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

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

CASE NO. 13486
ORDER NO. R-12376 De Novo

**RESPONSE OF JERRY WALMSLEY, TRUSTEE,
TO SYNERGY OPERATING, LLC'S MOTION TO
DISMISS APPLICATIONS FOR HEARING *DE NOVO***

Jerry Walmsley, Trustee, Bypass Trust U/W June H. Walmsley, ("Walmsley Trust"), for his Response to Synergy Operating's Motion to Dismiss Applications for Hearing *De Novo*, states:

The Walmsley Trust is the undisputed owner of a 12.5% interest in the SW/4 of Section 8, T29N, R11W, which Synergy proposes to consolidate with the W/2 of said Section 8 and dedicate it to the proposed Duff 29-11-8 Well No. 104 Basin Fruitland Coal formation well to be drilled in the NW/4 of the Section. In the proposed 320-acre proration unit, the Walmsley Trust owns a 6.25% undisputed interest, proportionately reduced. (See Joint Operating Agreement, Exhibit "A", attached as a portion of Exhibit D to the Synergy Motion.)

In addition to the 6.25% interest in the unit reflected on the Exhibit "A" to the Joint Operating Agreement, the Walmsley Trust claims ownership of 100% of the 18.75% attributed to Synergy Operating, LLC on the exhibit.¹

The Walmsley Trust interests derive from that Warranty Deed dated April 28, 1951 from Earl Kouns to Margaret Hasselman Jones, Julia Hasselman Keller, Mae Hasselman Kouns, and

¹ The 18.75% interest would include the 6.25% Margaret Hasselman Jones interest.

Jenny Hasselman Hill, “*as Joint Tenants*” and covering the interest in the subject lands. That 1951 conveyance was followed by a Warranty Deed dated September 8, 1981 whereby Jenny Hasselman Hill, the last of the surviving joint tenants and then the owner of 100% of the joint tenancy interest conveyed the property to June Hill Walmsley. As a result of the succession of interests, June Hill Walmsley became the sole owner of a 1/2 interest in the SW/4, which interest was subsequently conveyed to the Walmsley Trust.

In the course of its incomplete and cursory search of title to the SW/4 of Section 8, Synergy made the incorrect assumption that a 1958 Quiet Title Decree somehow “transmogrified” the joint tenancy into a tenancy in common. Synergy’s assumption in this regard is not supported by the quiet title judgment, by other instruments filed of record, or by the law. See *Gonzales v. Gonzales*, 116 N.M. 838, 845, 867 P.2d 1220, 1227 (1993). Acting on its erroneous assumption, Synergy proceeded to acquire assignments of the mineral interests from the heirs of Julia Hasselman Keller, Mae Hasselman Kouns and Jenny Hasselman Hill, which together comprise a putative 25% interest in the SW/4 of Section 8. (See Synergy hearing Exhibit No. 2, attached.)

At the Division Examiner Hearing, Synergy represented that it was unable to locate any of the heirs of Margaret Hasselman Jones and therefore proceeded to force pool that particular assumed interest by publication pursuant to Rule 1207-B. As a consequence, the interest attributed to Margaret Hasselman Jones was pooled under Order No. R-12376 at the statutorily presumed 7/8^{ths} working interest and 1/8th royalty interest rates pursuant to NMSA 1978 § 70-2-17C.

Synergy argues that because the 6.25% interest of the Walmsley Trust is committed to the well pursuant to the March 1, 2005 Joint Operating Agreement, the interest is not affected by

Order No. R-12376. In essence, Synergy argues that the Walmsley Trust has no standing to file an Application for Hearing *De Novo* under NMSA 1978 § 70-2-13. Regardless of Synergy's assertion, it is clear that the Walmsley Trust is a "party of record adversely affected" by the Order and consequently it "shall have the right to have the matter heard *de novo* before the Commission upon application". *Id.*

Whether the 6.25% Walmsley Trust interest that may be committed to the well under the Joint Operating Agreement is adversely affected by the Compulsory Pooling Order remains to be determined. However, because the Walmsley Trust has made a *prima facie* showing of a colorable claim to title to the remaining interests derived from Margaret Hasselman Jones, Julia Hasselman Keller, Mae Hasselman Kouns, and Jenny Hasselman Hill, based on instruments filed of record in San Juan County, there exists a question whether those interests are committed to the well at all. If title to the 12.5% interest claimed by Synergy and the imputed 6.25% interest of Margaret Hasselman Jones fails, then these interests would not have been consolidated and the well, if drilled, could not receive an allowable pursuant to Rule 1104.

It is clear, then, that Synergy has not conducted adequate due diligence with respect to these interests and it has acquired defective, unmarketable title as a result. In this regard, the authorities long-ago documented that compulsory pooling proceedings should not be used as a means to cure defects in title. The Division "...will not allow compulsory pooling to be used as a substitute for prudent leasing practices." Morris, Richard, *Compulsory Pooling of Oil and Gas Interests in New Mexico*, 3 Nat. Resources J. 316, 329 (1963).

With respect to the putative interest that Synergy claims must be owned by the unlocatable heirs of Margaret H. Jones, Order No. R-12376 would authorize Synergy to recoup well costs and the risk penalty out of the proceeds attributable to the statutorily presumed 7/8ths

working interest. The Walmsley Trust may or may not claim that the interests derived from Margaret H. Jones are effectively committed to the well under the terms of the Joint Operating Agreement, but if so, they should not be subject to the well costs and risk penalty recoupment provisions of the pooling order. To permit Synergy to recoup those costs and the risk penalty would be a *dejure* determination of the Walmsley Trust's claim to title and its concomitant entitlement to production proceeds without the risk penalty. Further the Walmsley Trust would be effectively deprived of the opportunity to elect to participate or go non-consent with respect to the force-pooled interests.

It is obvious, then, that the Walmsley Trust has a sufficient interest adversely affected by Order No. R-12376 to give it the right to seek a hearing *de novo* on Synergy's application.

For the foregoing reasons, Synergy Operating, LLC's Motion to Dismiss Applications for Hearing *De Novo* must be denied.

Respectfully submitted,

MILLER STRATVERT P.A.

By: 

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Certificate of Service

I hereby certify that a true and correct copy of the foregoing was faxed to counsel of record on the 8 day of August 2005, as follows:

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J. Scott Hall

Duff 29-11-8#104 well,

FEE - SW/4 Section 8, T29N, R11W
San Juan County, New Mexico

Heirs of Julia H. Keller

Annemarie Keller	6.25%
Margaret K. Dunn	6.25%

Heirs of May H. Kouns

Charla Varner	3.125%
Robert E. Kouns,	3.125%
Kimberly Brautigam	3.125%
Jodie Yates	3.125%

Heirs of Jennie H. Hill

June Wamsley	12.5%
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Heirs of Margaret H. Jones

David F. Jones	12.5%
S- TOTAL	50.000%

Joseph C. Robbins	3.125%
Edwin & Earnest Smith	46.875
TOTAL	100.000%

NOW SYNERGY
25%

