

**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:**

**CASE NO. 13486
ORDER NO. R-12376**

**APPLICATION OF SYNERGY OPERATING, LLC FOR COMPULSORY
POOLING, SAN JUAN COUNTY, NEW MEXICO.**

ORDER OF THE DIVISION

BY THE DIVISION:

This case came on for hearing at 8:15 a.m. on June 16, 2005, at Santa Fe, New Mexico, before Examiner David R. Catanach.

NOW, on this 1st day of July, 2005, the Division Director, having considered the testimony, the record and the recommendations of the Examiner,

FINDS THAT:

(1) Due public notice has been given, and the Division has jurisdiction of this case and its subject matter.

(2) The applicant, Synergy Operating, LLC ("Synergy" or "applicant") seeks an order pooling all uncommitted mineral interests from the surface to the base of the **Fruitland** Coal formation underlying the W/2 of Section 8, Township 29 North, Range 11 West, **NMPM**, San Juan County, New Mexico, in the following manner:

the W/2 to form a standard 320-acre gas spacing and proration unit for all formations **and/or** pools spaced on 320 acres within this vertical extent, which presently include but are not necessarily limited to the **Basin-Fruitland** Coal Gas Pool; and

the SW/4 to form a standard 160-acre spacing and proration unit for all formations **and/or** pools spaced on 160 acres within this vertical extent.

(3) The above-described spacing and proration units (the "Units") are to be dedicated to the applicant's proposed Duff 29-11-8 Well No. 104, which is to be drilled at a standard well location within the NW/4 of Section 8, and the Duff 29-11-8 Well No. 105, which is to be drilled at a standard well location within the SW/4 of Section 8.

(4) Jerry Walmsley, Trustee, Bypass Trust U/W June H. Walmsley ("Walmsley"), who represent the Heirs of Jennie H. Hill, and Edwin Smith ("Smith"), interest owners within the SW/4 of Section 8, appeared at the hearing in opposition to the application.

(5) At the hearing, the applicant stated that it plans to drill only the Duff 29-11-8 Well No. 104 at the current time, and therefore requested that the portion of its application seeking authority to drill the Duff 29-11-8 Well No. 105 be dismissed. In addition, by virtue of its request to not go forward with the drilling of the Duff 29-11-8 Well No. 105, the compulsory pooling of the SW/4 of Section 8 to form a standard 160-acre spacing and proration unit is unnecessary, and should therefore be dismissed.

(6) Synergy presented evidence that demonstrates that:

- (a) the NW/4 of Section 8 is a Federal lease owned by Burlington Resources Oil & Gas Company ("Burlington"). Burlington has verbally agreed to participate in the drilling of the Duff 29-11-8 Well No. 104, and therefore, applicant does not seek to pool the interest of **Burlington** at this time;
- (b) the SW/4 of Section 8 is fee land owned by multiple parties. Synergy owns 25% of the working interest that it obtained from the Heirs of Julia H. Keller, and the Heirs of May H. **Kouns**. Synergy also owns an additional 3.125% of the working interest in the SW/4 of Section 8 by virtue of its obtaining a **farmount** agreement from Joseph C. Robbins;
- (c) Jerry Walmsley executed Synergy's joint operating agreement covering the W/2 of Section 8 effective March 1, 2005; and

- (d) Synergy seeks to pool the interest of Edwin & Earnest Smith, who own a 46.875% interest in the SW/4 of Section 8. Synergy also seeks to pool a 12.5% interest in the SW/4 of Section 8 owned by David F. Jones, Heir of Margaret H. Jones. Despite its efforts, David F. Jones could not be located.

(7) Walmsley contends that a 50% interest in the SW/4 of Section 8 was owned in "joint tenancy" by Margaret H. Jones, Julia H. Keller, May H. Kouns, and Jenny H. Hill. Walmsley further contends that upon the death of Julia H. Keller and May H. Kouns, this interest became the property of Walmsley and Margaret H. Jones. Walmsley therefore believes that Synergy does not own the 25% interest in the SW/4 of Section 8 derived from Julia H. Keller and May H. Kouns.

