

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: )  
APPLICATION OF SYNERGY OPERATING, LLC, )  
FOR COMPULSORY POOLING, SAN JUAN COUNTY, )  
NEW MEXICO )

CASE NO. 13,663

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

BEFORE: DAVID R. CATANACH, Hearing Examiner

June 22nd, 2006

Santa Fe, New Mexico

2006 JUL 6 AM 8 08

This matter came on for hearing before the New Mexico Oil Conservation Division, DAVID R. CATANACH, Hearing Examiner, on Thursday, June 22nd, 2006, 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.

\* \* \*

## I N D E X

June 22nd, 2006  
 Examiner Hearing  
 CASE NO. 13,663

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| APPLICANT'S WITNESS:              |      |
| <u>PATRICK HEGARTY</u> (Landman)  |      |
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\* \* \*

## E X H I B I T S

| Applicant's | Identified | Admitted |
|-------------|------------|----------|
| Exhibit A   | 6          | 10       |
| Exhibit B   | 8          | 10       |
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\* \* \*

| Smith/Robbins | Identified | Admitted |
|---------------|------------|----------|
| Exhibit L     | 22         | 35       |
| Exhibit M     | 30         | 35       |

\* \* \*

## A P P E A R A N C E S

## FOR THE DIVISION:

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## FOR ED SMITH, LLC, and JOSEPH ROBBINS:

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P.O. Box 1945  
Albuquerque, New Mexico 87103  
By: DEREK V. LARSON

## FOR JERRY WALMSLEY, TRUSTEE OF THE JUNE H. WALMSLEY TRUST:

MILLER, STRATVERT P.A.  
150 Washington  
Suite 300  
Santa Fe, New Mexico 87501  
By: J. SCOTT HALL

\* \* \*

1           WHEREUPON, the following proceedings were had at  
2 10:12 a.m.:

3           EXAMINER CATANACH: All right, call Case 13,663,  
4 the Application of Synergy Operating, LLC, for compulsory  
5 pooling, San Juan County, New Mexico.

6           Call for appearances in this case.

7           MR. BRUCE: Mr. Examiner, Jim Bruce of Santa Fe,  
8 representing the Applicant. I have one witness.

9           EXAMINER CATANACH: Additional appearances?

10          MR. LARSON: Derek Larson, Sutin, Thayer and  
11 Browne, for Ed Smith, LLC, and Joseph Robbins. I don't  
12 anticipate calling Mr. Smith. He is here, but...

13          MR. HALL: Mr. Examiner, Scott Hall, Miller  
14 Stratvert law firm, Santa Fe, appearing on behalf of Jerry  
15 Walmsley, who is the Trustee of the June H. Walmsley Trust.  
16 I have no witnesses this morning.

17          EXAMINER CATANACH: Okay. Can I get -- Mr.  
18 Hegarty, you've already been sworn in, previous case. Can  
19 I get Mr. Smith to stand and be sworn in case you testify?

20                 (Thereupon, the witnesses were sworn.)

21          MR. BRUCE: Mr. Examiner, again, this case was  
22 heard -- I don't remember anymore, April --

23          EXAMINER CATANACH: I don't either.

24          MR. LARSON: March 30th.

25          MR. BRUCE: Thank you, Derek.

1           And it was continued because at that hearing Mr.  
2 Hegarty announced that he had -- there was a certain  
3 interest, the Margaret Hasselman Jones interest, which he  
4 had just recently discovered notice had not been given to  
5 these people, and he would like to discuss what has  
6 happened since that time.

7                               PATRICK HEGARTY,  
8 the witness herein, after having been first duly sworn upon  
9 his oath, was examined and testified as follows:

10                               DIRECT EXAMINATION

11 BY MR. BRUCE:

12           Q.    Just briefly, Mr. Hegarty, and recognizing that  
13 there is a district court proceeding, Synergy -- to  
14 summarize, you are seeking the pooling of the west half of  
15 Section 8 of 29 North, 11 West; is that correct?

16           A.    Yes.

17           Q.    For a Fruitland Coal gas well?

18           A.    That's correct.

19           Q.    And the northwest quarter is a federal lease  
20 owned by Burlington Resources, which is now ConocoPhillips?

21           A.    Yes.

22           Q.    And Burlington Resources previously signed a JOA  
23 with Synergy on this matter?

24           A.    Yes, they did.

25           Q.    And in the southwest quarter, which is fee land,

1 Synergy was claiming a 25-percent interest, mineral  
2 interest, in the subject depths?

3 A. Yes.

4 Q. And Mr. Walmsley -- or the Walmsley Trust, excuse  
5 me, claims an interest, and then the other interest owners  
6 are Joseph Robbins and -- I'm not sure of the exact title,  
7 but I think it's Edwin Smith, LLC, is the claimant, as  
8 another interest owner?

9 A. That's correct.

10 Q. And this was set forth in your original Exhibit  
11 2, submitted in this case a couple of months ago. And  
12 again, there's no dispute over the interest owned by Edwin  
13 Smith, LLC?

14 A. No, no dispute whatsoever.

15 Q. There was an additional interest which was set  
16 forth regarding the heirs of Margaret Hasselman Jones,  
17 which Synergy claims is a 12-1/2 percent, an undivided 1/8  
18 interest in the southwest quarter?

19 A. Yes.

20 Q. And after -- I don't know, you can tell the  
21 Examiner how long you had been looking after this interest,  
22 but you eventually tracked down these interest owners?

23 A. Yes, we did.

24 Q. And could you refer to Exhibit A and discuss what  
25 you have done with respect to the Margaret Hasselman Jones

1 interest?

