

JAMES BRUCE
ATTORNEY AT LAW

POST OFFICE BOX 1056
SANTA FE, NEW MEXICO 87504

369 MONTEZUMA, NO. 213
SANTA FE, NEW MEXICO 87501

(505) 982-2043 (Phone)
(505) 660-6612 (Cell)
(5050 982-2151 (Fax)

jamesbruc@aol.com

2006 JUL 3 PM 2 59

June 29, 2006

Via fax and U.S. Mail

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

Re: Case No. 13,663/Synergy Operating, LLC/W $\frac{1}{2}$ §8-29N-11W

Dear Mr. Catanach:

This letter responds to the questions you asked at the end of the June 22nd hearing, and also sets forth Synergy's position on certain of the issues raised by the opponents.

A. Interest Ownership and Commitment Status: Ownership of the W $\frac{1}{2}$ §8, and the status of commitment of the interest owners to the proposed well, are as follows:

1. NW $\frac{1}{4}$ §8: This tract is covered by a federal lease owned 100% by Burlington Resources Oil & Gas Company, L.P. (now ConocoPhillips Company), which I will refer to as Burlington. Burlington has executed a JOA. **Synergy Exhibit 10.**
2. SW $\frac{1}{4}$ §8: This is a fee tract which was originally owned as follows:

Edwin Smith, LLC	46.875%
Joseph C. Robbins	3.125%
Hasselmann heirs	50.000%

There is no dispute as to the quantum of the Edwin Smith, LLC interest. There is also no dispute as to the quantum of Mr. Robbins' mineral interest, although it is subject to a farmout agreement. **Synergy Exhibit 11.**

It is Synergy's contention that the Hasselman heirs' 50% interest was originally owned by the following people:

- Julia H. Keller (1/4, or 12.5%)
- May H. Kouns (1/4, or 12.5%)
- Margaret H. Jones (1/4, or 12.5%)
- Jennie H. Hill (1/4, or 12.5%).

Further, it is Synergy's contention that it owns the interests of the heirs of Julia H. Keller and May H. Kouns (**Synergy Exhibit 2** (attached), acquired by the instruments in **Synergy Exhibit 7**), and the heirs of Margaret H. Jones except the Leola Kellogg interest (**Synergy Exhibit A** (attached), acquired by the instruments in that exhibit). The interest of Jennie H. Hill is credited to the Walmsley Trust, **which has signed a JOA. Synergy Exhibit 10.**

3. Summary: Based on the above, it is Synergy's contention that the working interest in the well unit is now owned as follows:

Burlington	50.0000%	(signed JOA)
Edwin Smith, LLC	46.8750% x 1/2	(uncommitted)
Walmsley Trust	12.5000% x 1/2	(signed JOA)
Leola Kellogg	1.5625% x 1/2	(uncommitted)
Synergy	39.0625% x 1/2 ¹	(signed JOA)

In this hearing, Synergy only seeks to force pool the interests of Edwin Smith, LLC and Leola Kellogg. Those are the only two people notified of the hearing. **Synergy Exhibits 5 and B.**

B. Commitment Status of Burlington: After the June 22nd hearing Synergy contacted Burlington, which informed Mr. Hegarty (contrary to the assertions of Mr. Larson at hearing) that it was going to join in the well, although it has not yet signed an AFE. As soon as a signed AFE is received, it will be forwarded to the Division.

However, whether Burlington is a consenting party to the proposed well is irrelevant to this proceeding: It has signed a JOA (naming Synergy as operator) and may do whatever it wants. Because it signed a JOA covering the W $\frac{1}{2}$ §8, it was not notified of the hearing.

C. Operatorship: At the hearing Edwin Smith asserted that it desired to be named operator of the well unit. However, Synergy is the Division-approved operator of the W $\frac{1}{2}$ §8, and stated that it will not consent to Edwin Smith, LLC operating the infill well, as required by Division rules. Moreover, Burlington and the Walmsley Trust, by executing JOA's, have consented to Synergy as operator.² The Commission, in Order No. R-12,376-C, held that Synergy has the

¹ This is comprised of (i) the interest of the Julia H. Keller heirs, (ii) the interest of the May H. Kouns heirs, (iii) 7/8 of the interest of the Margaret H. Jones heirs, and (iv) the farmed-out interest of Joseph Robbins.

² Mr. Hegarty testified that Burlington informed him that it would seek to be named operator if Synergy was not the operator.

right to operate the W½ §8 under the JOA. As a result, operatorship of the proposed well is not an issue.

D. Rescission: On June 15th, Mr. Larson filed a brief in opposition to pooling. The brief makes several arguments, which can be dealt with in short order.

