**JAMES BRUCE**
**ATTORNEY AT LAW**

**POST OFFICE BOX 1056**
**SANTA FE, NEW MEXICO 87504**

**369 MONTEZUMA, NO. 213**
**SANTA FE, NEW MEXICO 87501**

**(505) 982-2043 (Phone)**
**(505) 660-6612 (Cell)**
**(5050 982-2151 (Fax)**

**jamesbruc@aol.com**

2006 JUL 10 PM 1 41

July 6, 2006

Via fax and U.S. Mail

David Catanach
Oil Conservation Division
1220 South St. Francis Drive
Santa Fe, New Mexico 87505

Re: Case No. 13,663/Synergy Operating, LLC/W½ §8-29N-11W

Dear Mr. Catanach:

This letter responds to the Post-Hearing Memorandum of the Walmsley Trust, submitted on June 29th, which in essence requests the Division to (i) not enter a pooling order, and (ii) not assess a risk charge. Synergy makes the following points:

1. The Division is a creature of statute, and only has those powers granted by **NMSA 1978 §§70-2-1 *et. seq.*** Synergy submits that the pooling statute, **NMSA 1978 §70-2-17.C**, does not contain any authority to place funds in suspense.

2. If the Division ordered that funds be placed in suspense, it would in effect be granting an injunction. Such relief is the province of the District Courts. **NMRA 1-066.** Again, it has no authority to do so.

3. When a well is drilled and completed as a producing well, the New Mexico Proceeds Payment Act requires that interest owners be paid on an ongoing basis as set forth therein. **NMSA 1978 §§70-10-1 *et seq.*** If an operator does not pay interest owners pursuant to the Proceeds Payment Act, it is subject to payment of interest (at 18%) and attorneys' fees. Thus, any order by the Division requiring that funds be placed in suspense would contradict the Proceeds Payment Act and possibly place Synergy at risk of excess charges. Again, the Division does not have such jurisdiction.

4. The Walmsley Trust's Memorandum requests the Division not to enter a pooling order. However, NMSA §70-2-17.C requires the Division to enter a pooling order if the parties have not agreed to voluntarily pool their interests. (The Walmsley Trust signed a JOA and will not be subject to the pooling order.)

In addition, the Memorandum argues that Synergy is not entitled to a risk charge. Please note:

(a) Synergy requested a 200% risk charge in its application (page 2);

(b) Rule 35.A provides for a standard 200% risk charge in a pooling order; and

(c) Rule 35.B provides that any person seeking a different risk charge than provided in Rule 35.A "shall so state in a timely pre-hearing statement filed with the Division," and "shall have the burden to prove the justification for the risk charge sought by relevant geologic or technical evidence."

Synergy requested a risk charge, and it was Walmsley Trust's obligation to object to the standard charge. It did not do so, and thus a 200% risk charge should be approved in the order.

5. Finally, the Memorandum cites several Division cases regarding "just and reasonable" Division orders. Those orders concerned situations where (i) excessive lease burdens were created after a pooling application was filed, or (ii) lease burdens were so large that a well could not be profitably drilled if relief wasn't granted, thereby causing waste. Those situations do not apply here, and the cases are not on point.

For the foregoing reasons, Synergy requests the Division to enter an order pooling the subject lands and well. If the Walmsley Trust desires injunctive relief, it can seek such relief from the District Court in the pending quiet title action.

Very truly yours,

James Bruce

Attorney for Synergy Operating, LLC

cc: Counsel of record