2 A. It was determined that the successors in  
3 interest, the heirs to Margaret Hasselman Jones' interest  
4 were Egid Schmitt and a Pauline Kellogg, which was the  
5 brother and sister of Margaret H. Jones.

6 We contacted the -- Both of those people had  
7 died, so we contacted their children and we were successful  
8 in acquiring all of the interest except for one person who  
9 owned a 1.5625-percent interest of the 12 1/2.

10 Q. And as you said, these people are deceased, and  
11 no probates were conducted in New Mexico on this interest?

12 A. That's correct.

13 Q. And Exhibit A contains copies of the conveyances  
14 you received from various parties?

15 A. Yes, they do.

16 Q. And there's one person, Leola Kellogg, who did  
17 not convey her interest; is that correct?

18 A. That's correct.

19 Q. Did Synergy send her a well proposal regarding  
20 this subject well?

21 A. Yes, we did.

22 Q. And is that contained in Exhibit A?

23 A. Yes, it is.

24 Q. Now that letter is dated May 22, 2006, and how  
25 did you send that letter?

1           A.    We sent it -- Well, on May 9th we e-mailed the  
2 contents of this letter to a Mr. Ronald Kellogg, which is  
3 the son of Leola -- she's quite elderly -- and then we  
4 backed that up with a May 22nd FedEx and -- containing the  
5 letter that you see, the AFE --

6           Q.    Okay.

7           A.    -- and asked for their participation.

8           Q.    Okay.  And is -- you have been dealing primarily  
9 with Ronald Kellogg; is that correct?

10          A.    Yes.

11          Q.    Has he indicated they still may be interested in  
12 joining in the well?

13          A.    You know, I'm not certain that he fully  
14 understands the process, and he's not really indicated that  
15 he wants to participate in the well.

16          Q.    But he on behalf of his mother did not agree to  
17 convey the interest; is that --

18          A.    That's correct.

19          Q.    Okay, and Mr. Examiner, Exhibit B is simply  
20 notice of this hearing sent to Leola Kellogg, care of  
21 Ronald Kellogg.

22                   And Exhibit C, Mr. Hegarty, at the original  
23 hearing Mr. Smith stated he hadn't received the AFE that  
24 you had mailed to him by letter dated November 16th, so you  
25 wrote an additional letter dated April 3.  That should be

1 2006, should it not --

2 A. Yes.

3 Q. -- rather than 2005?

4 A. Yes.

5 Q. And you sent that letter to me, and I mailed it  
6 to Mr. Larson, his attorney; is that correct?

7 A. That's correct.

8 Q. And that is just reflected in Exhibit C.

9 And does the AFE attached to Exhibit C reflect  
10 Synergy's current estimate of well costs for the proposed  
11 105 well?

12 A. Yes.

13 Q. In your opinion, is the granting of this  
14 Application in the interests of conservation and the  
15 prevention of waste?

16 A. Yes, it is.

17 Q. And were Exhibits A through C prepared by you or  
18 under your supervision or compiled from company business  
19 records?

20 A. Yes, they were.

21 MR. BRUCE: Mr. Examiner, I'd move the admission  
22 of Synergy Exhibits A through C.

23 EXAMINER CATANACH: Any objection?

24 MR. HALL: No objection.

25 MR. LARSON: No objection.

1 EXAMINER CATANACH: Exhibits A through C will be  
2 admitted.

3 Cross-examination, Mr. Hall?

4 MR. HALL: Go ahead.

5 EXAMINER CATANACH: Mr. Larson?

6 CROSS-EXAMINATION

7 BY MR. LARSON:

8 Q. Mr. Hegarty, I have a question, and maybe this is  
9 for Mr. Bruce, but at the last hearing, March 30th, there  
10 was a question as to what interest you were seeking to  
11 pool, and the answer was -- well, the question was, "Okay,  
12 so the Edwin Smith or Edwin Smith, LLC, interest is who you  
13 seek to pool today?" And the answer was, "That's correct."

14 Are you now seeking to pool any additional  
15 interests? Is that what I'm understanding?

16 MR. BRUCE: We are seeking to pool the Leola  
17 Kellogg interest.

18 Q. (By Mr. Larson) Mr. Hegarty, have you obtained  
19 an authorization from Burlington, which now answers the  
20 phone as ConocoPhillips, to the authorization for  
21 expenditure for the Duff 105 well, which you propose to  
22 drill?

23 A. You know, I'm not sure if they've signed that.  
24 But they did sign the 104, and they did sign the operating  
25 agreement.

1 Q. Same question with regard to the Walmsley Trust.  
2 Have you received a consent or an authorization for the  
3 expenditure for the 105 well from the Walmsley Trust?

4 A. They did not return a response to that AFE  
5 proposal.

6 Q. Okay. Is it your understanding that the persons  
7 listed on the green cover page of your Exhibit A list all  
8 of the previously mentioned interest owners that you  
9 mentioned on March 30th, without naming? Is this the  
10 complete list of those persons that you were referencing?

11 A. Yes, it is.

12 Q. Okay. Do you have any understanding as to  
13 whether the interest owned by any of the persons on this  
14 list, Exhibit A, derive from anyone other than Margaret  
15 Hasselman Jones' interest?

16 A. Could you restate that? I'm not sure I  
17 understand what you're asking.

18 Q. If it is determined -- if it were to be  
19 determined that Margaret Hasselman Jones had no interest  
20 following her death --

21 A. Uh-huh.

22 Q. -- would any of these other persons that are  
23 listed here still have any interest?

24 A. All of their interest is derived from Margaret  
25 Hasselman Jones.

1 Q. Okay, thank you. And other than the claimed  
2 interest in -- through a rescinded, I would say, but I know  
3 there's a dispute about the format agreement from Joe  
4 Robbins -- other than that 3.125 percent in the interest  
5 that is reflected here on the cover of Exhibit A, is  
6 Synergy claiming any other interest in the southwest  
7 quarter of the section?

