

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

CASE NO. 13,663
(Reopened)

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

BEFORE: RICHARD EZEANYIM, Hearing Examiner

April 12th, 2007

Santa Fe, New Mexico

This matter came on for hearing before the New Mexico Oil Conservation Division, RICHARD EZEANYIM, Hearing Examiner, on Thursday, April 12th, 2007, 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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Examiner Hearing
CASE NO. 13,663

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A P P E A R A N C E S

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* * *

1 WHEREUPON, the following proceedings were had at
2 10:43 a.m.:

3 EXAMINER EZEANYIM: At this time I call Case
4 Number 13,663. This case was continued from the March
5 15th, 2007, Examiner hearing and reopened. This is the
6 Application of Synergy Operating, LLC, for compulsory
7 pooling, San Juan County, New Mexico.

8 Call for appearances.

9 MR. BRUCE: Mr. Examiner, Jim Bruce of Santa Fe,
10 representing Synergy Operating, LLC. I have two witnesses.

11 EXAMINER EZEANYIM: Any other appearances?

12 MR. HALL: Mr. Examiner, Scott Hall with the
13 Miller Stratvert law firm, Santa Fe. I appear on behalf of
14 Jerry Walmsley, Trustee of the June Walmsley Bypass Trust.

15 EXAMINER EZEANYIM: Any other appearances?

16 MR. LARSON: Mr. Examiner, I'm Derek Larson with
17 the law firm of Sutin, Thayer and Browne, representing the
18 interests of Ed Smith, LLC. We may call one witness,
19 depending on the testimony.

20 EXAMINER EZEANYIM: Any other appearances?

21 Okay, at this point I think all the witnesses
22 that might appear will stand so we can swear them in.
23 Anybody that -- potential witnesses and witness, can stand
24 so we can swear them in.

25 (Thereupon, the witnesses were sworn.)

1 EXAMINER EZEANYIM: Do we have any opening
2 statements? How do you want to proceed?

3 MR. BRUCE: I suppose just very briefly. Mr.
4 Examiner, I realize that I don't have a copy of the order
5 in front of me, but in this case -- Well, let's take a step
6 back.

7 There was a prior case, Mr. Examiner, that
8 granted Synergy's request to force pool the west half of
9 Section 8 of 29-11 for a well in the northwest quarter.
10 That well is, as such, not at issue today.

11 This case involved the force pooling -- and these
12 are Fruitland Coal wells -- involved the pooling of the
13 same well unit for a second well in the southwest quarter
14 of Section 8.

15 The order was granted in, I think, September of
16 last year. The order required the well to be commenced by
17 December 15th, 2006, and then to be completed within 120
18 days thereafter. And the final completion of this well was
19 -- the well was commenced in August, actually, of 2006 and
20 has been recently completed.

21 Synergy requested an extension of the completion
22 deadline. Mr. Larson's and Mr. Hall's clients objected,
23 and so the matter was set for hearing. I think the issues
24 are -- I'm sure my opponents will say the order expired,
25 and we should be here today to reinstate the order. That

1 is one issue. I think there has been substantial
2 compliance under the order and that the order should not be
3 considered to have terminated. But either way, those are
4 the positions we will be arguing.

5 I'll have two witnesses who I hope will be very
6 brief.

7 One thing, I would like to request that the
8 Division incorporate in the record the prior testimony in
9 this matter so that we don't have to reiterate all of the
10 matters that were previously testified to.

11 EXAMINER EZEANYIM: Yeah, before I hear from the
12 -- let me understand what you're trying to say. You
13 spudded the well in August of 2006?

14 MR. BRUCE: Yes.

15 EXAMINER EZEANYIM: And you -- So what happened?
16 Did you finish drilling the well?

17 MR. BRUCE: Well, Mr. Examiner, rather than me
18 getting into it, I'd rather have my witnesses testify. We
19 think there are grounds for not completing it by -- within
20 120 days of completion, but we would rather -- I would
21 rather have the witnesses testify about that.

22 EXAMINER EZEANYIM: Okay, sure, that's okay.

23 Okay, Mr. Hall?

24 MR. HALL: Mr. Examiner, I believe you are the
25 only Examiner who has not been exposed to this dispute.

1 It's been more than a year in the making.

2 If you have before you, you might want to refer
3 to the compulsory pooling order for this infill well. It
4 is Order Number R-12,629. On page 3 of that order it
5 outlines the owners of the interests and their percentages
6 in the well.

7 By way of further background, my client, the June
8 Hill Walmsley Trust, is the undisputed owner of 12 1/2
9 percent in the southwest quarter of the section. That
10 interest was committed to the initial well under a joint
11 operating agreement, under the infill well. My client did
12 not participate in the drilling of the infill well.

13 In addition to that 12 1/2 percent, my client
14 claims ownership to the interests listed in the order for
15 the heirs of Julia H. Keller, May H. Kouns and Margaret H.
16 Jones, an additional 18 1/2 percent or so, which would take
17 my client's interest in the southwest quarter up to 50
18 percent in the southwest quarter only. Twenty-five
19 percent, basically, in the 320-acre unit.

20 Those are disputed interests. Those are also the
21 same interests that Synergy claims to own pursuant to deeds
22 and assignments that Synergy acquired from those heirs.
23 Those interests are the subject of a quiet title action
24 pending in the 11th Judicial District Court in Aztec.

25 The purpose for our appearance here today is to

1 request that if the Division enters an order renewing or
2 reinstating the compulsory pooling order for the infill
3 well, that it do so in a manner consistent with the actions
4 of the 11th Judicial District Court.

5 Earlier, on February 7th of this year, the Court
6 entered an order requiring that the operator suspends all
7 production proceeds from the well until title is
8 determined.

9 It is our position that in this case, this
10 administrative case, because the well was not completed
11 within 120 days as specified in the order, the order
12 automatically expired, and therefore the operator's
13 authority to recoup drilling costs or the risk penalty from
14 any interest at all were extinguished. That doesn't mean
15 the operator couldn't proceed to drill and complete the
16 well as it has done, but it did not have any legal
17 authority to recoup costs or withhold risk penalties.

18 That is our position, that if the order is
19 reinstated at your discretion, you recognize and honor the
20 order from the court, and your order should provide that
21 all production proceeds be suspended pending the outcome of
22 the district court litigation as well.

23 EXAMINER EZEANYIM: Yeah, okay, I will reserve my
24 comments on those matters. But let me hear from you.

25 MR. LARSON: Mr. Hearing Examiner, Derek Larson

1 representing Edwin Smith, LLC. If you're looking at the
2 same page that Mr. Hall was referring to, page 3 in the
3 interests that are set out there, those are the interests
4 as claimed by Synergy. We disagree with that as well.

5 The last two interests, those being Joe C.
6 Robbins, listed at 3.125 percent, and Edwin and Ernest
7 Smith at 46.875 percent, Ernest Smith is now deceased, and
8 Edwin Smith, our client, has inherited his interest.

9 But in addition we, including Joe Robbins,
10 dispute whether or not Joe Robbins owned any mineral
11 interest in this property. The original deed creating the
12 interest -- and this is incorporated in our prior testimony
13 in the prior hearings -- reserved only a royalty interest
14 and did not create a mineral interest. And so it is our
15 position that Edwin Smith -- and that royalty interest came
16 out of what -- the remainder of which was transferred to
17 Edwin Smith.

18 So it is our position that Edwin Smith owns the
19 other half of the working interest or mineral interest in
20 this property, and that Synergy does not own any interest
21 in the property or have any standing, therefore, to drill a
22 well.

23 Since the original order was entered over a year
24 ago -- or -- yes, over a year ago for the Duff 104 well,
25 there was a question at that time, upon which the Director

1 ruled, that it was unclear whether Mr. Robbins owned an
2 interest or not.

3 Subsequent to that, Mr. Robbins executed a
4 quitclaim deed to make sure that the record was clear, the
5 quitclaim deed being in favor of Edwin Smith.

6 So our position is, Edwin Smith owns 50 percent
7 of the working and mineral interest.

8 We would adopt the arguments of Mr. Hall here as
9 to why the order expired by its own terms on December 15th,
10 when the well had not been completed, even though it was
11 started even before this order was entered. The well was
12 started to be drilled in August; this order wasn't issued
13 until September.

14 And so it is our position that Ed Smith, who is
15 the only party aside from Synergy that contributed any
16 costs to the drilling of this well -- Burlington and the
17 Walmsleys have not contributed any costs to the drilling of
18 the well -- that it is unfair for Ed Smith to be charged,
19 and he did pay over \$100,000 as a *pro rata* share of the
20 drilling cost, as required in this order -- that those
21 amounts should be returned to Mr. Smith and, as the
22 District Court in the quiet title case has ordered, that
23 all proceeds -- that's gross proceeds, not net of operating
24 costs, but all proceeds be placed in an account.

25 And even as this order requires, or the prior

1 order for the Duff 104 well, it's to be placed in an escrow
2 account and the name and address and information about that
3 escrow account is to be reported to the OCD. This order
4 and the prior order require that.

5 EXAMINER EZEANYIM: Okay.

6 MR. BROOKS: I assume that the copy of the
7 district court order will be made a part of the record in
8 this proceeding.

9 MR. LARSON: We can do that now if you'd like.

10 MR. BROOKS: I don't care at what point, but
11 obviously we -- obviously we're bound by whatever the
12 district court order says.

13 EXAMINER EZEANYIM: We are? Are we bound by it?

14 MR. BROOKS: I believe that we -- I would assume
15 that we are. We're not parties to the case, but I would
16 assume that we're not going to go into the business of
17 ordering something contrary to what the District Court has
18 ordered.

19 EXAMINER EZEANYIM: Okay.

20 MR. HALL: At this point, Mr. Examiner, we'd
21 offer Walmsley Exhibit 1, which is a copy of the court's
22 order.

23 EXAMINER EZEANYIM: All right. Is there any
24 objection to accepting this?

25 MR. BRUCE: There's no objection to the admission

1 of this order. We will have some comments on it, Mr.
2 Examiner.

3 MR. BROOKS: Okay.

4 EXAMINER EZEANYIM: Okay, I think I will admit
5 this order into evidence if there are no objections.

6 Okay, we've covered all the -- you know, I mean
7 the prehearing statement. Could you continue, then? Call
8 your next witness. I guess that's what we -- call --

9 MR. BROOKS: Yeah, seems appropriate.

10 THOMAS E. MULLINS,
11 the witness herein, after having been first duly sworn upon
12 his oath, was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. BRUCE:

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

16 A. My name is Tom Mullins.

17 Q. Where do you reside?

18 A. I reside in Farmington, New Mexico.

19 Q. What is your relationship to Synergy Operating,
20 LLC?

21 A. I am the engineering manager for Synergy
22 Operating, LLC.

23 Q. Have you previously testified before the
24 Division?

25 A. Yes, I have.

1 Q. And were your credentials as an engineer -- I
2 should say an expert engineer, accepted as a matter of
3 record?

4 A. Yes, they were.

5 Q. Are you familiar with the drilling of the subject
6 well?

7 A. Yes, I'm familiar with the drilling, completion
8 and facility history for the subject well, which is the
9 Duff, D-u-f-f, Number 105.

