

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. 13,486

APPLICATION OF SYNERGY OPERATING,)
L.L.C., FOR COMPULSORY POOLING,)
SAN JUAN COUNTY, NEW MEXICO)

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

RECEIVED

BEFORE: DAVID R. CATANACH, Hearing Examiner

JUN 30 2005

June 16th, 2005
Oil Conservation Division
1220 S. St. Francis Drive
Santa Fe, New Mexico
Santa Fe, NM 87505

This matter came on for hearing before the New Mexico Oil Conservation Division, DAVID R. CATANACH, Hearing Examiner, on Thursday, June 16th, 2005, 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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June 16th, 2005
Examiner Hearing
CASE NO. 13,486

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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 9:07 a.m.:

3 EXAMINER CATANACH: At this time I'll call Case
4 Number 13,486, the Application of Synergy Operating,
5 L.L.C., for compulsory pooling, San Juan County, New
6 Mexico.

7 Call for appearances.

8 MR. BRUCE: Mr. Examiner, Jim Bruce of Santa Fe,
9 representing the Applicant. I have one witness to be
10 sworn.

11 EXAMINER CATANACH: Additional appearances?

12 MR. HALL: Mr. Examiner, Scott Hall, Miller
13 Stratvert, P.A., Fe, appearing on behalf of Jerry Walmsley,
14 trustee of the June H. Walmsley Trust.

15 That's W-a-l-m-s-l-e-y.

16 I have no witnesses this morning.

17 EXAMINER CATANACH: I'm sorry, is that on a
18 prehearing statement somewhere?

19 MR. HALL: No, hired yesterday. You do have an
20 entry of appearance for me.

21 EXAMINER CATANACH: Okay, Jerry Walmsley,
22 Trustee?

23 MR. HALL: Yes.

24 EXAMINER CATANACH: Okay, that's who you're
25 appearing on behalf of?

1 MR. HALL: Yes.

2 MS. NAIR: Mr. Examiner, Sarita Nair for Sutin,
3 Thayer and Brown. We represent Edwin Smith. He's also an
4 owner. We entered our appearance yesterday as well.

5 EXAMINER CATANACH: Let me see if I can find
6 that.

7 MS. NAIR: Thank you.

8 EXAMINER CATANACH: And you don't have any
9 witnesses, Ms. Nair?

10 MS. NAIR: We have Edwin Smith, who is here and
11 available to testify.

12 EXAMINER CATANACH: Okay, will the witness please
13 stand to be sworn in?

14 (Thereupon, the witnesses were sworn.)

15 PATRICK HEGARTY,
16 the witness herein, after having been first duly sworn upon
17 his oath, was examined and testified as follows:

18 DIRECT EXAMINATION

19 BY MR. BRUCE:

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

21 A. My name is Patrick Hegarty.

22 Q. Where do you reside?

23 A. Aztec, New Mexico.

24 Q. What is your relationship to Synergy Operating,
25 the Applicant in this case?

1 A. I am one of three principals of Synergy
2 Operating.

3 Q. And by trade are you a petroleum landman?

4 A. Yes, I am.

5 Q. Have you previously testified before the Division
6 as a landman?

7 A. Yes, I have.

8 Q. And have your credentials as an expert been
9 accepted as a matter of record?

10 A. Yes, they have.

11 Q. And are you familiar with the land matters
12 involved in this case?

13 A. Yes, I am.

14 MR. BRUCE: Mr. Examiner, I would tender Mr.
15 Hegarty as an expert petroleum landman.

16 EXAMINER CATANACH: Any objection?

17 MR. HALL: No objection.

18 MS. NAIR: No objection.

19 EXAMINER CATANACH: Mr. Hegarty is so qualified.

20 Q. (By Mr. Bruce) Mr. Hegarty, could you identify
21 Exhibit 1 and describe what Synergy seeks in this case?

22 A. Exhibit 1, labeled "Exhibit 'A', Force Pool
23 Hearing June 16, 2005", is basically a simple plat showing
24 the west half of Section 8 and basically delineating that
25 the northwest quarter is BLM federal minerals, and the

1 southwest quarter is fee minerals.

2 Q. Is the southwest a single fee tract?

3 A. Yes, it is.

4 Q. Okay. And do you seek an order force-pooling the
5 west half from the surface to the base of the Fruitland
6 Coal?

7 A. That's correct.

8 Q. What wells does Synergy propose to drill?

9 A. We propose to drill the Duff 29-11-8 Well Number
10 104 in the northwest quarter of Section 8 of 29 North, 12
11 West.

12 Q. Looking at Exhibit 1 or Exhibit A, it says at the
13 top, the northwest quarter of the federal land, who owns
14 that land?