8 A. Well, outside of what we've already purchased?  
9 Okay, with the inclusion of the heirs of Margaret Hasselman  
10 Jones, Synergy now controls 37 1/2 minus the 1.5625  
11 percent.

12 Q. Other than the heirs of Margaret Hasselman Jones  
13 and the 1.5625 from Leola Kellogg, and the claimed 3.125,  
14 what are the other interests that Synergy claims to own in  
15 this section?

16 A. The heirs of Julia H. Keller, May H. Kouns and  
17 Margaret H. Jones, less --

18 MR. BRUCE: -- Leola.

19 THE WITNESS: -- Leola Kellogg, yeah.

20 Q. (By Mr. Larson) All right. And all of those  
21 interests also derive the two sisters and stepmother that  
22 pre-deceased...

23 (Off the record)

24 Q. (By Mr. Larson) ...May Hasselman Kouns, in other  
25 words, all of these interests that Synergy claims are

1 through -- are other than through Margaret Hasselman Kouns  
2 -- Jones, Margaret Hasselman Jones. So it's through the  
3 two sisters and the stepmother, Julia Hasselman Keller,  
4 Mary Hasselman Kouns, or Jennie Hasselman Hill; is that  
5 correct?

6 A. Could you restate that question, because Jennie  
7 Hasselman Hill is the Walmsley --

8 MR. BRUCE: It's in Exhibit 2 of the prior --  
9 from the prior hearing, and certainly Jennie H. Hill,  
10 that's the Walmsley Trust --

11 THE WITNESS: Right --

12 MR. BRUCE: -- interest --

13 THE WITNESS: -- that's the Walmsley Trust.

14 MR. BRUCE: -- and Synergy is not making any  
15 claim to the Walmsley Trust interest through, as it states,  
16 12.5 percent.

17 MR. LARSON: So the remaining interest that  
18 Synergy is claiming is through the other three of the  
19 group --

20 MR. BRUCE: Julia H. Keller, May Hasselman Kouns  
21 and Margaret H. Jones, less the Leola Kellogg interest.

22 MR. LARSON: Correct.

23 Q. (By Mr. Larson) Is that correct?

24 A. Correct.

25 MR. LARSON: I have no other questions.

1 EXAMINER CATANACH: Okay --

2 MR. HALL: Briefly, Mr. Examiner.

3 CROSS-EXAMINATION

4 BY MR. HALL:

5 Q. Mr. Hegarty, if you would turn to your Exhibit A,  
6 you have attached a series of assignments to that from the  
7 claimants to title, and it looks like in each case those  
8 assignors signed in their capacity dealing with their sole  
9 and separate property. Do you see that?

10 A. (Nods)

11 Q. Who prepared these assignment forms?

12 A. Our office did.

13 Q. How was it determined that each of these interest  
14 owners was dealing in their sole and separate property?

15 A. We asked them if it was their interest, and they  
16 said yeah, it was their interest, they -- But we can -- if  
17 there's further clarification, certainly, whatever we need  
18 to do to, you know, quality that point, we'll --

19 Q. Tell us the process you went through to establish  
20 these interest owners.

21 A. Basically there was no record in the county or  
22 any of the -- the probate court as to the -- what happened  
23 to Margaret Hasselman Jones' interest, and so basically we  
24 started -- There's a gal in our office, Dorothy Weiner, and  
25 she went through high school records of Pueblo High School,

1 and she actually found, you know, people that remember the  
2 -- Margaret H. Jones and that family.

3 And the exact process -- I may not have all of  
4 this completely correct, because she spent quite a bit of  
5 time on this, but anyway she found a person that  
6 recollected the life of Margaret H. Jones, and through that  
7 contact was able to ascertain who the rightful heirs were.

8 Q. In terms of the record title reflected in the San  
9 Juan County Clerk's Office, do any of these assignees  
10 appear of record before the recordation of these  
11 assignments in your Exhibit A?

12 A. No, they do not.

13 Q. So is it correct to say that the record title  
14 interest, in San Juan County, anyway, is in Margaret  
15 Hasselman Jones?

16 A. Correct.

17 Q. And you were unable to determine the existence of  
18 any evidence of the probate of the Margaret H. Jones Estate  
19 in San Juan County?

20 A. That's correct.

21 Q. Did you determine whether her estate was probated  
22 in Colorado?

23 A. Yes, we did, and it was not probated.

24 Q. It was not probated. It appears that in each of  
25 these assignments the assignors state that they do not

1 claim an interest in or good title to the lands being  
2 assigned. Why is that provision in there?

3 A. It's a standard format. Non-warranty of interest  
4 is pretty much included in every assignment I've ever dealt  
5 with in the oil and gas business of recent date.

6 Q. Is it your understanding that these are  
7 effectively quitclaim deeds?

8 A. You know, I'm not really certain what the legal  
9 definition of a quitclaim deed is, so being that you're an  
10 attorney and I'm not, I'd hate to paint myself into a  
11 corner and say something I'm not really 100-percent certain  
12 of.

13 Q. Don't ask me.

14 MR. BRUCE: I would state on Synergy's behalf  
15 that probably Scott is correct, it's more or less a  
16 quitclaim deed. They're not warranting title to what they  
17 have.

18 Q. (By Mr. Hall) Just so we're clear here, you  
19 prepared these assignments?

20 A. Yes. A person in our office prepared them, yes.

21 Q. So your office prepared these. Is it the case  
22 that these assignors were disclaiming any interest in the  
23 lands?