10 MR. BRUCE: Mr. Examiner, I'd tender Mr. Mullins
11 as an expert petroleum engineer.

12 EXAMINER EZEANYIM: Mr. Mullins is so qualified.

13 Q. (By Mr. Bruce) Mr. Mullins, you have in front of
14 you Synergy Exhibit 1. What does -- Could you go through
15 that first and just tell about the drilling of this well?

16 A. Yes, Exhibit 1 is titled the Duff Number 105
17 Timeline. I prepared this exhibit from the information in
18 our files and also the files that are in the NMOCD records.
19 Briefly, the important dates:

20 The well was spud on August 17th, 2006. The
21 drilling rig was released on August 23rd of 2006. Synergy
22 obtained a pooling order, that was referenced earlier, on
23 September 12th.

24 On October 27th of 2006, Synergy was attempting
25 to get the pipeline connection to the well site in order to

1 complete the well. We received a copy of a letter from a
2 law firm -- I forget which particular law firm -- to El
3 Paso or Enterprise, EPFS, which declined access for the
4 right of way. That letter we had not received a copy of
5 previously, but once we received this copy Synergy sent a
6 release to El Paso in order to obtain the pipeline
7 connection to the well site. This is important because in
8 a Fruitland Coal well we believe it's critical that once
9 the well is completed, that the formation could be damaged
10 by the completion and that we would like to return the well
11 to production as soon as possible following the completion.

12 El Paso actually completed the pipeline
13 connection on December 10th of 2006. Synergy was not
14 notified of that being completed, just how work is done.
15 Our contract operator went by in the field and noticed that
16 they had finally completed the well connection.

17 Synergy on the 22nd of December began our
18 completion operations, which consisted of running the cased
19 hole logs and confirming the completion design.

20 On January 25th of 2007, we began the casing test
21 information that was charted in a requirement, and began
22 the fracture stimulation, perforating operations.

23 This particular Fruitland Coal well was completed
24 in two stages. There were five seams of coal that were
25 completed in two frac stages. The first frac stage did

1 screen out, and we had to clean out sand between the two
2 frac stages.

3 On February 7th of 2007 we finished the
4 completion operation, landed the tubing on the well, and
5 submitted the C-104 for approval. We then installed the
6 remaining surface facilities and commenced delivery of
7 natural gas to El Paso on February 22nd of 2007. We have
8 had two subsequent cleanout operations, because this well
9 has a beam -- a rod pump beam pumping unit producing the
10 water, and we did have some frac sand come in and plug up
11 the pump. These two cleanout operations are not unusual
12 during the completion operation.

13 That's the summary of Exhibit Number 1 on the
14 Duff 105 timeline.

15 Q. So let me understand, Mr. Mullins. With respect
16 to Fruitland Coal wells, you want to frac them and put them
17 on line as close together as possible?

18 A. That is correct.

19 Q. And if you don't do that, there could be damage
20 to the wellbore?

21 A. Yes, it's a significant -- based upon our
22 experience, it's extremely important to immediately follow
23 the completion and place the well on production to
24 eliminate any residual gel damage to the coal formation,
25 and that maximizes the producing capability of the well.

1 Q. Okay. And so you were slowed-down by the letter
2 to EPFS which denied a right of way?

3 A. Yes, we were significantly delayed in the
4 completion operation because we typically do not commence
5 the completion operation until we know that the pipeline
6 connection is available and ready to sell the gas on the
7 completion.

8 Q. Do you recall when Synergy asked EPFS when they
9 could -- before you received that letter from the law firm,
10 had you previously contacted EPFS to get the well
11 connection there?

12 A. We did, but I do not know that specific date.

13 Q. Okay.

14 A. I'm sure we have that information available.

15 Q. And so as a result you had to delay completion
16 until you were sure you could get a pipeline connection?

17 A. That is correct, and we obtained the pipeline
18 connection there at the end of December. And with the
19 Christmas-New Year's holiday and scheduling of the
20 stimulation equipment and then with the weather -- there
21 were some significant rain effects in the San Juan Basin --
22 we could not actually pump the first stimulation until the
23 end of January.

24 Q. But if things had gone more or less according to
25 normal, you had drilled the well by late August, it would

1 have been reasonable to assume you could have completed it
2 within the next couple of months?

3 A. That is correct. As in all oil and gas
4 investments, you know, time is money. And you know, we
5 have money spent on the drilling phase of the operation.
6 We want all of the phases to proceed as rapidly as possible
7 to completion.

8 Q. And in your opinion, Synergy wasn't responsible
9 for the delay in the completion?

10 A. That is correct.

11 Q. It was the objection to the pipeline that was
12 delivered to EPFS that caused the delay?

13 A. That is correct.

14 Q. Now again, the December 10th date, EPFS completed
15 the pipeline connection, but you didn't receive notice on
16 that date, did you?

17 A. No, we did not. In fact, I don't believe we
18 received any notice. We had our contract operator go by,
19 he identified that the connection had been made, and then
20 we contacted El Paso to install the -- to obtain a meter
21 number specifically for that connection.

22 Q. So as soon as you found out that the pipeline was
23 there, you commenced the completion operations?

24 A. Yes, immediately.

25 Q. Was Synergy Exhibit 1 prepared by you?

1 A. Yes, it was.

2 Q. And in your opinion, did Synergy substantially
3 comply or comply as best it could with the pooling order?

4 A. Yes, we did.

5 Q. And in your opinion is the reinstatement, if
6 necessary, of the pooling order in the interests of
7 conservation and the prevention of waste?

8 A. Yes, it is.

9 MR. BRUCE: Mr. Examiner, I'd move the admission
10 of Exhibit 1.

11 EXAMINER EZEANYIM: Any objection?

12 MR. HALL: No objection.

13 MR. LARSON: No objection.

14 EXAMINER EZEANYIM: Exhibit 1 will be admitted
15 into evidence.

16 MR. BRUCE: And I'd pass the witness.

17 MR. HALL: I have no questions, Mr. Examiner.

18 MR. LARSON: I do have a few questions.

19 CROSS-EXAMINATION

20 BY MR. LARSON:

21 Q. Mr. Mullins, can you -- if you know -- Well, let
22 me ask you, were you the person responsible within Synergy
23 for contact with El Paso Field Services, EPFS, with regard
24 to the requested gathering line to the Duff 105?

25 A. No, I was not.

1 Q. Who was that person?

2 A. That would be my -- his name is Glen Papp,
3 P-a-p-p. He is also a registered professional engineer in
4 the State of New Mexico, like myself. He handled the
5 initial contacts with El Paso Natural Gas and the
6 connection. And then I believe Mr. Patrick Hegarty, who
7 will be here to testify, also handled some communications
8 with El Paso and obtained the -- and supplied the release
9 of liability waiver, and so he can cover that matter.

10 Q. All right. Did Mr. Glen Papp -- was he acting
11 under your direction?

12 A. I cannot testify to what Mr. Papp was acting
13 under, you know, with regard to my direction. He contacted
14 El Paso initially.

15 Q. Is he -- is Mr. Papp a subordinate to you at
16 Synergy?

17 A. No, he is not.

18 Q. Okay. Do you know when El Paso, EPFS --
19 Enterprise, excuse me -- was contacted, first contacted, to
20 install the gathering line that's in place today?

21 A. I do not know specifically.

22 Q. Do you know if that was prior to the granting of
23 the pooling order in this case?

24 A. I do not know.

25 Q. Can you tell me what is the length or distance of

1 the run for this gathering line from the well site to the
2 existing gathering line that had already been in place?

3 A. I believe the distance was less than 100 feet,
4 but I do not have the exact distance. I'm sure the plats
5 are available for the Commission.

6 Q. And the existing line to which this new gathering
7 line was connected is the existing line within the
8 boundaries of the property that's the subject of this
9 dispute?

10 A. I am not certain of that.

11 Q. Okay. Do you know who owns the meter run that is
12 installed in this particular well?

13 A. The meter facilities are typically owned by the
14 pipeline company, so in this case the meter is owned by
15 Enterprise Field Services, EPFS.

16 EXAMINER EZEANYIM: Enterprise or El Paso?

17 THE WITNESS: I have by accident interchanged El
18 Paso with Enterprise Field Services, but in this instance
19 they would be synonymous. El Paso Field Services was the
20 predecessor company of Enterprise Field Services, so EPFS
21 in this matter.

22 EXAMINER EZEANYIM: So it's called Enterprise
23 now?

24 THE WITNESS: That is correct.

25 MR. LARSON: I apologize, Mr. Hearing Examiner.

1 For years it has been El Paso, and it's a hard habit to
2 break to -- We still tend to think of them as El Paso, but
3 it Enterprise.

4 EXAMINER EZEANYIM: Okay.

5 Q. (By Mr. Larson) Mr. Mullins, can you tell us
6 what efforts Synergy undertook to be notified or to know
7 when the gathering line had been put in place?

8 A. We were very interested in having the gathering
9 line installed so that we could commence our completion
10 operations. I would have to defer to Mr. Hegarty's
11 testimony with regard to the efforts on the pipeline
12 connection. We attempted to -- Typically, our normal
13 practice is, when we know we are ready to drill the well
14 and upon drilling, we have already contacted the pipeline
15 company or, if there's multiple pipeline companies, to
16 facilitate the best economical gathering arrangement for
17 the well that we plan to drill. But Mr. Hegarty would
18 probably be a better person to answer that question, sir.

19 Q. So then you don't really know whether any phone
20 calls were made or visits to El Paso -- Enterprise, excuse
21 me -- to find out if the gathering line had been put in
22 place?

23 A. I do not.

24 Q. Do you know if there was any plan or direction
25 that had been given to any Synergy employees to

1 periodically inspect the well site between the time that
2 the release was given to Enterprise and the time that the
3 discovery was ultimately made by Synergy that the gathering
4 line had been put in place?

5 A. Synergy is a small company, I guess I should
6 state that. We're not a -- We have three principals, Mr.
7 Hegarty, myself and Mr. Papp. We're officed within about
8 15 feet of one another. We meet regularly and communicate.
9 We do not have a contract -- or on-site field operation.
10 We contract that particular operation.

11 The Duff Number 104 well, which was the first
12 well drilled in the spacing unit, was right next to this
13 well. Our contract operator visits that well on a daily
14 basis to gauge the water and -- information. And he
15 checked on the installation progress of El Paso in the
16 field. I cannot testify to -- Enterprise, excuse me, I
17 made the same mistake -- Enterprise's process.

18 But once all of the documents are in place to
19 satisfy a well connection, they schedule it with their
20 construction department and they go make the connection.
21 And they do not typically notify the company of exactly
22 what date that is. And we noticed it, being diligent with
23 our contract operator. As soon as the installation was
24 made, we proceeded to move forward.

25 Q. Well, after all of that I still didn't hear an

1 answer as to what efforts or directions you had made to put
2 in place to determine or find out when the connection had
3 been made. You just said that typically Enterprise or the
4 gathering line companies don't typically tell you when
5 they're done.