15 A. That is owned by Burlington Resources Oil and Gas
16 Company.

17 Q. 100 percent?

18 A. That's correct.

19 Q. Okay. And so the pooling we're doing here today
20 has to do with the southwest quarter?

21 A. Yes.

22 Q. Could you identify Exhibit 2 for the Examiner and
23 describe the interests shown therein?

24 A. Exhibit 2 basically describes the ownership of
25 the southwest quarter of Section 8, 29 North, 11 West. I

1 broke down the interest into the heirs and basically showed
2 that the heirs of Julia H. Keller and the heirs of May H.
3 Kouns is now owned by Synergy and comprises 25-percent
4 ownership of the southwest quarter of Section 8.

5 The rest of the interest is the heirs of Jennie
6 H. Hill, which Mr. Walmsley represents -- that's a 12.5-
7 percent interest in the southwest quarter -- and the heirs
8 of Margaret H. Jones, which her husband -- after her death
9 it went to him, and that was David F. Jones, and that's
10 12.5 percent.

11 Also there's two other individuals, Joseph C.
12 Robbins owns a 3.125 percent, and the heirs of Claude
13 Smith, being Edwin and Earnest Smith, and they own the
14 remaining interest in the southwest quarter, being 46.875
15 percent.

16 Q. Now, there's some title matters regarding these
17 fee interests, regarding the clients of Mr. Hall and Ms.
18 Nair. Will we discuss that toward the end of your
19 testimony?

20 A. Yes, we will.

21 Q. Now, on this -- the people on Exhibit 2, who do
22 you seek to pool?

23 A. The people we seek to pool are the heirs of
24 Claude Smith, being Edwin and Earnest Smith, and also the
25 heirs of Margaret H. Jones, which we have not been able to

1 locate.

2 Q. You do not seek to pool the Walmsley Trust?

3 A. No, we do not.

4 Q. Let's discuss your efforts to obtain the -- well,
5 before that, Mr. Smith -- you know where he is, and you
6 have his address; is that correct?

7 A. Yes, we've corresponded and spoken on many
8 occasions.

9 Q. Okay. Are there certain unlocatable interest
10 owners?

11 A. Yes, there are.

12 Q. Okay, and we'll get into that in a minute.

13 A. Okay.

14 Q. Now regarding your efforts to obtain the
15 voluntary joinder of the Smiths' interest, let's discuss
16 your contacts with them. What is Exhibit 3?

17 A. Exhibit 3 basically comprises letters, and there
18 are three of them, the first being May 19th -- I'm sorry,
19 the first being March --

20 Q. Well, start with the top one.

21 A. Okay, all right. November 4th, 2004, is a
22 certified letter that we sent to Mr. -- to the attention of
23 Earnest Smith, and at two locations that was given to us by
24 his CPA whom we originally corresponded with, and that was
25 a Steven R. Jones.

1 And basically, we sent him copies of assignments
2 from the heirs of Julia H. Keller and the heirs of May H.
3 Kouns. And we also broke down the interests that we
4 acquired, being roughly 25 percent of the southwest quarter
5 -- not roughly, being exactly.

6 Q. Okay. Now it references on line 2 of your first
7 paragraph the Claude Smith well. Is there an existing well
8 in the southwest quarter?

9 A. Yes, there is.

10 Q. What type of well, what zone is it completed in?

11 A. The Claude Smith Number 1 well is a Pictured
12 Cliff well that Mr. Edwin Smith operates.

13 Q. Okay. So you mailed this letter with copies of
14 your assignments, and then you followed that up again on
15 November 17th; is that correct?

16 A. That's correct.

17 Q. Just putting an interest breakdown?

18 A. Yes, we did.

19 Q. Then move on to the third page. You were hoping
20 -- you still hope to drill some Fruitland Coal wells on the
21 west half of Section 8; is that correct?

22 A. Yes.

23 Q. And as a result, did you send him a well
24 proposal?

25 A. We did.

1 Q. And is that letter dated March 14th?

2 A. Yes, it is.

3 Q. Did that letter also include an AFE with it?

4 A. Yes, it did.

5 Q. And then you had a follow-up letter, or a couple
6 of follow-up letters?

7 A. Yes, we did.

8 Q. The March 24th letter and the March 19th letter,
9 in which you sent him an operating agreement; is that
10 correct?

11 A. Yes, the -- actually, that was May 19th.

12 Q. Or May 19th

13 A. Yes.

14 Q. -- excuse me.

15 Now, besides these letters proposing the well and
16 sending a JOA and informing him of your interest, did you
17 have any telephone conversations with Mr. Smith?

18 A. Yes, we did.

19 Q. Okay, with -- in an effort to get him to join
20 into a west-half well unit?

21 A. Yes.

22 Q. Okay. Has he ever indicated that he wants to
23 join in the drilling of the Fruitland Coal wells?

24 A. Yes, he did. The purpose of the May 19th, 2005,
25 letter was, we sent him another copy of an operating

1 agreement necessary to drill a Fruitland Coal well in the
2 west half of Section 8, and basically, as previously
3 stated, we broke out what his interest was, minus the Joe
4 Robbins interest, which equaled 23.34375 percent of the
5 \$340,000 of anticipated well cost, or for -- his share,
6 proportionate share, of the cost would be \$79,688 net.