24 A. Disclaiming any interest in the lands, meaning --  
25 Well, they are certainly acknowledging that they're heirs

1 of Margaret Hasselman Jones and that they've got a right to  
2 this interest and they are selling that interest to us.

3 But the last thing -- Most of these people are  
4 pretty elderly, and the one thing we did not want to do was  
5 subject these elderly people to undue stress, so we didn't  
6 think it right to, you know, warranty the interest, mainly  
7 because no one in the industry does anymore, number one.  
8 And number two, last thing I want to do for these elderly  
9 people is, you know, create additional stress in their  
10 lives. So we felt that was the right thing to do.

11 Q. Isn't it true that the assignments you received  
12 from Jody Yates, et al., were with warranty provisions?

13 A. Yes. And the reason why we did that was because  
14 we had close to 50 years' worth of, you know, payment that  
15 Mr. Smith had given these individuals through the PC well,  
16 and Mr. Smith also paid us for that interest. And there  
17 was, you know, much -- there really wasn't any -- and still  
18 isn't any question as to our ownership of that interest.

19 And what there was a question of was basically  
20 the accounting practices of Mr. Smith. He was charging a  
21 royalty with nothing in the county records to justify his  
22 taking a 1/8 royalty from those minerals and things of that  
23 sort, and -- but we wanted to make it real clear that at  
24 least as to these interests there was a preponderance of  
25 evidence to document that they owned it and there's no

1 question.

2 Q. How is the Examiner to deal with the Burlington  
3 interest in the unit, for purposes of this proceeding?

4 A. They signed an operating agreement.

5 Q. Have they been offered an opportunity to elect to  
6 participate in the infill well?

7 A. You know, I think they have. I think they've  
8 already signed the AFE, but I didn't bring that, and I  
9 don't recollect that off the top of my head. There's  
10 another gal in our office that handles that.

11 Q. We don't have any evidence to present to the  
12 Examiner today that Burlington was afforded the opportunity  
13 or notice --

14 A. Oh, I can provide --

15 Q. -- the opportunity to elect --

16 A. -- that if -- I can fax that --

17 Q. Okay.

18 A. -- if need be.

19 Q. And so as I understand it, you've not received an  
20 election from Burlington as of today?

21 A. No, I'm saying I don't know. I think we have,  
22 but I'm not certain of it, because Dorothy Weiner handles  
23 that, she's got that file.

24 Q. If you don't receive an election from Burlington,  
25 how will you treat the Burlington interest?

1           A.    Well, they've already indicated they want to  
2 participate.  I'm sure we've sent them an AFE and I'm sure  
3 they've signed it.  But I just can't, you know,  
4 definitively state that right now --

5           Q.    All right.

6           A.    -- and I can provide the evidence of that, and  
7 will do so if directed.

8           Q.    All right.  In the event they have not elected,  
9 how will their interests be handled under the operating  
10 agreement, for purposes of the drilling of the infill well?

11          A.    We will handle that interest as dictated under  
12 the terms of the operating agreement, which state that they  
13 will be provided an AFE, they will have 30 days in which  
14 to, you know, sign that AFE.

15                   And if they elect to participate and sign the  
16 AFE, then they'll be a participating party.  If they don't  
17 sign the AFE and return it, then they'd obviously be  
18 nonconsent.

19          Q.    And they would be subject to the nonconsent  
20 penalty under the JOA?

21          A.    Yes.

22          Q.    Do you know what that is, that penalty is?

23          A.    It's 300 percent.

24          Q.    Is it cost plus 300 percent?

25          A.    It's -- Yes, cost plus 300 percent.  And that --

1 Now that -- there's -- I can get the exact language, but I  
2 think surface equipment is 100 percent, everything downhole  
3 is cost plus 300 percent.

4 Q. Was Burlington notified of this hearing?

5 MR. BRUCE: No, they were not.

6 THE WITNESS: Well, for the record that's  
7 ConocoPhillips.

8 Q. (By Mr. Hall) Mr. Hegarty, if you could  
9 elaborate on one point for us. At the previous hearing it  
10 was established that the heirs of Margaret Hasselman Jones  
11 had not been notified, and that was one of the reasons for  
12 the continuance, and I believe it was represented to the  
13 Hearing Examiner, or stipulated, that the interests of  
14 Margaret Hasselman Jones and her successors were not  
15 effectively force pooled because of that. Do you recall  
16 that?

17 A. I don't, I'm going to have to defer to --

18 Q. Well --

19 A. -- to our attorney.

20 Q. -- if you'll assume that that was the case, where  
21 does that put us with respect to the pooling of interests  
22 for the initial well in the prior case? Are those  
23 interests also unpooled for --

24 A. Well --

25 Q. -- that well?

1 MR. BRUCE: And I would -- Mr. Examiner, that's  
2 more a legal question. I would say that if they've  
3 acquired the interests of the Jones heirs except for Leola  
4 Kellogg, those people have conveyed their interest in the  
5 first well also, other than Leola Kellogg, and some follow-  
6 up work may be required to pool Leola Kellogg into the  
7 first well, but that's unrelated to this proceeding.

8 THE WITNESS: And I might add that the letter  
9 that I sent, you know, advised them of both wells.

10 Q. (By Mr. Hall) Are there currently sales from the  
11 initial well?

12 A. No.

13 Q. It's not placed on production yet?

14 A. No.

15 MR. HALL: I have nothing further, Mr. Examiner.

16 EXAMINER CATANACH: Okay.

17 MR. LARSON: Mr. Examiner, if it's possible I do  
18 have a few follow-up questions.

19 EXAMINER CATANACH: Sure, go ahead.

20 FURTHER EXAMINATION

21 BY MR. LARSON:

22 Q. Mr. Hegarty, has the 104 well been officially  
23 completed?

24 A. Yes, it has.

25 Q. Has the final schedule of costs been generated?

1 A. No, it has not.

2 Q. Do you have a time frame for doing that?

3 A. We have 90 days from the date of completion to  
4 submit that evidence to the Division as well as yourself,  
5 and that will be provided.