6 Knowing that, what instructions, if any, had been
7 made for your operator of the 104 to keep an eye on it so
8 that you would know right away, so that you could be
9 diligent?

10 A. Well, I can testify to what I -- you know, my
11 knowledge. Mr. Glen Papp has daily communication multiple
12 times a day with our contract operator. That's his
13 specific direction. My area of expertise is on the
14 drilling and completion, you know, facility matters. He
15 may be a better person to answer that specific question,
16 but I believe Mr. Hegarty here, who is here today to
17 testify, has all that information about the correspondence
18 and the direction to diligently obtain pipeline access to
19 the well.

20 Q. Can you tell me what the cost was of the
21 placement of the gathering line and the meter?

22 A. I do not recall that specific item. I would
23 estimate from my memory -- and again, I'm probably not
24 supposed to do that -- it was approximately \$65,000 to
25 \$70,000 on the connection. There are specific arrangements

1 with a pipeline company when a well connection is made, at
2 what time the payments are made for that, for that pipeline
3 connection. But I know that we receive an invoice from
4 Enterprise Field Services, and we pay the invoice for the
5 connection upon its, you know, receipt.

6 MR. LARSON: I have no further questions.

7 EXAMINER EZEANYIM: Do you have any questions?

8 MR. BROOKS: Not really, but I did --

9 EXAMINATION

10 BY MR. BROOKS:

11 Q. This Duff 105, this is in the south half of this
12 spacing unit?

13 A. Yes, it's the second well in the south- -- I
14 believe it's in the southwest quarter.

15 Q. Okay, the 104, is that in the north half of the
16 spacing unit?

17 A. Yes, it's in the northwest quarter, it was the
18 first well drilled.

19 Q. And that's on Burlington acreage, right?

20 A. I believe that specific piece is, but it's part
21 of that spacing unit, yes.

22 MR. BROOKS: Okay, thank you.

23 EXAMINER EZEANYIM: Before I can follow this
24 conversation, let me -- let me ask a question here.

25 This well was spudded in August, but then maybe

1 you haven't really applied for the compulsory pooling
2 order. I'm looking at this order that was issued, so that
3 I can participate -- I'm not a lawyer, but to participate
4 in this discussion. Our order says that the operator of
5 the unit shall commence drilling -- drilling the proposed
6 well on or before December 15th.

7 So since I'm not a lawyer, I will throw away
8 anything you've done before December 15th and look at what
9 my order says, and if that is the case -- and then the next
10 paragraph says, Should the well not be completed within 120
11 days after commencement...

12 So commencement, are we talking about -- is it
13 the commencement in August, or the commencement that was
14 ordered by -- here?

15 I want to understand, because I'm not a lawyer,
16 and since we have a bunch of lawyers here I want you to
17 explain what that means, so I can participate in this,
18 because the order says that you should commence drilling
19 the well December 15th. Okay. So if that is the case, I
20 don't really care what you've been doing all along, as far
21 as I'm concerned. Correct me if I'm wrong. Then I will
22 look at December 15th, to 120 days. When does that end?
23 So that we can start this discussion, could you guys
24 explain to me what that means, anybody, because I --

25 MR. BRUCE: Mr. Examiner --

1 EXAMINER EZEANYIM: -- anybody?

2 MR. BRUCE: -- that was going to be part of my
3 closing argument, but I can say in actuality, I think it's
4 from the date that the well was started, not from December
5 15th. I think that's the way the order reads. It says you
6 have until the 15th to commence it, but I think you look at
7 the actual commencement date. I think that's generally the
8 way those orders read.

9 EXAMINER EZEANYIM: Okay.

10 MR. BRUCE: However, I mentioned in my opening
11 about substantial compliance. Mr. Examiner, they had until
12 December 15th to commence that well, and then they had 120
13 days to complete it from that. So if they had commenced
14 that well on December 15th, or even December 1st, they
15 would have had another four months to complete that well.

16 They did, and that's what I mean by substantial
17 compliance. They did start it, we believe that they own
18 the right to drill, and they started it early because rig
19 availability was an issue. They were slowed down through
20 no fault of their own, and as soon as they got that
21 pipeline connection they went and did it.

22 And that's why I say substantial compliance. If
23 you look at that December 15th date and add 120 days to it,
24 they completed within that time.

25 And therefore it's my argument that really the

1 order didn't expire. On the other hand, if it did expire
2 there's a good-faith basis, and the order should be
3 reinstated.

4 MR. LARSON: I have --

5 EXAMINER EZEANYIM: Before you guys say anything,
6 I need to hear from you.

7 MR. BROOKS: Well, I think that -- the way I had
8 read this order -- and I was interested in hearing what
9 other counsel said, but the way I had read this order it
10 says that, Should the subject well not be drilled and
11 completed within 120 days after commencement thereof -- I
12 would read that as running from August the 17th, I have
13 read that as running from August the 17th. And I gather
14 Mr. Bruce, who would be the person in whose interest it
15 would be to argue some other construction, does not really
16 advance a different construction of that language.

17 MR. BRUCE: No. And Mr. Brooks, and Mr.
18 Examiner, if they had not been slowed down, the timeline
19 and the testimony of Mr. Mullins showed that they would
20 have completed within that four-month period, they would
21 have drilled and completed --

22 MR. BROOKS: Right.

23 MR. BRUCE: -- within that four-month period.

24 MR. BROOKS: That would have been my
25 interpretation of the clause, though.

1 EXAMINER EZEANYIM: Okay, that would be -- even
2 that is a position there for subsequent operations.

3 So if that is the case, and you know that, you
4 know, you started August -- August what? 17th, and you are
5 going to -- you run into this problem with the pipeline,
6 you know, why didn't you invoke Rule 36? I ask this
7 question because we are here before -- Why didn't you
8 invoke Rule 36 for subsequent operations? You can come in
9 and say, We are delayed by EPFS, could you give us another
10 120 days? We could have done that under this rule.

11 MR. BRUCE: I agree, Mr. Examiner, and perhaps
12 Mr. Hegarty can testify about that. But for various
13 personal reasons I was not -- I was not available during a
14 good part of December. But accidents happen, Mr. Examiner,
15 that's all I can say. It wasn't anything intentional, and
16 I think Mr. Hegarty can testify about that. When he
17 realized that the time did pass, he did submit a letter to
18 the Division and tried to rectify the issue.

19 EXAMINER EZEANYIM: In my limited knowledge of
20 the law, I was thinking that if you had done that, we
21 couldn't be here today.

22 MR. BRUCE: I mean, that's --

23 EXAMINER EZEANYIM: I may be wrong --

24 MR. BROOKS: Well --

25 EXAMINER EZEANYIM: -- I may be wrong --

1 MR. BROOKS: -- Synergy submitted a letter
2 request, and I believe at the time the 120 days had already
3 run. Do you recall the date of that request?

4 MR. BRUCE: It was in early January, I believe,
5 Mr. Examiner.

6 MR. BROOKS: Yeah, the date would make a
7 difference because a hundred -- well, 120 days -- no, 120
8 days from August, it would expire in December, so --

9 MR. BRUCE: It would in December --

10 EXAMINER EZEANYIM: Yeah.

11 MR. BRUCE: -- mid-December.

12 MR. BROOKS: I thought that was correct. Synergy
13 sent that letter but did not give notice to any of the
14 other parties, but --

15 MR. BRUCE: And then you requested that I notify
16 Mr. Larson and Mr. Hall.

17 MR. BROOKS: That's correct.

18 MR. BRUCE: And -- which I did, and then they
19 objected and this matter was set for hearing.

20 MR. BROOKS: But even the original request was
21 not within 120 days.

22 MR. BRUCE: That is correct.

23 MR. BROOKS: Okay, thank you.

24 EXAMINER EZEANYIM: No wonder, that's why I'm
25 hearing this case, so I didn't even know all this happened.

1 MR. BRUCE: Yeah, and like I said, our next
2 witness can testify about that.

3 EXAMINER EZEANYIM: Okay. Now I'll open it up to
4 you to say what you need to say.

5 MR. LARSON: In response to the claim of the
6 delay by objection to the laying of the gathering line,
7 there are a couple of alternatives that can be -- for
8 gathering lines. It is our position, and our witness will
9 testify, that the existing line, the existing Enterprise
10 line, is on this property. And this new well and the new
11 gathering line, less than a hundred feet is a very short
12 distance.

13 There is no reason that a right of way must be
14 granted when the people that own the well also own the
15 property across which the gathering line would be laid.

16 It is our position that the operators in the
17 well, the working interest, just as they would fund the
18 drilling of the well, would also fund the laying of that
19 gathering line on their own property, thereafter retaining
20 control of that gathering line, ownership of that gathering
21 line, responsibility for that gathering line.

22 The reason that companies like Enterprise need
23 right of ways, typically, is when gathering lines are a lot
24 longer and they have to cross other people's property, and
25 you have to go to those people and say, Hey, we'd like to

1 lay this, you know, line underneath your property. Will
2 you give us the right to do so? But there was no need to
3 do so in this case.

4 I personally explained that to Enterprise folks
5 that called me in response to the denial, and I set it out
6 in the letter dated September 27th, which was forwarded to
7 Mr. Brooks as part of Mr. Bruce's correspondence in
8 February, our position being that -- Lay your own line.
9 You know, Synergy can lay the line, it's only 100 feet, and
10 we'll loan it all of the property, because there's no need
11 to further subdivide this land for eternity with a right of
12 way. That's not necessary.

13 And so that was communicated in September, and
14 our belief is that if that was a problem or if there was
15 objection to that by Synergy, they should have and could
16 have raised that at that time, come to the OCD if they had
17 a question about it and gotten an extension then, rather
18 than waiting until the 120 days had expired.

19 I also would note that the order provides that
20 Synergy is entitled to \$5000 in cost money every month
21 during the time that they're drilling the well, and so
22 extending the amount of time -- And that's one of the
23 reasons for limiting time to, say, 120 days, so that they
24 can't extend and draw out the process of drilling at the
25 expense of the other parties in the well. And

1 theoretically, all parties that submit to the others would
2 be subject to that \$5000 per month drilling fee. So that's
3 another reason that we believe that the order should not be
4 removed.

5 EXAMINER EZEANYIM: Mr. Hall?

6 MR. HALL: I have no comment. I'd be glad to
7 answer any questions you might have.

8 MR. BRUCE: Mr. Examiner, I think the witness can
9 respond to at least one issue.

10 EXAMINER EZEANYIM: Okay.

11 FURTHER EXAMINATION

12 BY MR. BRUCE:

13 Q. Mr. Mullins, you know, when Mr. Larson says,
14 Well, why didn't you build your own pipeline, what is your
15 response to that?

16 A. That would be great, if we could all build our
17 own pipelines and connect them to other people's systems
18 and sell gas into their system. But the pipeline is owned
19 by -- the gathering system in that area is owned by
20 Enterprise Field Services. I don't think that's in dispute
21 here today. The connection to the Enterprise Field
22 Services line is solely at the discretion of Enterprise
23 Field Services in this matter. We diligently attempted to
24 get the connection with Enterprise Field Services and were
25 delayed.