7 Q. Okay now -- and again, you said the interest --
8 the David F. Jones interest was not locatable; is that
9 correct?

10 A. That's correct.

11 Q. What did you do to track down the ownership of
12 the David F. Jones interest?

13 A. We hired a landman that is -- specializes in
14 locating unlocatable individuals, and we did this back in
15 November of last year, and he has not been able to locate
16 the heirs of Margaret Jones -- or, I'm sorry, Margaret
17 Hasselman and her husband David F. Jones.

18 Q. Okay, and this landman searched the county
19 records?

20 A. He searched -- He basically is an expert in
21 searching all sorts of databases throughout the United
22 States, telephone records, you know, any sort of record
23 that -- even going to Salt Lake City; they've got an
24 heirship database --

25 Q. The Mormon --

1 A. -- through the Mormon Church, right, and -- But
2 he's an expert in identifying all of these types of
3 databases to check for the whereabouts of unlocatable
4 individuals.

5 Q. And so besides phone records, Internet searches,
6 et cetera?

7 A. That's correct.

8 Q. In your opinion, has Synergy made a good faith
9 effort to obtain the voluntary joinder of the interest
10 owners in this well?

11 A. Yes, we have.

12 Q. Would you identify Exhibit 4 for the Examiner and
13 discuss the cost of the proposed 104 well?

14 A. The estimated cost of drilling the Duff 29-11-8
15 Number 104 well, located in the northwest quarter of
16 Section 8 in 29 North, Range 12 West, is \$340,000

17 Q. Now, is this cost in line with the cost of other
18 wells drilled to this depth in this area of the state?

19 A. Yes, it is.

20 Q. Do you request that Synergy be designated
21 operator of the well?

22 A. Yes, we do.

23 Q. And do you have a recommendation for the amounts
24 which Synergy should be paid for supervision and
25 administration expenses?

1 A. Yes, we do.

2 Q. And what are they?

3 A. The contract services is \$5000, and -- do you
4 want --

5 Q. For a drilling well?

6 A. Yes, that's correct.

7 Q. And for a producing well what is it?

8 A. \$500 per month.

9 Q. And are these amounts equivalent to those
10 normally charged by operators of Fruitland Coal wells in
11 this area?

12 A. Yes, they are.

13 Q. Would you request that this rate be adjusted
14 periodically as provided by the COPAS accounting procedure?

15 A. Yes, we would.

16 Q. And were the interest owners notified of this
17 hearing?

18 A. Yes, they were.

19 Q. And is Exhibit 5 the affidavit of mailed notice
20 to the locatable people?

21 A. Yes, it is.

22 Q. Now, Exhibit 5 mailing went out to a number of
23 people, but that also included people who had not joined --
24 signed a JOA at that point; is that correct?

25 A. That's correct.

1 Q. And then Exhibit 6 is the publication of notice
2 against the Margaret Hasselman Jones heirs; is that
3 correct?

4 A. That's correct.

5 Q. Now, let's get into the interest Synergy owns in
6 this property. What is Exhibit 7?

7 A. Exhibit 7 are the assignments of all right, title
8 and interest, surface to the base of the Pictured Cliff
9 that we acquired from the heirs of Julia H. Keller and May
10 H. Kouns.

11 Q. Okay, and they collectively, in your opinion,
12 cover 25 percent of the working interest in the southwest
13 quarter of Section 8?

14 A. That's correct.

15 Q. Okay. And you mentioned -- we mentioned the
16 Claude Smith well. That well still is producing, is it
17 not?

18 A. Yes, it is.

19 Q. And you provided the assignments marked Exhibit 7
20 to Mr. Edwin Smith, did you not?

21 A. Yes, we did.

22 Q. Now, with respect -- Take a step back. With
23 respect to Mr. Smith's interest in this well, there's no
24 dispute over his interest, that you know of?

25 A. No, there's not.

1 Q. And he is the operator of the well. Did he pay
2 yo on production from the well?

3 A. Yes, he did.

4 Q. What is Exhibit 8?

5 A. Exhibit 8 is the accounting breakdown of what he
6 paid, and it's a summary of cash receipts and disbursements
7 from October 1 of 2004 through December 31st, 2004, and it
8 shows the cash receipts, the disbursements. And included
9 with that was a check to Synergy Operating, L.L.C., in the
10 amount of \$1568.51.

11 Q. Which is the number on the bottom line, right-
12 hand column, of the first page of this exhibit?

13 A. That's correct.

14 Q. And this covers a period starting October 1,
15 which is the effective date of your assignments, is it not?
16 They are all effective --

17 A. Yes, they are all effective October 1st, 2004,
18 that's correct.

19 Q. Now, just in the last few days, Mr. Hall's client
20 has apparently challenged title to your interest; is that
21 correct?

22 A. That's correct.

23 Q. What is Exhibit 9?

24 A. Exhibit 9 is the judgment -- a quiet title
25 judgment of the District Court, and it's Judgment Number

1 5994, wherein it describes the ownership of the southwest
2 quarter of Section 8 of 29 North, 11 West.

