

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

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

CASE NO. 13486
ORDER NO. R-12376 De Novo

PRE-HEARING STATEMENT

This Pre-Hearing Statement is submitted by Miller Stratvert P.A. (J. Scott Hall) on behalf of Jerry Walmsley, Trustee, Bypass Trust U/W June H. Walmsley, ("Walmsley Trust"), as required by the Oil Conservation Commission.

APPEARANCES

ATTORNEYS

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APPLICANT

Synergy Operating, LLC

OPPONENT

Jerry Walmsley, Trustee

Edwin Smith, LLC

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STATEMENT OF THE CASE

JERRY WALMSLEY, TRUSTEE

The Walmsley Trust is the undisputed owner of a 12.5% interest in the SW/4 of Section 8, T29N, R11W, which Synergy proposes to consolidate with the W/2 of said Section 8 and dedicate it to the proposed Duff 29-11-8 Well No. 104 Basin Fruitland Coal formation well to be drilled in the NW/4 of the Section. In the proposed 320-acre proration unit, the Walmsley Trust owns a 6.25% undisputed interest, proportionately reduced.

In addition to the 6.25% interest in the unit, the Walmsley Trust claims ownership of 100% of an additional 18.75% claimed by Synergy Operating, LLC. These claims are the subject of a quiet title proceeding presently pending before the 11th Judicial District Court.

At the Division Examiner Hearing, Synergy represented that it was unable to locate any of the heirs of Margaret Hasselman Jones and therefore proceeded to force pool that particular assumed interest by publication pursuant to Rule 1207-B. As a consequence, the interest attributed to Margaret Hasselman Jones which is claimed by Walmsley was pooled under Order No. R-12376 at the statutorily presumed 7/8^{ths} working interest and 1/8th royalty interest rates pursuant to NMSA 1978 § 70-2-17C.

If title to the interests claimed by Synergy, including the imputed 6.25% interest of Margaret Hasselman Jones fails, then these interests would not have been consolidated and the well, if drilled, could not receive an allowable pursuant to Rule 1104.

With respect to the putative interest that Synergy claims must be owned by the unlocatable heirs of Margaret H. Jones, Order No. R-12376 would authorize Synergy to recoup well costs and the risk penalty out of the proceeds attributable to the statutorily presumed 7/8^{ths} working interest. To permit Synergy to recoup those costs and the risk penalty would be a *dejure*

determination of the Walmsley Trust's claim to title and its concomitant entitlement to production proceeds without the risk penalty. Further the Walmsley Trust would be effectively deprived of the opportunity to elect to participate or go non-consent with respect to the force-pooled interests.

PROPOSED EVIDENCE

JERRY WALMSLEY, TRUSTEE

WITNESSES

None

EXHIBITS

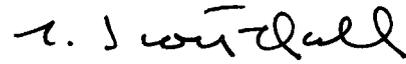
None

PROCEDURAL MATTERS

1. Applicant's Motion to Dismiss; and
2. Extension of the Stipulation for Continuance and Stay.

MILLER STRATVERT P.A.

By:



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Certificate of Service

I hereby certify that a true and correct copy of the foregoing was faxed to counsel of record on the 7 day of February 2006, as follows:

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