1 I want to repeat what I said earlier, that
2 Synergy did not receive a copy of the letter from the law
3 firm that was sent in September, until we received that
4 letter on October 27th. And the day that we received the
5 letter -- that's shown on Exhibit 1 -- we supplied a
6 release to Enterprise Field Services to connect the line.

7 With regard to the charges per month, that is for
8 operations ongoing. I think it would be unusual, highly
9 unusual, for an operator to charge the drilling overhead
10 rate of -- that was indicated, and I'm not sure
11 specifically what it was, but it was referenced at \$5000
12 per month -- unless an actual operation was going on, on
13 the well.

14 Q. So in other words, you are not attempting to
15 charge \$5000 a month from mid-August, 2006, to mid-
16 February, 2007?

17 A. No, we are not to the best of my knowledge, and
18 that would be highly unusual. Typically, these charges are
19 based only when operations are occurring on the well, such
20 as the days the well was actually being drilled, the actual
21 frac days and completion days where there's a rig on the
22 well site, and the actual facility days where they're
23 installing the pumpjack and the separator, and those would
24 be the days that -- you know, that would relate to that.

25 Q. And that would just be a couple weeks' time for

1 drilling one of these shallow wells?

2 A. That is correct.

3 And with regard to right of way, I do not believe
4 it is correct with regard to right of way, specifically,
5 even with regard to federal leases and state leases. Even
6 if you have a state lease or a federal lease, I believe you
7 have to obtain additional right of way on those properties
8 to access for not only road, water-gathering lines or gas-
9 gathering lines -- those are all separate right of way
10 requests. And I know that the federal regulations were
11 rewritten in January, effective January of 2007, requiring
12 even adjacent leases that are federal obtaining right of
13 way across them.

14 We diligently in this matter attempted to get
15 this well connected and completed. We have our money
16 invested in this project, and we'd like to see a return on
17 it.

18 EXAMINER EZEANYIM: Before you -- I know most of
19 them, they have known a lot about this well. Because I'm
20 going to be hearing this case, I didn't know anything, and
21 that's very good.

22 I have one question for you, and I have one
23 question for you, before you continue.

24 What is the distance between -- from this well to
25 the gathering line? What is it? You mentioned that --

1 THE WITNESS: The exact distance, I would have to
2 refer to the survey plat, which I do not have.

3 EXAMINER EZEANYIM: It's --

4 THE WITNESS: It's -- I'm going to say it's a
5 hundred feet --

6 EXAMINER EZEANYIM: A hundred feet.

7 THE WITNESS: -- but regardless of the distance,
8 the connection is entirely controlled by Enterprise Field
9 Services.

10 EXAMINER EZEANYIM: Yes, and from what you said,
11 Mr. Larson -- I'm sorry, I -- you said they could have
12 connected that -- that they could have connected the well
13 to the pipeline. Is that the normal industry practice for
14 them to do that, or do they have to ask for the right of
15 way to that pipeline? Because I think what you stated
16 previously was that they could have done that without even
17 asking the EPFS to do that?

18 MR. LARSON: Well, that's partially what I meant.
19 They can't just tap into a line without mentioning it to
20 them or anything like that.

21 But they have the option of buying their own
22 meter, running our own gathering line on our own property,
23 up to the gathering line that was already in place for
24 another well that we're not talking about here today, but
25 another well that's on the property, and say to El Paso --

1 excuse me, Enterprise -- We're drilling this other well
2 over here, describe it and all that sort of thing, and we
3 expect to have X number of gas, and we'd like for you to
4 gather it for us and enter into a gathering agreement with
5 Enterprise. And as part of that, specify that the
6 connection would be made on the Enterprise gathering
7 system, right there at the entry into the gathering system.

8 And that's entirely appropriate, it's legal and
9 it's prudent when all of the property owners are a small
10 group, as is the case here.

11 When you're talking about a federal property, or
12 state lands or other lands where you have a variety of
13 owners, and you may have differing interests between the
14 surface owners, let's say, and the working interest or the
15 mineral owners -- That's not the case here. They're the
16 same people all the way down to the center of the earth, to
17 the heavens, on this property. So there was no need for
18 that.

19 And this was also discussed. I discussed this
20 with the Enterprise folks, and they did not disagree that
21 that was an option.

22 EXAMINER EZEANYIM: Okay. Does anybody have
23 anything further? Do you have anything?

24 MR. BRUCE: No further questions.

25 MR. BROOKS: No questions.

1 THE WITNESS: Thank you, sir.

2 PATRICK HEGARTY,

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

5 DIRECT EXAMINATION

6 BY MR. BRUCE:

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

8 A. Patrick Hegarty.

9 Q. Where do you reside?

10 A. Aztec, New Mexico.

11 Q. What is your relationship to Synergy?

12 A. I'm one of the principals of Synergy.

13 Q. Are you also by profession a petroleum landman?

14 A. Yes, I am.

15 Q. Have you previously testified before the Division
16 as a petroleum landman?

17 A. Yes, I have.

18 Q. And were your credentials as an expert accepted
19 as a matter of record?

20 A. Yes, they were.

21 Q. And are you familiar with the land matters
22 involved in this case?

23 A. Yes, I am.

24 MR. BRUCE: Mr. Examiner, I'd tender Mr. Hegarty
25 as an expert petroleum landman.

1 EXAMINER EZEANYIM: Mr. Hegarty is so qualified.

2 Q. (By Mr. Bruce) Mr. Hegarty, before we get to the
3 couple of exhibits I have for you, in the original hearing
4 or hearings on this matter, you did present evidence
5 regarding the efforts to obtain the voluntary joinder of
6 the parties in the well unit, correct?

7 A. Yes.

8 Q. And that was presented and the Division ruled in
9 favor of Synergy in that case?

10 A. Yes, they did.

11 Q. As an aside, one of the parties who entered an
12 appearance was Mr. Robbins, who Mr. Larson referred to
13 earlier?

14 A. Yes.

15 Q. And submitted as part of that record was a -- was
16 there a farmout agreement for Mr. Robbins?

17 A. Yes, there was.

18 Q. Now, Mr. Larson stated that Mr. Robbins only
19 owned a non-participating -- a royalty interest, a non-
20 participating royalty interest. Is that your opinion?

21 A. No, it is not.

22 Q. Was there a quiet title decree back in the 1950s
23 that stated that Mr. Robbins owned an undivided mineral
24 interest in this quarter section of land?

25 A. Yes, there was.

1 Q. Okay. So he did not own a royalty interest, he
2 owned an actual mineral interest?

3 A. That's correct. And as a matter of fact, this is
4 the first time that Mr. Larson has made that argument.
5 Prior to this, he made the argument that the farmout
6 agreement that we had with Mr. Robbins was not in effect
7 and was unilaterally canceled, so he's changed his story in
8 that regard.

9 EXAMINER EZEANYIM: The farmout -- The farmout
10 agreement between Synergy and Mr. Robbins --

11 MR. BRUCE: It's part of the record.

12 EXAMINER EZEANYIM: Okay.

13 MR. LARSON: As is my prior argument, if you'll
14 look at the --

15 EXAMINER EZEANYIM: Okay.

16 MR. BRUCE: And that's why I don't want to
17 present all the data, but it is in the file, all these
18 documents are in the file, including the quiet title suit
19 and including briefs by Mr. Larson.

20 EXAMINER EZEANYIM: Okay.

21 Q. (By Mr. Bruce) Let me hand you what's been
22 marked Synergy Exhibit 2, and there are several documents
23 in that. Is the first couple of pages of Synergy Exhibit 2
24 the letter from Mr. Larson to Enterprise Field Services,
25 denying the right of way?

1 A. Yes.

2 Q. Now Mr. Larson -- you heard his argument that
3 while the interest owners could build their own pipeline,
4 but in his letter he also denies that Synergy owns
5 anything?

6 A. That's correct.

7 Q. So you're kind of caught crosswise there?

8 A. He's saying one -- on one hand he's saying one
9 thing, that we don't own an interest, and on the other hand
10 he's saying because we own an interest we could have built
11 our own line. That's contradictory.

12 Q. And there's some handwritten notes down in the
13 lower right-hand first page, "From EPFS 10-27-06". What
14 does that indicate?

15 A. We never received a copy of this letter, we got
16 it through Enterprise.

17 Q. Okay. And was -- that was the date that you
18 received it, about a month after it was written?

19 A. That's correct.

20 Q. What did Synergy then do?

21 A. We contacted -- and there's one point to make
22 here, is, Burlington Resources, which is an affiliate of
23 ConocoPhillips, owns an interest in this well and, contrary
24 to Mr. Larson's claims, did pay for their proportionate
25 share of this well, so I did want to clear that up.

1 But anyway --

2 Q. And to take a step back, Burlington is subject to
3 a joint operating agreement for the well?

4 A. Yes, they are, as well as Mr. Walmsley is. And
5 that's another point. His interest would not be force
6 pooled under this hearing. They would go under a
7 nonconsent status under the terms of the governing
8 operating agreement.

9 Q. The only two parties pooled in this proceeding
10 were -- or Mr. -- I should say -- not Mr. Smith, but Edwin
11 Smith, LLC, Mr. Smith's company?

12 A. Yeah.

13 Q. And a Leola Kellogg?

14 A. Uh-huh.

15 Q. And those were the only two parties force pooled?

16 A. That's correct.

17 Q. Okay. But once you received this letter from the
18 Sutin law firm or from EPFS, what did Synergy do?

19 A. I contacted Justin Jones and immediately
20 discussed the means of which we could relieve -- alleviate
21 any liability of Enterprise as it related to this matter,
22 and he took it to his superiors, and also I made a number
23 of trips over to their office and basically, you know,
24 argued that Synergy would take whatever liability there was
25 and -- necessary to get that pipeline built so that we

1 could make -- you know, finish our completion of this well.

2 Q. And going three pages into Exhibit 2, the final
3 indemnity -- hold-harmless and indemnity agreement, was not
4 signed until early December?

5 A. That's correct.

6 Q. So it is unlikely that the pipeline connection
7 was made before that date?

8 A. That's correct.

9 Q. And do you request the Division to hold either
10 that you substantially complied with the order or that the
11 order be reinstated?

12 A. Yes, I would.

13 Q. And would you also ask that the risk penalty be
14 included in the order?

15 A. Yes, I would.

16 Q. Mr. Larson also asked that the amounts that Edwin
17 Smith, LLC, paid should be returned. What do you think of
18 that idea?

19 A. That's crazy.

20 Q. Money was expended, correct?

21 A. Correct.

22 Q. There is no risk penalty against Mr. Smith
23 because he paid in time, correct?

24 A. That's correct.

25 Q. And do you think it's just fair and equitable

1 that he pay for his proportionate share of the well?

2 A. Yes, he should have, and did.

3 Q. Just one or two other questions. There is an
4 order in the district court regarding the suspense of
5 funds. You don't deny that?

6 A. No.

7 Q. Has there been a motion for reconsideration
8 filed?

9 A. Yes.

10 Q. Okay. And if reconsideration is granted and that
11 order is changed, would you ask that that be taken into
12 consideration by the Division?