3 Q. So if you go to page 4 of this judgment, it
4 quiets title in Margaret Hasselman Jones, Julia Hasselman
5 Keller, Jennie Hasselman Hill and May Hasselman Kouns as
6 heirs at law of Herman Hasselman of one-half of the
7 interest in the southwest quarter of Section 8; is that
8 correct?

9 A. That's correct.

10 Q. And you are the successor -- I should say,
11 Synergy is the successor in interest to --

12 A. -- the heirs of Julia H. Keller, May H. Kouns.

13 Q. Okay, okay. And this is what you base your
14 interest on --

15 A. That's correct.

16 Q. -- ultimately?

17 A. Yes.

18 Q. And you did -- And you have conducted an
19 extensive search of the county records?

20 A. Yes, we have.

21 Q. Okay. One other thing, just so we're clear. You
22 got your assignments from the surface to the base of the
23 Pictured Cliffs, I believe; is that correct?

24 A. That's correct.

25 Q. There wasn't any assignment before that, that

1 severed out the Fruitland Coal or anything like that?

2 A. No, there was not.

3 Q. Okay. So in your opinion there's nothing to
4 separate Pictured Cliffs ownership from Fruitland Coal
5 ownership in the southwest quarter of Section 8?

6 A. No, there's not.

7 Q. Now finally, what is Exhibit 10?

8 A. Exhibit 10 is the first page and the signature
9 page with the Exhibit A describing the ownership of the
10 well, and a check from Mr. Walmsley in the amount of
11 \$21,250, which is his proportionate share of the cost to
12 drill the Duff 29-11-8 Number 104 well.

13 Q. Okay, so he -- Mr. Hall's client did sign a JOA
14 designating Synergy as operator?

15 A. Yes, he did.

16 Q. And paying for its share of well costs?

17 A. That's correct.

18 Q. And apparently agreeing to the breakdown, Exhibit
19 A, the contract area of the JOA?

20 A. Yes.

21 Q. Okay. Were Exhibits 1 through 10 prepared by you
22 or under your supervision, or compiled from company
23 business records?

24 A. Yes, they were.

25 Q. And in your opinion, is the granting of this

1 Application in the interest of conservation and the
2 prevention of waste?

3 A. Yes, it is.

4 MR. BRUCE: Mr. Examiner, I'd move the admission
5 of Synergy Exhibits 1 through 10.

6 EXAMINER CATANACH: Any objection?

7 MR. HALL: No objection.

8 MS. NAIR: No objection.

9 EXAMINER CATANACH: Exhibits 1 through 10 will be
10 admitted.

11 Mr. Hall?

12 MR. HALL: Yes, sir.

13 EXAMINATION

14 BY MR. HALL:

15 Q. Mr. Hegarty, your Application proposes the
16 drilling of a parent well and an infill well; is that
17 correct?

18 A. The -- That's correct.

19 Q. And is it the 104 well, to be the initial well?

20 A. That's correct.

21 Q. By the way, are the interests of Burlington
22 committed under the JOA?

23 A. Not currently.

24 Q. What is Synergy's right to drill the 104 well on
25 the northwest quarter currently?

1 A. By virtue of our ownership in the -- from the
2 assignments from the heirs of Julia H. Keller and the heirs
3 of May H. Keller, as well as the operating agreement signed
4 by Mr. Walmsley.

5 Q. And that's for interest in the southwest quarter;
6 is that correct?

7 A. That's correct.

8 Q. What's the status of your negotiations with
9 Burlington?

10 A. They have agreed to join us in the drilling of
11 this well, and we have drilled other wells where Burlington
12 has taken a non-op working interest in our wells.

13 Ben Malone is the individual who we are primarily
14 contacted and dealing with, although David Valdez we've had
15 correspondence, or at least communication, with as well.
16 And there is basically the bureaucratic process of going
17 through the process of approval of the operating agreement,
18 is what is the reason for Burlington not signing that
19 operating agreement.

20 Q. And you're not seeking to pool the Burlington
21 interest through this Application, are you, then?

22 A. No, we're not.

23 Q. You've circulated the AFE on the 104 well. Have
24 you prepared and circulated the AFE for the 105 well?

25 A. No, we have not.

1 Q. Do you propose to treat the 104 well and the 105
2 well as the initial well and subsequent well, pursuant to
3 the joint operating agreement?

4 A. The 104 well is the only well that we have AFE'd.
5 When we're prepared to drill the 105 well, the follow-up
6 well, we will submit, you know, another AFE and ask for
7 participation, based upon the ownership of the west half,
8 and not the ownership of the 104 well.

9 Q. And so the interest owners will have a separate
10 opportunity to elect to participate in the 105 well?

11 A. That's correct.

12 Q. And are you asking Mr. Catanach to issue an order
13 to that effect, for the pooled interest owners here?

14 A. Yes, we are.

15 Q. You'll be running separate accounts for the
16 separate wells?

17 A. Yes, we will.

18 Q. What's your drilling schedule for the two wells?

19 A. The second well -- let me start with that one
20 first -- will not be drilled if the first well is not a
21 successful well, but the first well will be drilled as soon
22 as this hearing is concluded and we can secure the rights
23 to a drilling rig.

