J. Scott Hall, Esq.  
Post Office Box 1986  
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Joseph C. Robbins  
2136 N Lakeshore, Dr.  
Chapel Hill, NC 27514-2027  
VIA Regular First-Class Mail

  
Germaine R. Chappelle

**AFFIDAVIT OF EDWIN SMITH**

STATE OF CALIFORNIA        )  
  )  
COUNTY OF Fresno        )

The undersigned being first duly sworn, states:

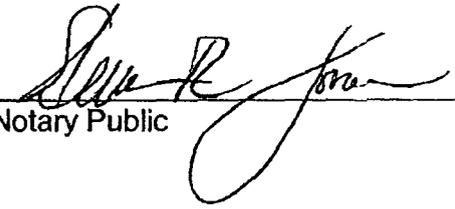
1. I am a member and the manager of Edwin Smith, LLC. Edwin Smith, LLC, owns a mineral interest in the southwest quarter of Section 8, Township 29 North, Range 11 West, N.M.P.M., San Juan County, New Mexico (the "Property").
2. I have personal knowledge of the facts stated in this affidavit.
3. My father, Earnest Smith, is a member of Edwin Smith, LLC.
4. My father and I are part-owners of the Property that is the subject of Case No. 13,486 before the State of New Mexico Department of Energy, Minerals and Natural Resources Oil Conservation Division.
5. My father was diagnosed with a terminal illness late last week and has been hospitalized as a result of the illness.
6. As a result, my father and I will not be able to attend the *de novo* hearing of Division Order No. R-12376 scheduled for August 18, 2005.

FURTHER AFFIANT SAYETH NAUGHT.

  
\_\_\_\_\_  
Edwin Smith

EXHIBIT 1

SUBSCRIBED AND SWORN TO before me on the 10<sup>th</sup> day August,  
2005, by Edwin Smith.

  
Notary Public

My commission expires:

9/27/06  
751940