13 A. Yes, we would.

14 Q. One final matter. Who is -- In the west half of
15 Section 8, both wells, who is the largest interest owner?

16 A. Burlington Resources, which is now an affiliate
17 of ConocoPhillips.

18 Q. Have you been in touch with ConocoPhillips
19 regarding the operation of this well?

20 A. Yes, we have.

21 Q. Now at the prior hearing, if I recall correctly,
22 Mr. Smith either asked to be named operator of this well or
23 to be operator or, I think, to recomplete the current PC
24 well on that southwest quarter?

25 A. Yes, he did.

1 Q. I'm handing you Synergy Exhibit 3. What does
2 that letter state? Or what is it, and who is it from?

3 A. Well, because of the continual discussion that I
4 guess the Sutin attorneys had with us and everyone, Mr.
5 Smith was of -- at least we were of the opinion that Mr.
6 Smith was of the opinion that he could operate one or both
7 of these Duff wells, and we suspected that that was a big
8 motivator of all of his efforts in regards to the NMOC, D,
9 was to gain operatorship of the Duff wells. And we wanted
10 to make it very clear to Mr. Smith that if for whatever
11 reason Smith were -- Synergy were not to operate these
12 wells, that ConocoPhillips would assume those duties. And
13 under the governing operating agreement, being the largest
14 working interest owners, they would have that right.

15 But we just wanted to make it clear, if the
16 motivation for Mr. Smith with this over-a-year-long
17 proceedings and endless legal actions, was -- the
18 impression that he would be operating the Duff wells at
19 some future date, we wanted to dispel that and hopefully
20 gain some sort of conclusion to these endless legal
21 proceedings and matters, and we're hoping that this letter
22 will help in that regard.

23 EXAMINER EZEANYIM: Under the operating agreement
24 -- you know, under the operating agreement Burlington or
25 ConocoPhillips or Synergy will operate --

1 THE WITNESS: Right, right.

2 EXAMINER EZEANYIM: Is that what you are trying
3 to make clear today?

4 THE WITNESS: Yes, we --

5 MR. BRUCE: And so this letter is from
6 ConocoPhillips saying they would want to operate --

7 THE WITNESS: That's right.

8 MR. BRUCE: -- if Synergy does not.

9 THE WITNESS: That's right.

10 EXAMINER EZEANYIM: Okay.

11 Q. (By Mr. Bruce) Were Exhibits 2 and 3 prepared by
12 you or compiled from company business records?

13 A. Yes, they were.

14 Q. In your opinion, is the -- either the
15 reinstatement of the order or a determination that it's
16 still valid in the interests of conservation and the
17 prevention of waste?

18 A. Yes, it is.

19 MR. BRUCE: Mr. Examiner, I'd move the admission
20 of Synergy Exhibits 2 and 3.

21 EXAMINER EZEANYIM: Any objections?

22 MR. HALL: (Shakes head)

23 MR. LARSON: No objections.

24 EXAMINER EZEANYIM: Okay, Exhibits 2 and 3 will
25 be admitted into evidence.

1 MR. BRUCE: And I pass the witness.

2 CROSS-EXAMINATION

3 BY MR. LARSON:

4 Q. Mr. Hegarty, you testified that Burlington, a
5 subsidiary of ConocoPhillips, has contributed a portion of
6 drilling costs for the Duff 105 well; is that correct?

7 A. That's correct.

8 Q. Can you tell me how much they contributed?

9 A. Their proportionate share.

10 Q. Do you know that amount?

11 A. No, I don't.

12 Q. Do you know the approximate amount?

13 A. It's one half of the cost of the well, and the
14 engineers -- if you want to get Tom back up here, you could
15 probably be more exact in that regard.

16 Q. Can you tell me when they contributed that?

17 A. I can't.

18 Q. Was it after the time that the pooling order was
19 granted?

20 A. You know, I just -- I don't want to say because I
21 don't know for sure.

22 Q. Do you know if it was within the last year?

23 A. I'd say that would be safe to say.

24 Q. How was it paid? In what form?

25 A. I think they sent us a check.

1 Q. Was there a cover letter or transmittal letter
2 with that?

3 A. Boy, that would be handled by our accountant.

4 Q. Who would that be?

5 A. Ricky Sue.

6 Q. Is that a lady?

7 A. Yes.

8 Q. Is she an employee of Synergy?

9 A. Yes, she is.

10 Q. She's in-house, as opposed to an outside --

11 A. She's in-house. She's a CPA.

12 Q. You said you've had communications with somebody
13 -- or persons at ConocoPhillips. Can you tell me who they
14 are?

15 A. Justin Jones and Velda Hurst.

16 Q. Now, Justin Jones, isn't he with Enterprise?

17 A. Yes, isn't that who you asked?

18 Q. No, I'm sorry, ConocoPhillips --

19 A. Oh, ConocoPhillips, yes. Bill Rainbolt, who is
20 the land supervisor, Linda Dean, and then also David
21 Valdez.

22 Q. And what form of communication has that been?
23 Oral or written?

24 A. Oral.

25 Q. So you have nothing in -- no written

1 correspondence, other than perhaps this letter that was
2 admitted today, with any of those folks at ConocoPhillips?

3 A. You know what? There was -- I gave testimony in
4 prior hearings to the fact that Linda Dean made it very
5 clear that if Synergy didn't operate that well, that they
6 would. And so I have testimony that I've given in that
7 regard at prior hearings over the past year-plus.

8 Q. How about your own testimony? I'm asking about
9 correspondence, written correspondence to or from Linda
10 Dean or the others at ConocoPhillips. Do you have anything
11 in that written form?

12 A. To my knowledge, I don't remember any, no.

13 Q. Has Synergy complied with the District Court's
14 order to suspend the proceeds from the Duff 104 and the 105
15 wells?

16 A. Yes, they have.

17 Q. How?

18 A. They suspended the moneys.

19 Q. All right, where have they been -- What account
20 are they in?

21 A. Wells Fargo.

22 Q. Was the Wells Fargo account created specifically
23 for these proceeds?

24 A. Yes.

25 Q. Who is your contact person at Wells Fargo?

1 A. I don't know. I can't remember our personal
2 banker. He was in my office just last week too.

3 MR. BRUCE: We can obtain that information for
4 Mr. Larson --

5 THE WITNESS: Yeah.

6 MR. BRUCE: -- after the hearing, if that's okay.

7 Q. (By Mr. Larson) Have you attempted to provide
8 any of the information regarding the suspense of the funds
9 to any parties other than Synergy?

10 A. We gave that information to Kyle French. I
11 assume he gave that -- That's what we were instructed to
12 do, is provide that information to our attorney. And I
13 assumed he took care of it, but I don't know. As a matter
14 of fact, we're not even allowed to contact people
15 individually; it's supposed to go through our attorney, is
16 from what I understand; I've been educated in that regard.

17 MR. LARSON: Good advice. No further questions.

18 MR. HALL: Nothing further.

19 EXAMINER EZEANYIM: Do you have anything?

20 MR. BROOKS: Yeah.

21 EXAMINATION

22 BY MR. BROOKS:

23 Q. Mr. Hegarty, I've been over much of this before.
24 You may recall I was --

25 A. Yeah.

1 Q. -- acted as the Commission attorney in the first
2 round --

3 A. Yeah.

4 Q. -- and then I got a pass on the second round.
5 Back in it on the third round, unless there are more rounds
6 that I'm not aware of.

7 MR. HALL: You missed the Commission proceeding.

8 MR. BROOKS: I was in the Commission proceeding.

9 MR. BRUCE: That was for the first well.

10 MR. HALL: Yeah --

11 MR. BROOKS: Oh, for the first well.

12 MR. BRUCE: There was no Commission proceeding on
13 the second --

14 MR. BROOKS: Right, and I was not part of the
15 hearing on the second well.

16 Q. (By Mr. Brooks) But the -- I don't have any of
17 the title information before me, but as I recall, there
18 were -- the interest owners -- there was Mr. Walmsley as
19 trustee, and there was the issue of whether he owned the
20 entire family interest as a result of a --

21 A. -- Joint tenancy.

22 Q. -- joint tenancy with the right of survivorship,
23 or whether the interest was split among the four heirs
24 or --

25 A. Uh-huh.

1 Q. -- and Synergy had acquired at that time, Synergy
2 had acquired two of those four heirships, and one of them
3 was outstanding if I remember rightly.

4 A. Well, and then we went ahead, and we have a gal
5 who did a lot of ancestry sort of work, and we actually
6 found heirs to that party that originally we came in to
7 force pool --

8 Q. Yeah.

9 A. -- and we started acquiring all their interests.

10 Q. So at the time that this order that's now before
11 us was entered, then, did Synergy have three of those four
12 -- sisters, I guess they were --

13 A. Yeah, and one was a mother, a mother -- a
14 stepmother, a stepmother, and then there were the
15 sisters --

16 Q. Yeah.

17 A. -- or the daughters, I mean.

18 Q. So Synergy had all of -- Synergy claimed to have
19 three-fourths of that interest; is that --

20 A. Well, there were -- yes, there were interests --
21 because of the lack of probates and wills and, you know,
22 heirship -- and we had to rely somewhat on the
23 representations of the people we were acquiring, and as we
24 got further along, you know, and we started getting copies
25 of probates and wills and started ferreting those things

1 out, a lot of them were never recorded. Then we got better
2 knowledge, and we acquired all the interests as we, you
3 know, went along and got better educated.

4 But our position was, you know, anybody that
5 potentially could have an interest, you know, we'd contact
6 them and advise them of, you know, what's going on.

7 Q. Right. But that family that Mr. Walmsley
8 represents, they had -- you claim that Synergy had three-
9 fourths of that interest and Walmsley one-fourth; is that
10 the way it was? And then --

11 A. Pretty much, yes.

12 Q. -- then Walmsley claims that he owns 100 percent
13 of it under --

14 A. That's correct.

15 Q. -- this joint -- joint tenancy.

16 A. Yes.

17 Q. Okay, and they own how much?

18 A. But one -- you know, one important issue here --

19 MR. BRUCE: And just for --

20 THE WITNESS: Okay.

21 MR. BRUCE: -- the entire family, which was
22 referred to as, I think, the Hasselman family --

23 Q. (By Mr. Brooks) Yeah, how much of that -- how
24 much of the mineral interest did they own?

25 A. They owned 50 percent of the southwest quarter of

1 Section 8 of 29-11.

2 Q. Okay.

3 A. So 80 acres.

4 Q. What about this guy that had the farmout from --

5 A. He had a -- five -- five mineral acres, Joe
6 Robbins.

7 MR. BRUCE: Yeah, a 1/16 is what Mr. Hegarty
8 testified to in the prior hearing.

9 MR. BROOKS: Okay.

10 MR. BRUCE: Undivided 1/16.

11 Q. (By Mr. Brooks) Then did Smith own the other --

12 MR. BRUCE: Or no, it was less than -- it was a
13 3.125-percent interest.

14 THE WITNESS: Yeah.

15 MR. BRUCE: 1/16 divided by a 1/2 mineral
16 interest. So it was 3.125 percent.

17 Q. (By Mr. Brooks) Then did Edwin Smith own the
18 rest of it?

19 A. Yes.

20 Q. Okay. And Synergy claimed under the three
21 Hasselman heirs and also claimed under this farmout --

22 A. Uh-huh.

23 Q. -- from the gentleman whose name I've forgotten.

24 A. Joe Robbins.

25 Q. Joe Robbins. Okay.

1 And so at the time -- Now the operating
2 agreement, who are the parties to the operating agreement?

3 A. Synergy is the designated operator.

4 Q. Right.

5 A. And then Mr. Walmsley, who Scott Hall is
6 representing, is a signatory party. And Burlington
7 Resources, which is now a subsidiary of ConocoPhillips, is
8 a signatory party to that operating agreement.