24 Q. Mr. Hegarty, were you responsible for running
25 title on the west half of the section?

1 A. I supervised the running of title on this tract,
2 yes.

3 Q. Did you have a title opinion rendered?

4 A. We are in the process of having a title opinion
5 prepared. The documentation -- we have preliminary title
6 -- an opinion of title, but as far as the official title
7 opinion, it has not been prepared as of this date.

8 Q. All right. Would you make that available to us?

9 A. Sure.

10 Q. Mr. Hegarty, who made the determination that the
11 heirs of Julia Keller, May Kouns and Margaret Jones
12 continue to own an interest in the southwest quarter?

13 A. I did.

14 Q. And could you tell us how you reached that
15 conclusion?

16 A. We basically, from patent to present, compiled a
17 copy of every document that affected the minerals. From
18 that compilation of documentation we came across the quiet
19 title proceeding and -- which has been previously discussed
20 and has been entered in as Exhibit Number 9. That quiet
21 title action was very definitive in defining what the
22 ownership of the southwest quarter of Section 8, 29 North,
23 11 West, was in August of 1958. And so basically we relied
24 upon that document and took our title evaluation forward
25 from that point with great certainty.

1 Q. And that's your Exhibit 9, a copy of that
2 judgment from that proceeding, correct?

3 A. That's correct.

4 Q. And if you look at the face of that, it shows
5 that the plaintiffs were Claude Smith, Margaret Hasselman
6 Jones, Julia Hasselman Keller, Jennie Hasselman Hill and
7 May Hasselman Kouns. Do you see that there?

8 A. Yes, I do.

9 Q. In your title search, did you come across that
10 warranty deed that was recorded on June 2nd, 1957, at Book
11 159, page 110, whereby Earl Kouns conveyed to those
12 plaintiffs as joint tenants?

13 A. Yes, we did.

14 Q. And what was your evaluation of that conveyance?

15 A. Our evaluation -- we felt that the significance
16 of this judgment, quiet title judgment, was of more -- was
17 of greater importance in signifying the ownership of the
18 southwest quarter of Section 8 of Township 29 North, Range
19 11 West.

20 Q. Well, of that 1957 warranty deed, do you dispute
21 that those plaintiffs were owners in joint tenancy at that
22 time?

23 A. That would be a legal question that I would defer
24 to counsel.

25 Q. Well, what was your determination at the time,

1 based on your experience as a petroleum landman?

2 A. We felt that this judgment defined the interest
3 as an undivided interest and not a joint-tenancy interest.

4 Q. Can you show me where in Exhibit 9 it says that?

5 A. Page 4:

6

7 "IT IS, THEREFORE, FURTHER ORDERED..."

8 adjudicated "...AND DECREED that the plaintiffs,
9 MARGARET HASSELMAN JONES, JULIA HASSELMAN KELLER,
10 JENNIE HASSELMAN HILL and MAY HASSELMAN KOUNS, as
11 heirs at law of HERMAN HASSELMAN, deceased, are the
12 owners in fee simple of the following described real
13 property situated in San Juan County, New Mexico:

14 "AN UNDIVIDED ONE-HALF OF:

15 "The Southwest Quarter...of Section Eight...,
16 Township Twenty-nine... North, Range Eleven...
17 West..."

18

19 Q. And based on that, did you conclude that those
20 plaintiffs then owned as tenants in common?

21 A. No, we felt that they were an owner in fee simple
22 of an undivided one-half interest, as the judgement states.
23 Further --

24 Q. And so --

25 A. Further, there were payments being made to these

1 individuals by Mr. Claude Smith for many, many years. And
2 we reviewed the records of payment to our predecessors in
3 interest. And based upon the checks and the accounting
4 summaries and cost summaries and cash disbursements that
5 were received over -- in excess of 10 years, we felt this
6 fact, in conjunction with the practice at hand, very
7 clearly defined the interest as an undivided fee simple
8 interest.

9 Q. Did you -- When you came across the judgment in
10 the title records, did you look at any other pleadings, any
11 other documents contained in that quiet title action file?

12 A. Yes, we did.

13 Q. And did you see anything in there that indicated
14 to you that the plaintiffs intended to dissolve their joint
15 tenancy?

16 A. We felt that it was dissolved by virtue of the
17 order which was adjudicated and decreed.

18 Q. So that's the extent of it, you saw saw nothing
19 else that --

20 A. No.

21 Q. And if you refer to your Exhibit 8, what
22 information was this compiled from?

23 A. This was provided to us by Mr. Earnest R. Smith,
24 and what information was utilized to compile this
25 information is a good question. We asked for the

1 documentation that substantiated the ownership -- or the
2 breakout of this interest because we do not agree with it,
3 particularly -- and I could go into detail if you'd like me
4 to, but I think that would be more a question addressed to
5 Mr. Earnest Smith.

