

SUTIN THAYER & BROWNE
A PROFESSIONAL CORPORATION
LAWYERS

IRWIN S. MOISE (1906-1984)
LEWIS R. SUTIN (1908-1992)
FRANKLIN JONES (1919-1994)
RAYMOND W. SCHOWERS (1948-1995)
GRAHAM BROWNE (1935-2003)
MICHAEL G. SUTIN (OF COUNSEL)
BENJAMIN ALLISON
C. SHANNON BACON
PAUL BARDACKE
JAMES E. BRISTOL III
ANNE P. BROWNE
SUZANNE WOOD BRUCKNER
CRISTY J. CARBON-GAUL
MARK CHAIKEN
SUSAN G. CHAPPELL
GERMAINE R. CHAPPELLE

MARIA MONTTOYA CHAVEZ
SAUL COHEN
MICHAEL J. GOLDEN
GAIL GOTTLIEB
SUSAN M. HAPKA
HELEN HECHT
JAY D. HERTZ
ROBERT G. HEYMAN
CHRISTOPHER A. HOLLAND
HENRY A. KELLY
KERRY KIERNAN
PETER S. KIERST
RACHEL S. KING
ANDREW P. KNIGHT
TWILA B. LARKIN
DEREK V. LARSON

2007 APR 6 AM 12 09
C. JOSEPH LENNHAN
STEVEN DOUGLAS LOONEY
ELIZABETH J. MEDINA
VICTOR P. MONTTOYA
JEAN C. MOORE
SARITA NAIR
MICHELLE K. OSTRYE
JAY D. ROSENBLUM
FRANK C. SALAZAR
RONALD SEGEL
RAY SHOLLENBARGER
ANDREW J. SIMONS
JEANNE Y. SOHN
NORMAN S. THAYER
BENJAMIN E. THOMAS
CHRISTINA S. WEST

TWO PARK SQUARE
6565 AMERICAS PARKWAY, N.E.
ALBUQUERQUE, NEW MEXICO 87110
POST OFFICE BOX 1945
ALBUQUERQUE, NEW MEXICO 87103
505-883-2500
FAX 505-888-6565

317 PASEO DE PERALTA
SANTA FE, NEW MEXICO 87501
POST OFFICE BOX 2187
SANTA FE, NEW MEXICO 87504
505-988-5521
FAX 505-982-5297

WWW.SUTINFIRM.COM

April 4, 2007

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

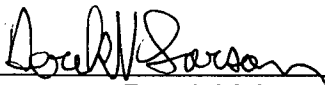
Case No. 13,663 - Synergy Operating
SW/4 Section 8-29N-11W

Dear Mr. Catanach:

I enclose herein a courtesy copy of the Pre-Hearing Statement we originally filed on March 8, 2007. We will rely on this same Statement for the re-scheduled hearing now to be held on April 12, 2007.

Very truly yours,

SUTIN, THAYER & BROWNE
A Professional Corporation

By 
Derek V. Larson
Albuquerque Office

DVL:mrt

cc: Leola Kellogg
Ed Smith
James Bruce
Scott Hall

976823

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

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

CASE NO. 13663

PRE-HEARING STATEMENT

This Pre-Hearing Statement is submitted by Sutin, Thayer & Browne P.A. (Derek V. Larson) on behalf of Edwin Smith LLC, ("Edwin Smith"), as required by the Oil Conservation Commission.

APPEARANCES

ATTORNEYS

James Bruce, Esq.
Post Office Box 1056
Santa Fe, New Mexico 87504

OPPONENT'S ATTORNEY

J. Scott Hall, Esq.
Miller Stratvert P.A.
Post Office Box 1986
Santa Fe, New Mexico 87504-1986

Derek V. Larson, Esq.
Sutin, Thayer & Browne
Post Office Box 1945
Albuquerque, New Mexico 87103

APPLICANT

Synergy Operating, LLC

OPPONENT

Jerry Walmsley, Trustee

Edwin Smith, LLC

STATEMENT OF THE CASE

Edwin Smith, LLC

Synergy Operating, LLC is required to explain to the Division why the Duff No. 105 Fruitland Coal infill well was not drilled and completed within the deadlines set forth in Order No. R-12629. The burden will be on Synergy to prove that good grounds exist for the reinstatement of Order No. R-12629.

The mineral lands underlying the W/2 of Section 8 T28NR11W were previously force-pooled under Order No. R-12376 pursuant to an application filed on behalf of Synergy. Because of changes in record title interests since the issuance of Order No. R-12376, and in order to establish a 320 and a 160-acre unit Synergy did not invoke the provisions of Rule 36 for the drilling of the Duff No. 105 infill well, choosing instead to file a new application for compulsory pooling. Correspondingly, the Division issued Order No. R-12629 with new terms, including the requirement that the subject well be drilled "*and completed*" within 120 days after commencement.

It is undisputed that Synergy Operating, LLC did not complete the Duff Well No. 105 within the 120-day timeframe for doing so set forth in Order No. R-12629. Therefore, on the 121st day, by its own terms, Order No. R-12629 was no longer effective.

It is also undisputed that Synergy did not seek an extension of time from the Division's Director before Order No. R-12629 automatically terminated. Consequently, the opportunity to seek an administrative extension was lost. The provisions of NMSA 1978 §70-2-23 would thus apply.

It is further undisputed that the Permit to Drill (Form C-101) expired on November 27, 2006, prior to completion of the well.

With the termination of Order No. R-12629, Synergy has lost the ability to invoke the cost-recovery provisions of the order. Consequently, Synergy is without any authority to recover well costs, a risk penalty, or supervision charges. It would also follow that Synergy's authority to retain funds for estimated drilling costs tendered by Ed Smith LLC has also terminated.

As a further consequence of having allowed Order No. R-12629 to expire, Synergy has assumed the risk for drilling and completing the well. Thus, once it places the well on production, Synergy would be obliged to allocate production to all the respective tracts in the unit, and to account to the owners of those tracts, without deduction of costs, in accordance with NMSA 1978 §70-2-17 C. This result is consistent with the February 5, 2007, Order of the San Juan County District Court in the related quiet title proceeding¹ directing Synergy to suspend all proceeds attributable to the disputed interests in the Duff 104 and Duff 105 wells. The Division should not accord relief that would be inconsistent with the rulings of the San Juan County District Court.

PROPOSED EVIDENCE

ED SMITH LLC

WITNESSES

EXHIBITS

Tom Smith may testify regarding his on-sight observations of Synergy's activities.

PROCEDURAL MATTERS

None.

¹ Edwin Smith, LLC et al. v. Synergy Operating, LLC, et al.; 11th Judicial District Cause No. D-1116 CV 06-59-6