9 Q. Right. Okay, so under your view of things, who
10 is force pooled by the order?

11 A. Just the miscellaneous interest owners under the
12 Hasselman heirs.

13 MR. BRUCE: Mr. Examiner, I think the two parties
14 pooled -- and that's in the prior record -- were Edwin
15 Smith, LLC, Mr. Smith's company --

16 MR. BROOKS: Right.

17 MR. BRUCE: -- and then this one, Leola Kellogg,
18 who, if you go back to the record, owned like a 1.5625 --

19 MR. BROOKS: She's --

20 MR. BRUCE: -- percent.

21 MR. BROOKS: -- one of the Hasselman heirs?

22 MR. BRUCE: That is correct.

23 MR. BROOKS: Okay. And I take it that the other
24 side may have a difference of opinion as to the exact --

25 MR. BRUCE: Yeah, they dispute the ownership.

1 There is no dispute as to Mr. Smith's interest.

2 MR. BROOKS: Okay.

3 MR. BRUCE: Well, I mean, there's the Robbins
4 interest. But overall, really what is at dispute is the
5 undivided one-half Hasselman heirs' interest. That is
6 the --

7 MR. BROOKS: Right.

8 MR. BRUCE: -- biggest dispute.

9 Q. (By Mr. Brooks) Well, I think I understand that
10 dispute. Now who participated in the well?

11 A. Mr. Walmsley participated in the first well to
12 the extent of his one-eighth interest that we showed he
13 owned. And so he participated to that effect. And he
14 stated in a deposition here just yesterday that that's --

15 MR. HALL: We're going to object to out-of-
16 court --

17 Q. (By Mr. Brooks) Yeah, my real question is, who
18 participated in this one?

19 A. Okay, okay. This -- the 105 is what you're
20 asking --

21 Q. Yeah --

22 A. -- Duff 105?

23 Q. -- that's the one that we were here about before.

24 A. Okay.

25 Q. Who participated in this?

1 A. Burlington Resources, ConocoPhillips, and Mr.
2 Smith.

3 Q. And Synergy?

4 A. And Synergy.

5 Q. And Smith put up the full amount of expenses
6 proportional to his interest?

7 A. Yes, he did.

8 Q. Including the Robbins interest, because you said
9 50 percent?

10 A. No, he did not.

11 Q. Okay. So the Robbins interest came out of which
12 50 percent?

13 A. Well, we farmed in Mr. Robbins' interest --

14 Q. Right.

15 A. -- and we paid for Mr. Robbins' interest.

16 MR. BRUCE: The question -- That is connected
17 with the Smith interest, not the Hasselman interest.

18 Q. (By Mr. Brooks) Well, that was what's confusing
19 me, because Mr. Hegarty, as I understand, you testified
20 that Smith put up half of the costs, and it would seem to
21 me to be less than --

22 A. Oh, no, no. Yeah, you're right.

23 Q. -- less than 50 --

24 A. It's less than 50 percent, yeah.

25 Q. A little bit less?

1 A. Yeah. Well, that's because we billed him for 50
2 percent less -- actually, it would be 25 because it was a
3 320-acre proration unit.

4 Q. Right, that's right.

5 A. But it's -- we billed him for his interest, which
6 did not include the Robbins interest, because --

7 Q. And he paid for what you billed him for?

8 A. That's correct.

9 Q. Okay. He didn't tender anything additional?

10 A. No.

11 Q. Okay. And --

12 THE WITNESS: So in effect, would that mean that
13 his interest is force pooled? If he claims --

14 MR. LARSON: It's not in the order.

15 THE WITNESS: -- if it's found that he owned it.

16 MR. LARSON: It's not in the order.

17 Q. (By Mr. Brooks) Well, our orders say -- This
18 would be a matter of interpretation. Our orders say that
19 all interests are pooled -- we pool all interests whatever
20 they may be, although that's -- we've always construed that
21 as meaning all interests that were not committed.

22 A. Okay.

23 Q. But Mr. Smith was never party to an operating
24 agreement?

25 A. No.

1 Q. Okay. And Mr. Walmsley, who was a party to an
2 operating agreement under your contention, never advanced
3 any money for this well?

4 A. Right, he did not want to participate.

5 Q. Okay.

6 A. He made that clear to us.

7 MR. BROOKS: Okay. I think I understand those
8 basic facts. I'm mostly just refreshing my recollection
9 from things I've been over before, but I believe that's all
10 I have at this moment.

11 EXAMINER EZEANYIM: Good. And turning to that
12 myself, since you have nothing to say anymore -- Okay.

13 EXAMINATION

14 BY EXAMINER EZEANYIM:

15 Q. Mr. Hegarty, the well is currently producing,
16 right? Right now?

17 A. That's correct.

18 Q. It's currently -- And then all the proceeds have
19 been put into that escrow account --

20 A. Yes.

21 Q. -- as directed by the court? Okay.

22 And then the court's ruling -- I haven't read
23 that, I don't have time to read it, to really read it -- is
24 that you should be doing that, and the odd interest in that
25 west half is established, or just on the 105 well? Is that

1 on both wells, or on the -- just 105 well? Which well? I
2 mean, because I think this is saying that you should return
3 all the proceeds and put it in that escrow until the
4 specific interest is really resolved. Is that the whole
5 west half or just in that well -- southwest quarter, 105?

6 MR. BRUCE: The order does specifically apply to
7 both wells, does it not?

8 MR. LARSON: It does.

9 EXAMINER EZEANYIM: Well --

10 MR. BRUCE: I'm not involved in the litigation,
11 but it does apply --

12 EXAMINER EZEANYIM: Oh, for district court, you
13 -- okay, now -- But what is before us now is Well 105. I
14 mean, I don't want to bring 104 in there. Just 105?

15 MR. LARSON: That's correct.

16 Q. (By Examiner Ezeanyim) Okay. So are you telling
17 me that the interest ownership in 105, that this could --
18 how much each person owns?

19 A. The dispute -- yes, there -- well, you know,
20 there is a dispute as to the -- who owns the minerals. But
21 it's our contention that under the terms of the operating
22 agreement, being that Mr. Walmsley agreed to go nonconsent
23 in the second well, that there really isn't a dispute.

24 Q. Okay. So how do the parties intend to resolve
25 the district court judgment? You know, when is that going

1 to end?

2 A. Oh --

3 MR. LARSON: I can answer that. Attorney for
4 Synergy and Mr. Walmsley in that matter. The court had
5 issued an order that summary judgments be filed on February
6 12th of this year. Synergy requested 60 days of discovery.
7 That discovery ends on Friday, two days -- tomorrow, excuse
8 me. And then summary judgments are to be filed within 30
9 days after that. We believe that this case can and should
10 be decided on summary judgment as to who owns these
11 disputed interests --

12 EXAMINER EZEANYIM: Okay.

13 MR. LARSON: -- and that the court's objective
14 was to suspend the proceeds until they're determined, and
15 then they would be distributed in accordance with the
16 court's determination of ownership.

17 EXAMINER EZEANYIM: So I assume that a week
18 from -- thirty days from tomorrow there will be a decision
19 on that -- on this case.

20 (Laughter)

21 MR. BRUCE: Mr. Examiner, I think you can ask Mr.
22 Brooks how judges decide cases.

23 MR. BROOKS: Well, I don't know what the schedule
24 -- I don't know what is to be expected of the judges in San
25 Juan County. I've never practiced there. But I would say

1 -- I would guess we're at least six months before a
2 judgment, even if the judge decides it can be resolved on
3 summary judgment. And of course when the judge does hand
4 down a judgment, any party can appeal. So it could be
5 years.

6 EXAMINER EZEANYIM: It could be years? Okay.

7 THE WITNESS: Oh, no.

8 (Laughter)

9 THE WITNESS: Hopefully, we won't be back though.

10 EXAMINER EZEANYIM: Okay, so if it's going to be
11 years, then are you telling me we can't go against what
12 they said in the --

13 MR. BROOKS: Well, you know, that's a little more
14 complicated question than perhaps my glib response
15 justifies, because the Oil Conservation Division is not a
16 party to that case --

17 EXAMINER EZEANYIM: Yeah, we --

18 MR. BROOKS: -- so we're not literally bound by
19 the terms of the order.

20 At the same time, the district court has
21 jurisdiction to determine title to mineral interests, which
22 the Oil Conservation Division does not have --

23 EXAMINER EZEANYIM: Yes.

24 MR. BROOKS: -- so, you know, that is an issue to
25 address where a specific question is involved as to what we

1 would want to put in our order.

2 EXAMINER EZEANYIM: So with that in mind, since
3 we lack jurisdiction to determine who owns what, of course
4 we don't meddle in those things, so we can do whatever we
5 want with this order, regardless of what comes out of, you
6 know --

7 MR. BRUCE: Mr. Examiner, I think, you know, you
8 can either hold that the order is valid or reinstate the
9 order, or you can deny force pooling.

10 I mean, as Mr. Brooks said, the final mineral
11 title will be determined by the court, and it's simply
12 Synergy's position that it's reasonable to force pool the
13 parties in the interim so that there is an operator in
14 place for this well, because not everybody signed under a
15 JOA.

16 EXAMINER EZEANYIM: Uh-huh.

17 MR. BRUCE: They need an operator -- we need an
18 operator in the interim. And Synergy is the operator of
19 the first well, and it's our position that it should
20 operate both wells.

21 EXAMINER EZEANYIM: And we want the well to
22 produce.

23 Okay, now turning to what you -- I think --
24 unless you have any other thing for him, so that you can
25 present your --

1 MR. BRUCE: I just have one question.

2 EXAMINER EZEANYIM: Okay.

3 REDIRECT EXAMINATION

4 BY MR. BRUCE:

5 Q. Mr. Larson asked you about correspondence with
6 Burlington. Certainly, written well proposals were made to
7 Burlington?

8 A. Yes.

9 Q. And AFEs were sent to them?

10 A. Yes.

11 Q. And they signed their elections?

12 A. Yes.

13 Q. And sent the elections back to you?

14 A. Yes.

15 Q. So there has been --

16 A. And they signed the operating agreement.

17 MR. BRUCE: And they signed the operating
18 agreement. Okay, thank you.

19 Mr. Examiner, the only other thing I have in this
20 matter is, my notice affidavits are out in the car, but I
21 did notify all of the parties involved today, and I would
22 grab those whenever available and submit those --

23 EXAMINER EZEANYIM: Okay.

24 MR. BRUCE: -- later.

25 Mr. Hall or Mr. Larson, who wants to go first?

1 MR. HALL: I have no witnesses this morning.

2 EXAMINER EZEANYIM: Okay. May you call your
3 witness?

4 MR. LARSON: I don't think we're going to need
5 to. I do want to clear up one point and offer a possible
6 solution anyway.