6 Q. Well, anyway, the heirs of Julia Keller, May
7 Kouns, Margaret Jones, the plaintiffs from the quiet title
8 proceeding, are not referenced on Exhibit 8, are they?

9 A. They are not. Synergy, as a predecessor in
10 interest is listed and represented to own that interest.
11 So they accepted the assignments that we gave them and paid
12 us accordingly.

13 MR. HALL: That's all I have, Mr. Examiner.

14 EXAMINER CATANACH: Okay, do you have any
15 questions, Ms. Nair?

16 MS. NAIR: Just one question, sir.

17 EXAMINATION

18 BY MS. NAIR:

19 Q. In your title review, did you come across the
20 deed on page 199 of Book 921 in the San Juan County
21 Records, a 1981 deed, from Jennie Hasselman Hill as her --
22 as the sole surviving joint tenant of these various
23 Hasselman sisters, to June Hill Walmsley?

24 A. Yes, we did.

25 Q. And how did that affect your analysis of the

1 court order?

2 A. We did not feel that that document influenced the
3 ownership as we've got it represented here in this hearing,
4 and mainly because of the fact that we've got a judicial
5 decree which stipulates the interest is owner and fee
6 simple undivided interest, as well as we had records of
7 payments to the -- our predecessors in interest that
8 spanned, you know, a greater number than 10 years, and that
9 information was compelling enough for us to feel
10 comfortable that these individuals did, in fact, own an
11 undivided interest in this tract.

12 Q. And I guess I have one more. Did Ed Smith, Edwin
13 Smith, ever contact you regarding his questions on the way
14 the title was laid out in the operating agreement in
15 exhibits that you provided him?

16 A. No, he did not.

17 MS. NAIR: Okay, thank you.

18 EXAMINER CATANACH: Any other questions of this
19 witness?

20 MR. BRUCE: Just one.

21 FURTHER EXAMINATION

22 BY MR. BRUCE:

23 Q. Mr. Hegarty, you're not going to commence the
24 well until you get Burlington signed on to a JOA; is that
25 correct?

1 A. That's correct.

2 MR. BRUCE: Thank you.

3 Mr. Examiner, one point of clarification. The
4 Application did talk about two wells. At this point we are
5 just seeking the force pooling of the Number 104 well on
6 the northwest quarter of the section --

7 EXAMINER CATANACH: So you --

8 MR. BRUCE: -- and so we'd amend the Application
9 accordingly.

10 EXAMINER CATANACH: You want to dismiss that
11 portion seeking to pool the second well?

12 MR. BRUCE: That's correct.

13 EXAMINATION

14 BY EXAMINER CATANACH:

15 Q. Just for clarification, this well is in 29 North,
16 11 West, right?

17 A. (Nods)

18 EXAMINER CATANACH: Your Exhibit Number 1 says
19 12, and I believe -- 12 West -- and I believe in some parts
20 of Mr. Hegarty's testimony he did reference 12 west also,
21 but it seems like everything else is in order.

22 MR. BRUCE: Mr. Hegarty can confirm it, but I'm
23 sure it's 11 West; is that correct?

24 THE WITNESS: That is correct, 29 North, 11 West.

25 Q. (By Examiner Catanach) The Helmsley interest --

1 I'm sorry, the Walmsley interest; is that right? -- has
2 signed -- is committed to the well; is that correct?

3 A. That's correct.

4 Q. Okay, they've signed the JOA?

5 A. Yes, they have.

6 Q. So you're just pooling the Edwin and Earnest
7 Smith interests at this time, and the David Jones interest?

8 A. That's correct.

9 EXAMINER CATANACH: Okay, I don't have anything
10 else of this witness at this time.

11 Is there anything further that you have?

12 MR. BRUCE: I have no further questions of the
13 witness.

14 EXAMINER CATANACH: Okay.

15 MR. HALL: Mr. Examiner, briefly, I would ask
16 that the case be continued until such time as we're
17 provided with the title opinion and have had a chance a
18 chance to review that.

19 There is a question about the quantum of interest
20 owned by my client in the southwest quarter, and the title
21 opinion may shed some light on that, may be helpful to you
22 in making your decision in the case.

23 It appears that my client did execute the AFE --
24 I'm sorry, the JOA -- but I would point out that my client
25 is not familiar with the industry and is unsure about the

1 interest owned in that section, so it's unsure at this
2 point what interests may have been committed to the well.

3 In addition to that, Ms. Nair has done quite a
4 bit of extensive research on title, and I believe she's in
5 a position to present you with some more documentation
6 about the status of title and questions about title which
7 go directly to Synergy's right to drill in this case.

8 In addition to that, Mr. Examiner, I'd ask that
9 you take administrative notice of the warranty deed
10 recorded on June 2nd, 1957, at Book 159, page 110, of the
11 San Juan County Clerk's Office. I will get that to you,
12 and we ask that that be made a part of the record in this
13 case.