(8) The Division does not have the authority to determine the ownership of the interest within the SW/4 of Section 8.

(9) There is no dispute among the parties that Synergy owns a 3.125% working interest in the SW/4 of Section 8 by virtue of its agreement with Joseph C. Robbins. Synergy therefore has the right to drill the Duff 29-11-8 Well No. 104.

(10) Synergy has made a good faith effort to secure the voluntary participation of the interest owners within the W/2 of Section 8 for the drilling of the Duff 29-11-8 Well No. 104, but has been unable to do so.

(11) To avoid the drilling of unnecessary wells, protect correlative rights, prevent waste and afford to the owner of each interest in the Unit the opportunity to recover or receive without unnecessary expense its just and fair share of hydrocarbons, this application should be approved by pooling all uncommitted interests, whatever they may be, in the oil and gas within the W/2 of Section 8 (the "Unit").

(12) The applicant should be designated the operator of the subject well and of the Unit.

(13) Any pooled working interest owner who does not pay its share of estimated well costs should have withheld from production its share of reasonable well costs plus an additional 200% thereof as a reasonable charge for the risk involved in drilling the well.

(14) Reasonable charges for supervision (combined fixed rates) should be fixed at \$5,000.00 per month while drilling and \$500.00 per month while producing, provided that these rates should be adjusted annually pursuant to Section III.1.A.3. of the COPAS form titled "Accounting Procedure-Joint Operations."

IT IS THEREFORE ORDERED THAT :

(1) Pursuant to the application of Synergy Operating, LLC, all uncommitted mineral interests from the surface to the base of the **Fruitland** Coal formation underlying the W/2 of Section 8, Township 29 North, Range 11 West, NMPM, San Juan County, New Mexico, are hereby pooled to form a standard 320-acre gas spacing and proration unit for all formations **and/or** pools spaced on 320 acres within this vertical extent, which presently include but are not necessarily limited to the **Basin-Fruitland** Coal Gas Pool.

(2) The above-described Unit shall be dedicated to the Duff 29-11-8 Well No. 104, which is to be drilled at a standard well location within the NW/4 of Section 8 to test the Basin-Fruitland Coal Gas Pool.

(3) The operator of the Unit shall commence drilling operations on the Duff 29-11-8 Well No. 104 on or before October 1, 2005 and shall thereafter continue drilling the well with due diligence to test the Basin-Fruitland Coal Gas Pool.

(4) In the event the operator does not commence drilling operations on the Duff 29-11-8 Well No. 104 on or before October 1, 2005, Ordering Paragraph (1) shall be of no effect, unless the operator obtains a time extension from the Division Director for good cause.

(5) Should the subject well not be drilled and completed within 120 days after commencement thereof, Ordering Paragraph (1) shall be of no further effect, and the Unit created by this Order shall terminate unless the operator appears before the Division Director and obtains an extension of time to complete the well for good cause demonstrated by satisfactory evidence.

(6) Upon final plugging and abandonment of the subject well, the pooled Unit created by this Order shall terminate, unless this order has been amended to authorize further operations.

(7) Synergy Operating, LLC is hereby designated the operator of the subject well and of the Unit.

(8) After pooling, uncommitted working interest owners are referred to as pooled working interest owners. ("Pooled working interest owners" are owners of working interests in the Unit, including unleased mineral interests, who are not parties to an operating agreement governing the Unit.) After the effective date of this order, the operator shall furnish the Division and each known pooled working interest owner in the Unit an itemized schedule of estimated costs of drilling, completing and equipping the subject well ("well costs").

(9) Within 30 days from the date the schedule of estimated well costs is furnished, any pooled working interest owner shall have the right to pay its share of estimated well costs to the operator in lieu of paying its share of reasonable well costs out of production as hereinafter provided, and any such owner who pays its share of estimated well costs as provided above shall remain liable for operating costs but shall not be liable for risk charges. Pooled working interest owners who elect not to pay their share of estimated well costs as provided in this paragraph shall thereafter be referred to as "non-consenting working interest owners."