7 Ed Smith does not care -- this is a little bit
8 general -- who operates the well, as long as it is a party
9 that does actually have an ownership interest. Smith --
10 Edwin Smith does already presently operate a well in this
11 same section of the property, just a few thousand feet
12 away, and so it is convenient and makes sense that he could
13 operate the Duff 105 also.

14 But Ed Smith does not object to ConocoPhillips
15 operating the both of these wells. ConocoPhillips-
16 Burlington clearly has an interest and owns the lease on
17 the entire northwest quarter, so there's no dispute in any
18 way about their ownership.

19 I would need to double-check, probably, with
20 Walmsley, but I'm confident that Robbins and Edwin Smith,
21 and I'm almost certain that Walmsley would also agree that
22 ConocoPhillips could operate the both of these wells. The
23 letter here indicates -- from Mr. Rainbolt, that
24 ConocoPhillips is willing to do so. Indeed, in my prior
25 discussions with Linda Dean at ConocoPhillips, she also

1 stated that they would be receptive to an invitation to
2 operate that half of the section.

3 So that may be a possibility to confirm that this
4 order has expired, simply designate ConocoPhillips, kind of
5 an independent or neutral party here, as the operator until
6 this dispute is resolved.

7 EXAMINER EZEANYIM: Before -- I know you want to
8 ask questions. Before I go for that, from what you said,
9 why do you want Mr. Smith to be the operator, instead of
10 Synergy?

11 MR. LARSON: We do not -- We do not believe that
12 Synergy owns any interest in this property, and our -- my
13 clients are not comfortable with the business practices of
14 Synergy and --

15 MR. BRUCE: Mr. Examiner, you know, I would
16 object to that. There's no evidence in any record about
17 Synergy's business practices, and to make these unfounded
18 statements is really offensive to Synergy.

19 EXAMINER EZEANYIM: I will sustain that
20 objection, because here we -- and the finding that Synergy
21 has the right to drill the well. I mean -- I mean, if I --
22 if you look at this order there is a place, it says they
23 have the -- where we say they have to right to drill the
24 well. Unless there is some mistake there, you know.

25 They must have some interest to -- they're going

1 to be accorded that -- that they have the right to drill
2 this well, and proposing to drill this Well 105, unless
3 there is anything to the contrary, to say that they don't
4 have any right or -- So that might come into play in my
5 ruling here.

6 But from this order, I think you stated that they
7 have some interest, and they have a right to drill. I
8 mean, I'm just reading the order. I mean --

9 MR. LARSON: We don't disagree with the terms of
10 the order. We understand that the Commission did make that
11 determination, and on two occasions when Synergy has made
12 its applications, there is testimony and evidence in the
13 record in the 105 and also the 104 as to why Edwin Smith
14 believes that they don't.

15 EXAMINER EZEANYIM: Okay.

16 MR. LARSON: The Commission reached a different
17 conclusion, and we have now taken that question to a
18 district court.

19 EXAMINER EZEANYIM: So it's your opinion that
20 they don't have any right, they are -- either by farmout or
21 farm-in or whatever, they don't have any right to drill any
22 wells down there?

23 MR. LARSON: No ownership at all in the section,
24 is our position.

25 EXAMINER EZEANYIM: Okay.

1 MR. BRUCE: My only comment on Mr. Larson's
2 statement is that there has to be a pooling order, because
3 there is no JOA covering Mr. Smith's interest or the Leola
4 Kellogg interest, and therefore there has to be a pooling
5 order. Otherwise, under general case law, there may be
6 issues regarding -- Mr. Smith could conceivably claim half
7 of production rather than a quarter of production, which
8 he's now claiming, and therefore there has to be a pooling
9 order in order to equitably allocate production among the
10 interest owners.

11 EXAMINER EZEANYIM: Of course there should.
12 There must be a -- you know, allocate -- when they
13 participate, there should be a pooling order.

14 And in some cases, if I understand correctly, the
15 working interest -- ConocoPhillips may not like to be the
16 operator, might assign the operatorship to somebody else,
17 you know. Sometimes -- Don't we do that? Do we?

18 MR. BROOKS: Well, the only application we have
19 before us right now is Synergy's Application.

20 EXAMINER EZEANYIM: Yeah.

21 MR. BROOKS: Now we do sometimes appoint someone
22 other than the Applicant as an operator, but I've never
23 seen it done except in a situation where the Applicant
24 requested someone else be appointed as operator. So I
25 guess that's my answer to your question.

1 EXAMINER EZEANYIM: Okay, that -- I wanted to get
2 that clarification, because not knowing all the legal, you
3 know, language here, you know, that hindsight is very
4 important to me, so that's why I wanted to know that.

5 MR. LARSON: And in response to the point about
6 the pooling order being required, I disagree. The District
7 Court's order clearly states that all proceeds from both
8 wells are to be held in suspense, the objective being that
9 once that District Court determines who owns what, those
10 proceeds will be distributed in accordance.

11 So any claims made in between now and that final
12 determination, it doesn't really matter. All the proceeds
13 are to go into the bank account.

14 MR. BRUCE: But there would still be no
15 designated operator for that 105 well unless absent a
16 pooling order.

17 MR. LARSON: I think the Commission can fashion
18 an order, if that's what their intent is.

19 EXAMINER EZEANYIM: Yeah, I was -- I was making
20 clear that the well should continue to produce. We
21 normally shut it in because --

22 MR. LARSON: Absolutely.

23 EXAMINER EZEANYIM: -- ownership interest had to
24 produce. And we must appoint an operator of that well. I
25 mean, that's two basic things that must happen, so...

1 MR. LARSON: We agree.

2 MR. BROOKS: Since Smith participated in this
3 well, then there wouldn't be any nonconsent -- there
4 wouldn't be any risk penalty recoverable against Smith,
5 right, under the terms of the order?

6 MR. LARSON: I believe so. There's this possible
7 question about Robbins and --

8 MR. BROOKS: Well, yeah, but they didn't
9 participate on behalf of Robbins --

10 MR. LARSON: Correct.

11 MR. BROOKS: -- didn't attempt to? But did not
12 tender any --

13 MR. LARSON: Correct.

14 MR. BROOKS: -- any election on behalf of
15 Robbins. So you're right, there is a question there.

16 Under the terms of the order -- Of course,
17 Synergy is not taking the position that Robbins was force
18 pooled -- the Robbins interest was force pooled, so perhaps
19 -- although it's by different theories, neither party would
20 claim that they would be entitled to -- neither party is
21 claiming, perhaps -- at least before us, I don't know what
22 they'll claim in district court, but neither party is
23 claiming before us an entitlement to that interest under
24 the -- to a nonconsent penalty, out of that interest under
25 the pooling order.

1 MR. BRUCE: The funds for that Robbins-plus-Smith
2 interest were paid on the well, so --

3 MR. BROOKS: Yeah --

4 MR. BRUCE: -- so --

5 MR. BROOKS: -- by Synergy.

6 MR. BRUCE: On the Robbins interest paid by
7 Synergy and the Smith interest paid by Mr. Smith. So yeah,
8 there is no risk penalty against that complete undivided
9 one-half interest.

10 MR. BROOKS: But there may be an issue in the
11 district court, may there not, Mr. Hall, as to -- under the
12 Walmsley interest, as to whether or not there is some right
13 that exists under the force pooling order, as distinct from
14 the -- under the title, to a certain portion of the
15 proceeds from this well? Is that not correct or accurate?

16 MR. HALL: I think that's correct. I don't think
17 that there's a clear, bright line between the jurisdiction
18 of the Division and the court in that regard.

19 I had always argued that the Division ought to be
20 circumspect in the actions it takes, because it may have
21 the effect of affecting those interests that are the
22 subject of the quiet title in the district court.

23 And we've always said that now that a suspense
24 order has been ordered by the district court, the Division
25 ought to give that full faith and credit and recognize

1 that, and not take any actions inconsistent with that.

2 It would have the result so that those disputed
3 interests are dunned for operating costs, risk penalties,
4 et cetera.

5 MR. BROOKS: Well, of course so far as what
6 actually happens to the proceeds, it doesn't really matter
7 for the time being, during the pendency of the proceeding,
8 because while the Division is not a party, the parties are
9 all parties, and therefore -- and they're bound by it, and
10 they're not at liberty to ignore the order of the district
11 court. So they must put proceeds in suspense, correct?

12 MR. HALL: Yes.

13 MR. BROOKS: No one would disagree with that.

14 MR. BRUCE: Correct.

15 MR. BROOKS: But what I'm trying to think my way
16 through is that the Division presumably has the
17 jurisdiction to determine whether or not the Division's
18 order expired or whether the Division's order is still in
19 effect. And if we revive it, if the Division revives its
20 order, it has jurisdiction to determine the terms on which
21 it will revive its order.

22 And it could be, it seems to me, that some rights
23 accrue to a risk penalty under the terms of the Division's
24 order that the District Court might feel were rights that
25 needed to be enforced in its final judgment that would --

1 so that we may, in effect, be determining some rights when
2 we make this decision, even though it's not entirely
3 obvious.

4 MR. HALL: I think that's right.

5 MR. BROOKS: That was my thinking on the subject.
6 I will try to formulate my thoughts more clearly and
7 provide them to the Examiner, but if any of the parties --
8 if any counsel can provide me with any assistance in making
9 my way through this idea, I will be happy to receive any
10 thoughts.

11 MR. HALL: Also bear in mind, Mr. Brooks, that
12 there are -- some of the pooled interests were unlocatable
13 mineral interests --

14 MR. BROOKS: Right.

15 MR. HALL: -- and they are in dispute, they are
16 claimed by Walmsley trust. Those interests, a portion of
17 them would be subject to risk penalty. They would have
18 been deprived of any opportunity to elect, participate or
19 go nonconsent in the well, depending on ownership.

20 So to the extent that those ownership interests
21 will be determined by the District Court, they will in
22 turn, I think, determine whether or not Mr. Walmsley or the
23 unlocatable mineral interest owner had the right to elect
24 or not.

25 MR. BROOKS: But I gather as contrasted to where

1 we were before the Commission when we had one-fourth of
2 one-half in that status, we now only have a -- with this
3 well we only have a very small interest in that --

4 MR. HALL: I can't give you the exact
5 percentages. All the percentages are set forth in the
6 order. There is -- It is correct that there is an
7 undisputed percentage, 6 1/4 percent owned by Walmsley,
8 that is committed under an operating agreement.

9 MR. BROOKS: Okay.

10 MR. HALL: The balance is 12 3/4, that is in
11 dispute. And a portion of that is attributable to some
12 unlocatable interest owners.