14 What we think it will show to you, Mr. Examiner,
15 is that the interests that are being pooled were, in fact,
16 joint tenancy interests. And so therefore the heirs of
17 Julia Keller, May Kouns and Margaret Jones did not succeed
18 to any interest at all. We believe all of those interests
19 devolved to my client's trust, and my client owns those
20 interests, and I believe Ms. Nair's documentation will help
21 bear that out.

22 EXAMINER CATANACH: So if I understand correctly,
23 Mr. Hall, is it your contention that Synergy may not own
24 any interest in the southwest quarter?

25 MR. HALL: It's possible. I was unaware that my

1 client had signed the JOA, frankly, so I'm going to have to
2 investigate that and see what precipitated that, see what
3 their understanding was at the time, that led them to sign
4 that. But it is a question --

5 THE WITNESS: Might I interject? Joe Robbins,
6 one of the interest owners, did farm out to us, so we do
7 own an interest outside of even this.

8 MR. HALL: If that's the case, Mr. Examiner, we
9 wouldn't contest their right to drill.

10 EXAMINER CATANACH: Joe Robbins is an interest
11 owner in the southwest quarter?

12 THE WITNESS: That's correct.

13 MR. BRUCE: He's listed on Exhibit 2, Mr.
14 Examiner.

15 EXAMINER CATANACH: And there's no disputing that
16 farmout from that interest?

17 MS. NAIR: We haven't seen it. We weren't aware
18 of that, and we haven't seen that documentation.

19 THE WITNESS: We can provide that.

20 MR. BRUCE: We'll get a copy and ship it to
21 counsel of record and provide it to you, Mr. Examiner.

22 MS. NAIR: We also have a question as to whether
23 Mr. Robbins signed that in reliance on the fact that
24 Synergy already had an existing right to drill.

25 MR. BRUCE: Mr. Examiner, that's speculation, and

1 if they want to bring Mr. Robbins in, that's fine, but I
2 object to this type of speculation.

3 EXAMINER CATANACH: All right. So from what I
4 can gather, Synergy does have a right, by virtue of at
5 least the Joe Robbins interest at this time to drill a well
6 in the west half of that section --

7 MR. BRUCE: Yes, sir.

8 EXAMINER CATANACH: -- and you're not disputing
9 that?

10 MR. HALL: I have no reason to dispute it right
11 now.

12 EXAMINER CATANACH: With regards to the
13 continuance for the -- for review of the title opinion, I
14 don't think that that's going to affect the decision in this
15 case, because I'm not going to -- we're obviously not going
16 to get involved in that part of it. It appears that
17 Synergy does have the right to drill at this point. I'm
18 not sure what it would be served, to continue the review
19 the title opinion, Mr. Hall.

20 MR. HALL: Well, I believe, Mr. Examiner, that it
21 might answer the question of whose interests are being
22 pooled and who would have the right to elect and who would
23 have the right to participate in the well. So I think it's
24 part of the application, frankly.

25 MR. BRUCE: Mr. Examiner, I would say that if Mr.

1 Hall's client owns all of these interests as a joint
2 tenant, which we dispute, they -- they've signed a JOA.
3 Now, if they want to seek to amend the percentages on that
4 JOA, that's fine, but they have voluntarily committed their
5 interests, whatever they may be.

6 Q. (By Examiner Catanach) Mr. Hegarty, do you know
7 when that title opinion is going to be ready?

8 A. That should be ready -- you know, I just don't
9 have an idea. I would have to make an inquiry to be
10 certain. Right now the oil and gas industry, as you're
11 well aware by your workload and everybody's workload, is --
12 because of -- the current prices are fairly high, the
13 workload is burdensome. So I cannot make a definitive
14 statement or answer without some inquiry.

15 Q. And it's your plan to drill the well as soon as
16 you have a pooling order?

17 A. Yes, and a rig. We are comfortable with title.
18 We will not wait for the opinion.

19 Q. How is rig availability?

20 A. We have an agreement with two majors, and when
21 they run into problems with rigs that they have secured, on
22 a moment's notice they give that rig to us in the interim
23 period while they get their permits or whatever delays they
24 encounter. So by virtue of that fact we have to have
25 locations prepared and ready to go, and we move that rig in

1 place and get our wells drilled, and workovers, and so on
2 and so forth.

3 So we do have a means to get this done, and we've
4 already drilled four wells this year under that basis.

5 Q. Hm. Do you have any reason to believe that your
6 title opinion is going to show anything different than what
7 you've shown here today, Mr. Hegarty?

8 A. None whatsoever.

9 EXAMINER CATANACH: I think I'm going to go ahead
10 and deny the request to continue. I would request that you
11 provide us with a copy of the farmout agreement from the
12 Robbins interest.

13 THE WITNESS: Will do.

14 EXAMINER CATANACH: And --

15 MS. NAIR: Excuse me, sir, may I have a chance to
16 put these title documents into the record and explain our
17 argument to the Examiner, please?