6 Q. What was the date of final completion?

7 A. You know, I'm not certain.

8 Q. Do you know how -- the last couple of days,  
9 weeks, or 89 days ago?

10 A. Boy, you know, our -- our -- you know, I would  
11 just hate to misspeak, and we've got an operations engineer  
12 that handles that matter, and I would prefer -- I'd just  
13 feel more comfortable if I could speak to him and get that  
14 exact date, which I can certainly advise you of.

15 Q. Do you know if it followed the last hearing, the  
16 March 30th?

17 A. It did follow the last hearing, yes, I know that.

18 MR. LARSON: May I offer an exhibit to question  
19 him about? What I'll call Exhibit L, which will follow in  
20 the exhibits that we offered last time, is a copy of the  
21 answer that was filed in the quiet-title case. And I'd  
22 like to direct everyone's attention to page --

23 Q. (By Mr. Larson) Well, first of all let me ask  
24 you, Mr. Hegarty, if you've had a chance to look at it.  
25 I'll ask you if you've seen this before.

1           A.    Yes, I gave this a perusal.  There's a Peter  
2 Kepler, who is the -- one of the -- I think it's the --  
3 well, actually I need to see the -- He's one of the  
4 interest owners.  He's also an attorney, but he's working  
5 with Cliff Atkinson, who is our attorney, as -- in regards  
6 to this filing.  So this is more of a legal issue, and --  
7 as far as the details of which this -- all of this, it's --  
8 it's basically in their hands.

9           Q.    So I take it, then, that Synergy has retained  
10 Atkinson and Thal, specifically Mr. Atkins [sic], to  
11 represent it --

12          A.    Yes.

13          Q.    -- in this quiet-title case?

14          A.    And Peter Kepler is representing the heirs of --  
15 I think it's Julia Hasselman Keller, as well as May  
16 Hasselman Kouns, and they're basically working together in  
17 this matter.

18          Q.    I'm not familiar with Mr. Kepler.  Do you know if  
19 he's a New Mexico attorney or an attorney somewhere else?

20          A.    He's a Colorado attorney.

21          Q.    So he's not an attorney with the firm of Atkinson  
22 and Thal; is that correct?

23          A.    No.

24          Q.    So was this answer filed on your behalf in the  
25 quiet-title case?

1 A. Yes.

2 Q. Have you reviewed -- Did you review this answer  
3 before it was filed?

4 A. You know, I -- basically -- it was mainly the  
5 collaboration of Mr. Kepler and Cliff Atkinson.

6 Q. So are you aware of the contents of the answer,  
7 then?

8 A. In a cursory manner, yes.

9 Q. I'll ask you, then, to focus first on what is  
10 numbered page 2 of the answer, way up at the front, at the  
11 caption, to the bottom of page 2, there's a list at the  
12 very last paragraph, Class 5. Could you read those  
13 individuals' names to us, into the record?

14 A. Mildred Delano, William Schmitt, Geraldo [sic]  
15 Chipsu- -- Chipsuso? -- William Brown, Myrna Schmitt,  
16 Carolyn Evans, Rachel Evans and Dominique Evans.

17 Q. Can you tell me whether any of those parties have  
18 been given notice of this proceeding?

19 A. No, they have not.

20 Q. Have you contacted any of these parties, either  
21 you or anybody on your behalf, on Synergy's behalf?

22 A. Let's see, we own William Schmitt, and I'm not  
23 sure where they came up -- oh, yeah -- no, these are all  
24 the interest owners we own, yeah.

25 Q. Are these interests that you have -- that Synergy

1 has acquired since the March 30th hearing?

2 A. Yes.

3 Q. Let me ask you to turn to the next page, first  
4 paragraph, and could you read the names there, in the  
5 paragraph beginning with Class 6?

6 A. Leola Kellogg if living, if deceased the unknown  
7 heirs of Leola Kellogg; Robert Prangley if living, [if]  
8 deceased unknown heirs of Roy Prangley; Joy Lynn Prangley;  
9 Joy Lynn Prangley; Rita Kouns and the unknown heirs of Rita  
10 Kouns.

11 Q. I'd like to ask you now to flip to page 9,  
12 numbered paragraph 12, and ask you to read --

13 A. Did you say page -- What page?

14 Q. Page 9, paragraph 12 --

15 A. Uh-huh.

16 Q. -- and if you could read into the record the  
17 first sentence of that paragraph.

18 A. Counter- and Cross-plaintiffs are credibly  
19 informed and believe that each of those additional parties  
20 listed in Class 5 and 6 of the caption of this Counter- and  
21 Cross-claim may make a claim of right, title and interest  
22 or lien upon the premises, adverse to the title of the  
23 Counter- or Counter-plaintiffs [sic]. Said claims are  
24 inferior to the title of the interest of the Counter- and  
25 Cross-Plaintiffs in the Property; said claims consistent --

1 constitute a cloud on the Counter- and Cross-Plaintiffs'  
2 title in the property.

3 Q. Okay. That paragraph referencing the persons  
4 that you just read that are listed in the paragraphs -- or  
5 in the Class 5 and the Class 6 parties; is that correct?