13 MR. BROOKS: Well, my understanding was, there
14 only one unlocatable interest owner.

15 MR. BRUCE: At the time of the last hearing,
16 yeah, I believe that -- And in the well unit own probably
17 less than a percent.

18 MR. BROOKS: I'm assuming that Synergy put up its
19 share of operating costs on its own behalf for those
20 interest that it claimed to own.

21 MR. BRUCE: Yes, it did.

22 MR. BROOKS: And so it's not claiming any
23 nonconsent penalty as to those interests?

24 MR. BRUCE: Well, it would be. I think the
25 woman's name was Leola Kellogg. I suppose she was notified

1 and force pooled, and so --

2 MR. BROOKS: For her -- for that one interest?

3 MR. BRUCE: For that one very small interest,
4 there would be a -- Synergy put up the money, so would
5 request that penalty.

6 MR. BROOKS: Okay, thank you.

7 EXAMINER EZEANYIM: Okay. You know, in addition
8 to all this legal analysis that you guys have been going
9 through, I have four questions for both of you, but I am
10 going to maybe ask in one simple sentence. Maybe you will
11 answer all the four questions.

12 What would your clients or what would you like to
13 have happen here? What do you want in this case? Both of
14 you?

15 MR. HALL: I believe the overall effect of the
16 two orders are that the interests are pooled. Yes, a
17 certain quantum of them are in dispute in the district
18 court litigation. The well needs to be flowed, it does
19 need to be produced, the formation dewatered. I think
20 that's for the benefit of everyone. I think that needs to
21 happen.

22 I think the only issue before you, really, is --
23 should you choose to reinstate the pooling order, is
24 whether or not you should accord relief that recognizes the
25 right of the operator to withhold drilling costs, overhead

1 and risk penalty to a certain percentage of those
2 interests. I think when you think about that when you're
3 crafting an order, you do need to bear in mind what the
4 district court has directed the parties to do, because of
5 the dispute of the ownership.

6 I think you should refrain from taking any sort
7 of interest that interferes with the court's process.

8 EXAMINER EZEANYIM: Okay.

9 MR. LARSON: We would join in that. We
10 absolutely agree that both of these wells have now been
11 drilled. Maybe not the best placement of them, but they
12 are drilled and they are producing, and they ought to be --
13 done everything that's necessary to keep them producing as
14 efficiently as possible.

15 EXAMINER EZEANYIM: Okay. If the well is drilled
16 and producing, would you want your client's, you know, up-
17 front money to be refunded to him?

18 MR. LARSON: Yes.

19 EXAMINER EZEANYIM: And the reason being what?

20 MR. LARSON: The reason being that that money
21 should come out of the share of the proceeds to the future,
22 rather than having to be borne by him at this point in
23 time.

24 EXAMINER EZEANYIM: But the well was drilled on
25 what -- your assertion, of course, you know, the --

1 depending on -- we have to -- you know, we have to --
2 otherwise violating -- the terms of the order was violated.

3 I wanted to understand why you want it, because
4 he put up the money for the well to be drilled, and it was
5 drilled. Why do you want him now to get back that money?

6 MR. LARSON: Mr. Hearing Officer, there was
7 another application that was made by our client with regard
8 to this 105 well. As I mentioned earlier, he is already
9 the operator of another well on this property, and our
10 proposal was for Mr. Smith to recomplete the existing well
11 as a dual completion, to tap into this formation. It was
12 already an existing wellbore, already existing gathering
13 lines, and it would have been recompleted at approximately
14 half of the cost that has been estimated by Synergy to
15 drill this entirely new well at a distant location.

16 While our application for permission to
17 recomplete was pending, Synergy drilled this new well. We
18 were not even aware that they were out there actually
19 drilling the well prior to the Commission granting them an
20 order, a pooling order, to do so.

21 So it is our position that when Synergy began to
22 drill this 105 well, they did so completely on their own
23 risk. There was no pooling order in place at that time,
24 and they should have to bear the cost of -- and the risk of
25 drilling that well entirely.

1 EXAMINER EZEANYIM: Very good. At the time --
2 They're drilling without you knowing it, then at the time
3 they did the first pooling order on this infill well, they
4 didn't notify you that they're drilling that well, because
5 what you are letting -- you see, because my position here
6 is to prevent waste. And it wasn't the -- an essential
7 unit well.

8 If you had shown up on the first hearing for this
9 105 and demonstrate that you have a well in that same
10 section that could tap into there, you know, that might
11 make a lot of difference. But I don't know whether -- I
12 know you must have been notified, even though they have
13 started drilling the well. We can even say, Stop drilling
14 the well, this well could do whatever that well is supposed
15 to have done.

16 Did you object at that point to say, Well, this
17 well already here could tap into this formation, instead of
18 drilling that well?

19 MR. LARSON: That was part of our --

20 EXAMINER EZEANYIM: And if that is the case at
21 that point, well, you should have made it and then your
22 client shouldn't have to put up those moneys in the first
23 place. I mean -- so I --

24 MR. LARSON: I agree with you, and that -- I
25 think if you'll look back in the record, you were not a

1 party to it --

2 EXAMINER EZEANYIM: Yeah, not --

3 MR. LARSON: -- at the time, and Gail MacQuesten
4 was the counsel then, so Mr. Brooks probably doesn't
5 remember that either, but --

6 MR. BROOKS: This proceeding was before Mr.
7 Catanach, was it not?

8 EXAMINER EZEANYIM: Yes, it was, yeah.

9 MR. LARSON: And the application is on file.
10 It's a matter of public record, and we did raise it at the
11 hearing.

12 MR. BROOKS: And you did not file a *de novo*
13 appeal to the Commission in this case, as opposed to the
14 other one?

15 MR. LARSON: That is correct.

16 MR. BROOKS: Okay.

17 MR. BRUCE: Mr. Examiner, I would note that the
18 application that was filed was simply a C-101. It wasn't
19 an application for hearing, which would have been necessary
20 to have two operators in the well unit, because Synergy was
21 already the operator of the first well, and therefore under
22 Rule 104 Mr. Smith should have filed an application before
23 a Hearing Examiner. All they did was present a C-101 at
24 the hearing, and that's not the same as an application for
25 hearing, so... And the Division did ultimately decide to

1 name Synergy operator.

2 Also, with respect to the refund of costs, under
3 the pooling statute I think the order makes provision --
4 has to make provision for the pooling and the payment of
5 the well cost. And you're asking Synergy to pay for a good
6 chunk of the well cost, but not Smith, even though he
7 voluntarily joined in the well. And if he doesn't want to
8 pay the well cost now, then I think a production penalty
9 should be -- a risk charge should be assessed against him
10 because he has not, in effect, paid for his share of well
11 costs.

12 EXAMINER EZEANYIM: Yeah, there's -- You know,
13 please forgive me if I'm asking too much question here,
14 it's because I do not understand all the legal issues here.

15 When I read your briefs, Mr. Larson, I think you
16 are trying to indicate that you want your client to get
17 back the money that he gave to Synergy up front, and yet
18 you want him to share in production with that payout.

19 So I wanted to see if there's anything I'm
20 missing why that should be the case. You know, you want
21 him to shut in production after he gets back the refund of
22 the money he advanced for drilling the well. You want that
23 refunded, and you want him to stop -- shut in production
24 without waiting for payout. Is it because the order is
25 payout, you're asking that for, or is there any other thing

1 behind that -- or is it because you don't -- why are you
2 asking -- You know, I'm just asking, because that's what I
3 think you stated that you're asking for your client. I
4 need to know the answer so that I can -- you know.

5 MR. LARSON: The reason that we're asking now is
6 because the order has expired. Mr. Smith participated in
7 the well because of the order, that if he had not, he -- at
8 that point in time his -- you know, would be subject to a
9 risk penalty.

10 EXAMINER EZEANYIM: Sure.

11 MR. LARSON: And the Commission obviously at that
12 point had declined to allow him to recomplete the existing
13 well. We recognize that there is Fruitland gas under the
14 property that can be produced and make money for everybody
15 that owns an interest, and so -- But that was his interest,
16 to have a well drilled. He wanted to do it cheaper. But
17 after the Commission ruled, and if he didn't participate
18 then, he would have been at risk at that point in time.

19 But that order has now expired, and Mr. Smith we
20 believe that in equity ought not to have to be the only
21 party here, aside from the Walmsleys and these other
22 uncommitted interests, to have contributed well costs which
23 are being held and the use of that money being made by
24 Synergy, when at the conclusion of the quiet title suit
25 what we expect is that there will be an accounting, a

1 determination of who owns the property, who should have the
2 right to participate in that well, what the actual costs
3 were, what the proceeds were from it, and then deductions
4 made from those proceeds and carried forward on that basis,
5 equal to all parties, everybody gets treated the same way.

6 EXAMINER EZEANYIM: Okay.

7 MR. BROOKS: Well, isn't that an adjustment the
8 district court could make, for the fact that Smith has paid
9 their portion and other parties have not?

10 MR. LARSON: It certainly could.

11 MR. BRUCE: Synergy paid its portion too. And
12 that money isn't being held and used by Synergy.

13 MR. BROOKS: Right.

14 MR. BRUCE: It was used to pay ongoing well
15 costs.

16 MR. BROOKS: Right.

17 MR. BRUCE: So it's out to third-party
18 contractors. It's not being maintained by Synergy.

19 MR. BROOKS: I don't have anything further.

20 EXAMINER EZEANYIM: Do you have anything?

21 MR. HALL: I have nothing more.

22 EXAMINER EZEANYIM: I think I have gotten
23 everything I need now. For the record, Mr. Smith is an
24 operator of a well that is in the same southwest quarter?

25 MR. LARSON: Correct, the Claude Smith Number 1.

1 EXAMINER EZEANYIM: What is it called?

2 MR. LARSON: The Claude Smith Number 1, named for
3 his grandfather.

4 EXAMINER EZEANYIM: The Claude -- How do you --
5 Claude?

6 MR. LARSON: C-l-a-u-d-e.

7 EXAMINER EZEANYIM: -- Smith?

8 MR. LARSON: Claude Smith Number 1.

9 EXAMINER EZEANYIM: Okay. And is -- do you know
10 -- Okay, this Duff -- very close to 105?

11 MR. LARSON: Correct.

12 EXAMINER EZEANYIM: In the same southwest
13 quarter?

14 MR. LARSON: Yes, the 105 is closer to the top
15 middle part of the property, and the Claude Smith is a
16 little bit closer to the center of the property.

17 EXAMINER EZEANYIM: Okay, I think I can find out
18 where I need to look at that, where that is, or is
19 operating. Anything further?

20 MR. BRUCE: Nothing further, Mr. Examiner.

21 EXAMINER EZEANYIM: Well, finally Case Number
22 13,663 will be taken under advisement.

23 (Thereupon, these proceedings were concluded at
24 12:23 p.m.)

25

* * *

I do hereby certify that the foregoing is
a correct record of the proceedings in
the hearing of Case No. 13663
heard by me on 12/20/71

STEVEN T. BRENNER, CCR Evaluation Division, Examiner
(505) 989-9317

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 April 18th, 2007.



STEVEN T. BRENNER
CCR No. 7

My commission expires: October 16th, 2010