18 EXAMINER CATANACH: Sure. Are you going to put a
19 witness on, Ms. Nair?

20 MS. NAIR: I don't need to, I can just walk you
21 through these documents.

22 By way of background, we do not dispute all of
23 the notice that Mr. Hegarty has provided to Mr. Smith. We
24 don't dispute that all those negotiations went on. In
25 fact, Mr. Smith was ready to participate until we became

1 aware of this title question as a result of yet another
2 well, the Jones well, that is also on this property.

3 What we've attached here as Exhibit A is the
4 original deed conveying the one-half interest in the
5 property from the Hasselman sisters to Earl Kouns. This
6 was back when they used to use a straw man to change a
7 tenancy in common to a joint tenancy.

8 Then on the same day, Exhibit B, there's a
9 warranty deed conveying that same undivided one-half
10 interest from Earl Kouns back to the Hasselman girls as
11 joint tenants.

12 Exhibit C, the court order, merely confirms that
13 same ownership. Although this is a legal question that's
14 probably outside the scope of this hearing, we don't think
15 that the law supports that a court order is going to
16 destroy an existing joint tenancy unless it affects a
17 conveyance.

18 And then finally Exhibit D is the warranty deed
19 about which I asked Mr. Hegarty, the 1981 deed from Jennie
20 Hasselman Hill as surviving joint tenant of the Hasselman
21 sisters to June Hill Walmsley.

22 And again, the reason for the continuance is so
23 that my client, Mr. Edwin Smith, can be comfortable with
24 the state of title. As both Mr. Hegarty and I have stated,
25 we were ready to participate, but as long as there are

1 questions about title, he just doesn't feel comfortable
2 signing that JOA. If we were able to delay it until we got
3 that title opinion and it came out the way that Mr. Hegarty
4 expects it to come out, then the pool might not even be
5 necessary. That's why we think it's just a little more
6 practical to wait until we can both see the Robbins farmout
7 agreement, of which we weren't aware, and to get the title
8 opinion.

9 MR. BRUCE: Mr. Examiner, we don't have any
10 objection to the introduction of these documents, but I do
11 object to a continuance. We will provide the Robbins
12 farmout. They do have the right to appeal to the
13 Commission if they're not content with what they see, but
14 Synergy does have the right to commence a well. It won't
15 commence it until it gets a JOA from Burlington. We think
16 we've satisfied the pooling statute, and we'd ask that the
17 matter be taken under advisement.

18 Q. (By Examiner Catanach) Mr. Hegarty, is Synergy
19 comfortable with drilling the well without a final title
20 opinion in place?

21 A. Yes, we are.

22 Q. And that's based upon your belief that you do own
23 the interest?

24 A. Yes, it is.

25 Q. I'm not familiar -- certainly, I wish I would

1 have counsel here today to help me with this situation, but
2 is a title opinion challengeable? Can that be challenged?

3 A. It's an opinion.

4 MR. BRUCE: It's one man's opinion.

5 MS. NAIR: It's an opinion, uh-huh.

6 EXAMINER CATANACH: So if the title opinion comes
7 out and these parties still don't agree with it, that can
8 be challenged?

9 MR. BRUCE: That can be challenged. Their remedy
10 is in district court. And I'd note that Mr. Smith's title
11 is not at issue here. So I don't -- I fail to see what a
12 title opinion has to do with his interest, if Synergy has a
13 farmout through Mr. Robbins. Mr. Hall's client's remedy, I
14 think, is in district court if they believe otherwise. But
15 Synergy does have the right to drill a well.

16 EXAMINER CATANACH: Okay. At this time, then,
17 I'm going to deny the request to continue and again ask
18 that you provide the farmout documents to these parties and
19 to the Division.

20 And is there anything further?

21 MR. BRUCE: No, sir.

22 EXAMINER CATANACH: Is this -- Do we want to mark
23 this as an exhibit, Ms. Nair?

24 MS. NAIR: Yes, please.

25 MR. HALL: You know what I think you can do, Mr.

1 Examiner, is add that as a pleading, and the exhibits that
2 are attached to that are all instruments filed of record
3 with the San Juan County Clerk's Office, so you're entitled
4 to take administrative of those.

5 EXAMINER CATANACH: So --

6 MR. HALL: You may rely on those as evidence in
7 the case, the exhibits, that is.

8 EXAMINER CATANACH: Okay.

9 MR. BRUCE: I don't think you're entitled to take
10 administrative notice, but we don't object to those
11 documents.

12 EXAMINER CATANACH: Okay, this exhibit submitted
13 by Ms. Nair will be entered in this case.

14 Okay, anything further?

15 There being nothing further, Case 13,486 will be
16 taken under advisement.

17 Let's take a 15-minute break.

18 (Thereupon, these proceedings were concluded at
19 9:56 a.m.)

20 * * *

21 I do hereby certify that the foregoing is
22 a complete record of the proceedings in
23 the Examiner hearing of Case No. 13486
24 heard by me on June 16, 2005
25 David L. Catnach, Examiner
Oil Conservation Division

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 June 18th, 2005.



STEVEN T. BRENNER
CCR No. 7

My commission expires: October 16th, 2006