6 A. Yes.

7 Q. Okay. And have you or Synergy, on Synergy's  
8 behalf, contacted any of the members of Class 6?

9 A. I think it's -- and I'm not 100-percent certain  
10 on this, but those individuals are, I think -- we already  
11 own their interest through, you know, probates, heirs,  
12 transfers of interest. That's our -- That's my opinion.

13 Q. So it's your belief and your representation that  
14 all of these parties listed in Class 6, that Synergy has  
15 acquired their interests; is that correct?

16 A. Yes. Or -- Well, let me --

17 MR. BRUCE: Except Leola Kellogg --

18 THE WITNESS: Yeah, Leola Kellogg --

19 MR. BRUCE: -- he stated that on the record.

20 THE WITNESS: Right.

21 Q. (By Mr. Larson) Aside from Ms. Kellogg?

22 A. Right.

23 Q. Also aside from Ms. Kellogg, were any of the  
24 other parties given notice of this proceeding?

25 A. I think everyone has been given an interest -- or

1 has been notified in Class 5. In Class 6 I'm not even sure  
2 -- you know, I'm not even sure what -- I think we have --  
3 Well, I'm not certain.

4 MR. BRUCE: If you don't know, don't speculate --

5 THE WITNESS: Yeah.

6 MR. BRUCE: -- Mr. Hegarty.

7 THE WITNESS: No, I -- I'm not certain.

8 Q. (By Mr. Larson) Do you know whether -- can you  
9 tell us whether these interests, aside from Ms. Kellogg,  
10 that Synergy claims to have acquired that are listed in  
11 Class 6, do they derive from any of the parties --

12 A. Yes --

13 Q. -- Exhibit --

14 A. -- they do.

15 Q. I'm sorry?

16 A. Yes, they do.

17 Q. Are these interests that Synergy has obtained  
18 since March 30th hearing?

19 A. I think we have already acquired their interests  
20 through the -- I think it's the Kouns, that there was a  
21 prior conveyance from the father, and it was the -- our  
22 interpretation of the paperwork that this interest was  
23 acquired through those acquisitions.

24 But I think the purpose of that class -- and I  
25 think -- and I'm not an attorney, so I don't know if I'm

1 speculating -- well, I am speculating, and this would be a  
2 question better answered by Cliff Atkinson. I mean, he's  
3 representing us and -- But I think the logic is to --  
4 anyone who could possibly have a claim, to notify those  
5 people, and -- But I'm not certain what his logic was.  
6 You'd have to ask him that, and what his legal basis for  
7 doing what he did was. I'm not qualified to answer that  
8 question.

9 Q. And those parties that might have a claim, have  
10 they been notified of this proceeding?

11 MR. BRUCE: Of this hearing?

12 THE WITNESS: It's our impression --

13 Q. (By Mr. Larson) That's right, of this hearing.

14 MR. BRUCE: And I will answer that. The only  
15 people that have been given notice of this hearing are the  
16 two people we seek to pool, which is Edwin Smith, LLC, and  
17 Leola Kellogg.

18 MR. LARSON: No further questions.

19 MR. HALL: (Shakes head)

20 EXAMINER CATANACH: I don't have any questions,  
21 other than I'm going to need -- This is about as  
22 complicated a pooling case as I've ever heard. I need --

23 MR. BRUCE: Get outa here.

24 (Laughter)

25 EXAMINER CATANACH: I need for you guys to

1 summarize all the interest that you have and have not, and  
2 just do a whole new summary that includes the new interest  
3 owners that you --

4 MR. BRUCE: Yes, I can do that, Mr. Examiner.  
5 And one other request I had, I mean, I can make a closing  
6 argument. I know Mr. Hall at the last hearing was going to  
7 submit something on suspension of funds, I believe. It  
8 looks like he may have forgotten about it, and --

9 MR. HALL: I'll be glad to do that, Mr. Examiner.

10 MR. BRUCE: And Mr. Larson had submitted a brief  
11 before the hearing. I don't know if you want us to submit  
12 a written closing argument, and we would --

13 EXAMINER CATANACH: Well, Mr. Larson, are you  
14 going to put Mr. Smith on or not?

15 MR. LARSON: I don't think so. I have a couple  
16 of statements that I would make and one other exhibit that  
17 I would offer, depending on the Hearing Examiner's desire,  
18 I can put him on to testify about.

19 EXAMINER CATANACH: I don't know that that's  
20 necessary. Would you like to submit written closing  
21 statements?

22 MR. BRUCE: It's up to you.

23 MR. LARSON: Maybe I can make the two points that  
24 I was going to make.

25 One is that I personally contacted the contact

1 person at Burlington yesterday -- now it's answered as  
2 ConocoPhillips -- Ms. Linda Dean, and discussed with her  
3 what ConocoPhillips intend to do with this pooling  
4 Application.

5 Their concern is -- their overriding concern is  
6 the quiet title. They have stated that they will not be  
7 consenting and are returning the AFE. They have not done  
8 so as of yesterday morning. They would not consent to the  
9 expenditure to drill the second well. They understand that  
10 there at potential risk of the drilling of Synergy if they  
11 get the permit approved, get the well drilled and have the  
12 risk penalty, but they're not going to do anything further  
13 in either one of these until that's resolved, so that  
14 answers that question.

15 The other point that I wanted to make is that we  
16 had a concern about the -- Ed Smith had a concern about the  
17 amount of the expenses that have been requested for the 105  
18 well. We hadn't gotten those as of the last hearing.  
19 We've since looked at those, we've had an expert look at  
20 those and now found a new possibility.