1. The brief argues that Synergy failed to notify recently discovered interest owners of the hearing. That is incorrect, as described above: Synergy acquired the Margaret H. Jones heirs' interests, except for Leola Kellogg. Ms. Kellogg was provided with the chance to join in the well, and was notified of the hearing.³

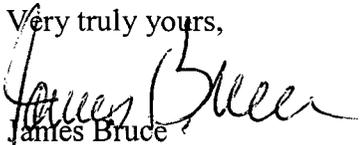
2. The brief further states that the JOA with Burlington does not give Synergy the right to drill the proposed well. Again, Order No. R-12,376-C held that Synergy has the right to operate the W½ §8 under the JOA., and the Division is bound by that decision.

3. Finally, the brief re-argues the claims that the Robbins farmout was void due to fraud or because Mr. Robbins has rescinded the farmout agreement. The Division does not have the authority to rule on contract matters; that is for the courts. And, please note that Mr. Robbins has never filed suit to terminate the farmout. Furthermore, Mr. Hegarty testified that what he told Mr. Robbins regarding Synergy's right to drill was truthful, and there is no contrary testimony in the record.⁴

In addition, the farmout is a bilateral agreement, and the consent of both parties is required to rescind the agreement. Moreover, Synergy performed under the farmout, starting as soon as it was signed, by obtaining an APD, force pooling interests, obtaining a JOA from Burlington, obtaining financing, and drilling the well. Such acts forbid a unilateral rescission.

For the foregoing reasons, Synergy requests the division to enter an order pooling the subject lands and well.

Very truly yours,


James Bruce

Attorney for Synergy Operating, LLC

cc: Counsel of record w/encl.

³ Smith/Robbins take a contradictory position: FIRST, their position is that the Jones heirs own no interest; and SECOND, they claim that Synergy must pool the Jones heirs. By requesting that Synergy pool these interests, they are contradicting their position in the San Juan County quiet title action, and admitting that Synergy owns an interest under the assignments from the Hasselman heirs.

⁴ Synergy's position is that it had the right to drill under assignments from the Hasselman heirs. **Synergy Exhibit 7**. These people had been paid by Smith on production from the SW¼ §8 for 40 years, and in fact Smith paid Synergy after it acquired the interests. This is evidence of title.

Duff 29-11-8#104 well,

FEE - SW/4 Section 8, T29N, R11W
San Juan County, New Mexico

Heirs of Julia H. Keller

Annemarie Keller	6.25%
Margaret K. Dunn	6.25%

Heirs of May H. Kouns

Charla Varner.	3.125%
Robert E. Kouns,	3.125%
Kimberly Brautigam	3.125%
Jodie Yates	3.125%

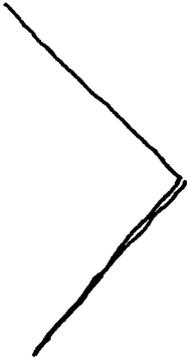
Heirs of Jennie H. Hill

June Wamsley	12.5%
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Heirs of Margaret H. Jones

David F. Jones	12.5%
<hr/> S- TOTAL	<hr/> 50.000%

Joseph C. Robbins	3.125%
Edwin & Earnest Smith	46.875%
<hr/> TOTAL	<hr/> 100.000%



NOW SYNERGY
25%

RECORDED & INDEXED

Synergy

2

13663

CASE NO.

T 29 N, R 11 W - SECTION 8 - SW/4

MARGARET HASSELMAN JONES INTEREST 12.5000%
OWNED BY SYNERGY OPERATING - 10.9375%
OWNED BY LEOLA KELLOGG - 1.5625%

I - EGID SCHMITT, BROTHER OF MARGARET H. JONES - 6.25%

- 1) WILLIAM J. BROWN 1.5625% *
LIVING SPOUSE OF DAUGHTER, MARY L. BROWN, DECEASED.
- 2) GERALDINE CHIAPUSIO 1.5625% *
LIVING SPOUSE OF SON, EDWARD L. SCHMITT, DECEASED.
- 3) MYRNA SCHMITT 1.5625% *
LIVING SPOUSE OF SON, ELMER J. SCHMITT, DECEASED.
- 4) WILLIAM J. SCHMITT, LIVING SON OF EGID SCHMITT 1.5625% *

II - PAULINE KELLOGG, SISTER OF MARGARET H. JONES - 6.25%

- 1) MILDRED P. DELANO, DAUGHTER 1.5625% *
- 2) CAROLYN DELANO EVANS, GRANDDAUGHTER 1.5625% *
- 3) DOMINIQUE SUZANNE and RACHEL ANNE EVANS 1.5625% *
GREAT GRANDDAUGHTERS

TOTAL OF SYNERGY OPERATING INT. 10.9375%

- 4) LEOLA KELLOGG 1.5625%
LIVING SPOUSE OF STEPSON, EDWARD L. KELLOGG, JR.

TOTAL INTEREST 12.5000%

* INTERESTS PURCHASED BY SYNERGY OPERATING

OIL CONSERVATION DIVISION

CASE NUMBER

Synergy EXHIBIT NUMBER *A*