(10) The operator shall furnish the Division and each known pooled working interest owner (including non-consenting working interest owners) an itemized schedule of actual well costs within 90 days following completion of the proposed well. If no objection to the actual well costs is received by the Division, and the Division has not objected within 45 days following receipt of the schedule, the actual well costs shall be deemed to be the reasonable well costs. If there is an objection to actual well costs within the 45-day period, the Division will determine reasonable well costs after public notice and hearing.

(11) Within 60 days following determination of reasonable well costs, any pooled working interest owner who has paid its share of estimated costs in advance as provided above shall pay to the operator its share of the amount that reasonable well costs exceed estimated well costs and shall receive from the operator the amount, if any, that the estimated well costs it has paid exceed its share of reasonable well costs.

(12) The operator is hereby authorized to withhold the following costs and charges from production:

- (a) the proportionate share of reasonable well costs attributable to each non-consenting working interest owner; and

- (b) as a charge for the risk involved in drilling the well,
200% of the above costs.

(13) The operator shall distribute the costs and charges withheld from production, proportionately, to the parties who advanced the well costs.

(14) Reasonable charges for supervision (combined fixed rates) are hereby fixed at \$5,000.00 per month while drilling and \$500.00 per month while producing, provided that these rates shall be adjusted annually pursuant to Section III.1.A.3. of the COPAS form titled "*Accounting Procedure-Joint Operations.*" The operator is authorized to withhold from production the proportionate share of both the supervision charges and the actual expenditures required for operating the well, not in excess of what are reasonable, attributable to pooled working interest owners.

(15) Except as provided in Ordering Paragraphs (12) and (14) above, all proceeds from production from the well that are not disbursed for any reason shall be placed in escrow in San Juan County, New Mexico, to be paid to the true owner thereof upon demand and proof of ownership. The operator shall notify the Division of the name and address of the escrow agent within 30 days from the date of first deposit with the escrow agent.

(16) Any unleased mineral interest shall be considered a seven-eighths (7/8) working interest and a one-eighth (1/8) royalty interest for the purpose of allocating costs and charges under this order. Any well costs or charges that are to be paid out of production shall be withheld only from the working interests' share of production, and no costs or charges shall be withheld from production attributable to royalty interests.

(17) Should all the parties to this compulsory pooling order reach voluntary agreement subsequent to entry of this order, this order shall thereafter be of no further effect.

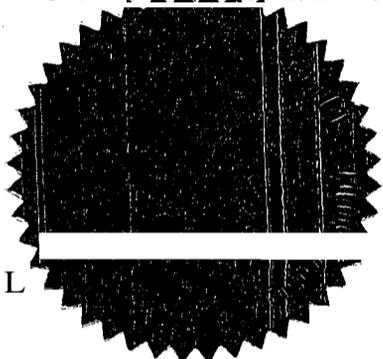
(18) The operator of the well and Unit shall notify the Division in writing of the subsequent voluntary agreement of all parties subject to the forced pooling provisions of this order.

(19) That portion of Synergy Operating, LLC's application seeking authority to drill the Duff 29-11-8 Well No. 105 within the SW/4 of Section 8, Township 29 North, Range 11 West, NMPM, San Juan County, New Mexico, to test the Basin-Fruitland Coal Gas Pool, is hereby dismissed.

(20) That portion of Synergy Operating, LLC's application seeking to compulsory pool the SW/4 of Section 8, Township 29 North, Range 11 West, NMPM, San Juan County, New Mexico, to form a standard 160-acre spacing and proration unit, is hereby dismissed.

(21) Jurisdiction of this case is retained for the entry of such further orders as the Division may deem necessary.

DONE at ~~Santa Fe~~, New Mexico, on the day and year hereinabove designated.



SEAL

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

MARK E. FESMIRE, PE
Director