21 And what I'd like to offer as our last exhibit,  
22 Exhibit M, is an application for recompletion of an  
23 existing well, the Claude Smith well, that is in this same  
24 section, currently producing in the Pictured Cliff  
25 formation, to recomplete that well by perforating it 60

1 feet up from the current bottom of the hole into the  
2 Fruitland formation, and to produce that well for  
3 approximately \$300,000 less than drilling and completing a  
4 new well. That would also reduce the impact on the  
5 environment, there is already a pipeline to the well.

6 And so I have the application, which we plan to  
7 be filing any day now, to commingle that, and I would offer  
8 that as our last exhibit.

9 THE WITNESS: Can I respond to that?

10 EXAMINER CATANACH: This is an application you  
11 were filing with who, Mr. Larson?

12 MR. LARSON: Oil Conservation Commission.

13 EXAMINER CATANACH: In Aztec?

14 MR. LARSON: Yes. We have not yet had the lapse  
15 of the 20 days that the interested parties would have, so  
16 it's not yet filed.

17 EXAMINER CATANACH: Now let's see, there's an  
18 existing -- You know, my memory on this is just a little  
19 fuzzy. There's already been a Fruitland Coal well drilled  
20 in the west half, right?

21 MR. LARSON: In the northwest quarter.

22 EXAMINER CATANACH: And the west half is  
23 dedicated to that well, right?

24 MR. LARSON: Correct.

25 EXAMINER CATANACH: And Synergy is currently the

1 operator -- designated operator of the west half?

2 MR. BRUCE: That is correct, and it is operating  
3 that well.

4 EXAMINER CATANACH: Okay. And this well, the  
5 Claude Smith Number 1, is in the southwest quarter.

6 MR. LARSON: Correct. And we would dedicate that  
7 160 -- propose to dedicate that 160 as an infill well to  
8 the 320. There would still need to be resolved the issue  
9 of the operator. The Claude Smith is currently operated by  
10 Ed Smith, LLC, and it would be, I think, the most efficient  
11 position to continue operating it as a dual completion or a  
12 commingled well.

13 EXAMINER CATANACH: I'm sorry, Mr. Larson, your  
14 intent on the Claude Smith Number 1 is to dedicate 160 to  
15 the well, or --

16 MR. LARSON: Well, the 160 under that section --

17 EXAMINER CATANACH: The southwest quarter?

18 MR. LARSON: -- under the southwest quarter of  
19 the section, to the 320-acre unit, the entire --

20 EXAMINER CATANACH: You're not planning to split  
21 up to 320 --

22 MR. LARSON: No.

23 EXAMINER CATANACH: -- you're just going to  
24 keep --

25 MR. LARSON: Correct.

1 EXAMINER CATANACH: Okay, I -- You know, this is  
2 getting really complicated because the Division does have a  
3 rule that authorizes a different operator on a 320. I  
4 don't know how that's going to be handled, so it's just...

5 MR. BRUCE: Yeah. Mr. Examiner, if I can just  
6 say a few things to -- With respect to what Mr. Larson just  
7 said, I would request, say, a week to get back to the  
8 Division, Burlington's AFE, because in the past, with  
9 respect to the first well on this unit, Synergy was  
10 disparaged for not having Burlington's joinder in the well,  
11 which they obtained and which Mr. Hegarty testified  
12 Burlington joined in.

13 And so I don't -- What Mr. Larson is saying about  
14 what Linda Dean said is just hearsay, and I would object to  
15 that being part of the record. But we can certainly get  
16 back to the Division on that.

17 With respect to Exhibit M, under current Division  
18 rules, without Synergy agreeing -- and Mr. Hegarty could  
19 confirm this, but it's not -- Synergy will not consent to  
20 Mr. Smith being operator in the southwest quarter. And  
21 without that approval, Mr. Smith cannot be operator, or  
22 Edwin Smith, LLC. And furthermore, there's been no well  
23 proposal to Synergy, no negotiations with anyone regarding  
24 this well.

25 And so Exhibit M is -- you know, until somebody

1 comes forward to the other interest owners in the well  
2 unit, this is completely -- I mean, it's a nice package of  
3 paper, but it's completely premature and completely  
4 irrelevant to this case.

5 And I would just simply ask that, other than  
6 allowing Mr. Hegarty to report back with respect to the  
7 election of Burlington, this matter be taken under  
8 advisement, and the matters that you have requested, which  
9 is what interests we do seek to pool or what interests are  
10 committed to the well.

11 EXAMINER CATANACH: Now Mr. Bruce, the interest  
12 of Burlington --

13 MR. BRUCE: There's no dispute.

14 EXAMINER CATANACH: -- is not subject -- I mean,  
15 whether or not they've agreed to participate in the  
16 drilling of the second well is not relevant to the case  
17 because they're subject to the JOA, right?

18 MR. BRUCE: That is correct. Whether they  
19 consent to the well or not is completely irrelevant. There  
20 is --

21 EXAMINER CATANACH: To this proceeding.

22 MR. BRUCE: -- a JOA, and the signature page is  
23 in the record in this case, where Burlington has signed the  
24 JOA.

25 And that's why we didn't notify them. Anybody

1 who signs a JOA, we don't notify of a pooling hearing. And  
2 as I said, Mr. Smith has not proposed this well to anyone,  
3 whether Burlington, whether Synergy, whether Jerry  
4 Walmsley. It's just a piece of paper. And you know, if  
5 you want to put it in the record, fine, but it's irrelevant  
6 to this proceeding.

7 MR. LARSON: It has been orally proposed to  
8 Walmsley, Robbins and Burlington, and it's not at all  
9 active because we haven't completed it, but...

10 EXAMINER CATANACH: Okay, are you going to move  
11 the admission of this --

12 MR. LARSON: -- L and M, please.

13 EXAMINER CATANACH: We'll admit Exhibits L and M.  
14 And so what do we need to get from you guys?  
15 What I asked from you is a summary, again, of the interest  
16 ownership and --

17 MR. BRUCE: You asked for the summary of who's in  
18 the well -- or the interests that have been consolidated,  
19 let's put it that way -- which I will provide to you and  
20 counsel.

21 And then Mr. Hegarty would like a chance to check  
22 his records with respect to the Burlington election, just  
23 so you know whether or not they have signed the AFE. As  
24 you know, under a JOA when an AFE is sent to -- once  
25 they've signed a JOA and an AFE is sent, they generally

1 have about 30 days to either sign or not sign, and we will  
2 get you the dates and the pertinent correspondence on that.

3 EXAMINER CATANACH: Okay, so you can provide that  
4 to us.

5 Do we need anything from you guys?

6 MR. HALL: Let me summarize where I think my  
7 client's interests are, and this implicates the original  
8 compulsory pooling case for the initial well also.

9 My client, the June Walmsley Trust, claims 25  
10 percent of the 320. 6 1/4 percent of that is committed  
11 under an operating agreement with Synergy. Synergy claims  
12 the remainder, the 18 3/4 percent, by virtue of their  
13 theories with respect to the deeds that they purport  
14 extinguish the tenancy-in-common. That's being adjudicated  
15 in the district court in San Juan County.

16 The problem is, as I see it, at the time the  
17 interests were pooled for the initial well, it was  
18 purported that all of those interests were notified and had  
19 been committed and pooled under the first order for the  
20 infill well. When we heard the first hearing in this case  
21 for the infill well, it turned out that there was no  
22 notice, those interests had not been lined up.

23 We reconvened here today, Synergy purports to  
24 have obtained assignments for all of the interests that my  
25 client claims, with the exception of the Leola Kellogg

1 interest. It's my opinion that those assignments are not  
2 sufficient to vest title in Synergy. Again, I think that's  
3 something that the district court will decide, not  
4 something we are asking you to adjudicate here.

5 But it does present you a problem in this  
6 respect. Of the interests committed under the initial  
7 compulsory pooling order, I've always viewed these  
8 proceedings for infill wells simply to provide interest  
9 owners an opportunity to elect to participate in the infill  
10 well, in order to avoid the risk penalty. And the issue in  
11 common with both cases now is that we claim because there's  
12 a dispute over the ownership interests, we were not  
13 afforded the opportunity to elect to participate in the  
14 initial well, and now the infill well, because of the  
15 dispute over ownership. Again, that's going to be decided  
16 by the district court in San Juan County.

17 But in the meantime Synergy will have, in their  
18 view, they've stated before, authorization to recoup well  
19 costs and the risk penalty out of the interest my client  
20 claims. I've asserted before that I think that probably is  
21 inappropriate, and I've asked the Division to enter an  
22 order that if it does pool those disputed interests, it  
23 requires Synergy to place in suspense any proceeds  
24 attributable to my client's claimed interest, the 18-3/4-  
25 percent interest, because if it does not, then I think

1 that's an effective *de facto* adjudication of my client's  
2 interest by the Division, which the Division recognizes it  
3 cannot do. And I will give you some authority with respect  
4 to the Division's jurisdiction and authority to grant  
5 relief like that.

6 EXAMINER CATANACH: Okay.

7 MR. LARSON: We'd like maybe 10 days to review  
8 the submission of Synergy's claimed interest and to add our  
9 own if we had any different view of those. We've asked Mr.  
10 Bruce to --

11 EXAMINER CATANACH: How long would that be,  
12 before you can --

13 MR. BRUCE: I'll get everything to you within a  
14 week, Mr. Examiner.

15 MR. LARSON: Well, could we have a week beyond  
16 that, beyond our receipt to review that and provide our own  
17 version if --

18 MR. BRUCE: What it is is going to simply be a  
19 recapitulation of the exhibits that have already been  
20 submitted in the record.

21 EXAMINER CATANACH: I think that's reasonable.  
22 So do you want to submit that in conjunction with a closing  
23 statement? I mean, whatever you guys want to submit, I  
24 guess we'll review. If you want to submit a closing  
25 statement, plus your position on the interest ownership --

1 MR. LARSON: That sounds good.

2 EXAMINER CATANACH: -- that's -- Will that be all  
3 right?

4 MR. BRUCE: I would -- I do have some comments on  
5 the suspense, but I'll hold off. But I would like to see  
6 what Mr. Hall submits and submit a response to that, since  
7 I don't know exactly what he's citing to right now. But --

8 EXAMINER CATANACH: So does that --

9 MR. BRUCE: -- try to get everything done within  
10 two weeks -- I mean, if Scott could submit his thing within  
11 a week or ten days and give me a few days to respond to  
12 that.

13 EXAMINER CATANACH: Yeah, let's shoot for two  
14 weeks, a two-week deadline on all this.

15 MR. BRUCE: I'll submit what I'm going to submit  
16 within a week, and we can fax it or e-mail it to everybody,  
17 and then whatever I get from Scott I could respond to.

18 EXAMINER CATANACH: Okay. All right, sounds  
19 good. Anything else?

20 MR. BRUCE: No, sir.

21 EXAMINER CATANACH: All right, there being  
22 nothing else, Case 13,663 will be taken under advisement.

23 (Thereupon, these proceedings were concluded at  
24 11:03 a.m.)

25

I do hereby certify that the foregoing is  
a complete record of the proceedings in  
the Examiner hearing of Case No. 13663  
heard by me on June 22, 2006

STEVEN T. BRENNER, CCR  
(505) 989-9317 David P. Cabant, 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 26th, 2006.




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STEVEN T. BRENNER  
 CCR No. 7

My commission expires: October 16th, 2006