

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,)
L.L.C., 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

March 30th, 2006

Santa Fe, New Mexico

2006 APR 13 PM 3:56

This matter came on for hearing before the New Mexico Oil Conservation Division, DAVID R. CATANACH, Hearing Examiner, on Thursday, March 30th, 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.

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I N D E X

Marc 30th, 2006
 Examiner Hearing
 CASE NO. 13,663

	PAGE
EXHIBITS	3
APPEARANCES	4
APPLICANT'S WITNESS:	
<u>PATRICK HEGARTY</u> (Landman)	
Direct Examination by Mr. Bruce	6
Examination by Mr. Hall	17
Cross-Examination by Mr. Larson	35
Examination by Examiner Catanach	38
Redirect Examination by Mr. Bruce	39
SMITH AND ROBBINS WITNESS:	
<u>EDWIN L. SMITH</u>	
Direct Examination by Mr. Larson	45
Cross-Examination by Mr. Bruce	51
Examination by Examiner Catanach	53
Redirect Examination by Mr. Larson	56
CLOSING STATEMENTS:	
By Mr. Larson	59
By Mr. Hall	60
By Mr. Bruce	64
REPORTER'S CERTIFICATE	71

* * *

E X H I B I T S

Applicant's	Identified	Admitted
Exhibit 1	6	17
Exhibit 2	8	17
Exhibit 3	9	17
Exhibit 4	9	17
Exhibit 5	11	17
Exhibit 6	(does not exist)	
Exhibit 7	11	17
Exhibit 8	12	17
Exhibit 9	12	17
Exhibit 10	13	17
Exhibit 11	14	17
Exhibit 12	14	17

* * *

Smith and Robbins	Identified	Admitted
Exhibit A	-	59
Exhibit B	-	59
Exhibit C	-	59
Exhibit D	-	59
Exhibit E	-	59
Exhibit F	-	59
Exhibit G	42	59
Exhibit H	-	59
Exhibit I	-	59
Exhibit J	-	59
Exhibit K	44	59

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A P P E A R A N C E S

FOR THE DIVISION:

GAIL MacQUESTEN
Deputy General Counsel
Energy, Minerals and Natural Resources Department
1220 South St. Francis Drive
Santa Fe, New Mexico 87505

FOR THE APPLICANT:

JAMES G. BRUCE
Attorney at Law
P.O. Box 1056
Santa Fe, New Mexico 87504

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

FOR JOSEPH ROBBINS, EDWIN L. SMITH
and EDWIN L. SMITH, LLC.:

SUTIN, THAYER & BROWNE, P.C.
By: DEREK V. LARSON
Two Park Square, Suite 1000
6565 Americas Parkway, N.E. 87110
P.O. Box 1945
Albuquerque, New Mexico 87103
and

SUTIN, THAYER & BROWNE, P.C.
By: GERMAINE R. CHAPPELLE
317 Paseo de Peralta
Santa Fe, New Mexico 87501
P.O. Box 2187
Santa Fe, New Mexico 87504

* * *

1 WHEREUPON, the following proceedings were had at
2 9:59 a.m.:

3 EXAMINER CATANACH: Call the hearing back to
4 order, and at this time I'll call Case 13,663, which is the
5 Application of Synergy Operating, LLC, for compulsory
6 pooling, San Juan County, New 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 MR. HALL: Mr. Examiner, Scott Hall appearing on
12 behalf of Jerry Walmsley, Trustee of the June H. Walmsley
13 Trust. No witnesses.

14 MR. LARSON: Mr. Hearing Examiner, Derek Larson
15 and Germaine Chappelle on behalf of Joseph Robbins, Ed
16 Smith and Ed Smith, LLC. We're with the law firm of Sutin,
17 Thayer and Browne. We have prepared to testify today Mr.
18 Ed Smith.

19 EXAMINER CATANACH: And I do have written notices
20 of your appearances in this case; is that correct?

21 MR. LARSON: Correct.

22 EXAMINER CATANACH: Okay, can I get the witnesses
23 to stand and be sworn in at this time?

24 (Thereupon, the witnesses were sworn.)

25 EXAMINER CATANACH: Anyone want to make any

1 opening statements in this case, or do you just want to...

2 MR. BRUCE: Not me.

3 EXAMINER CATANACH: No?

4 MR. LARSON: We'll just wait and listen how the
5 argument goes, thanks.

6 EXAMINER CATANACH: Okay. You may proceed, Mr.
7 Bruce.

8 MR. BRUCE: Mr. Examiner, subject to objection by
9 counsel, if the record could reflect that my witness is
10 Patrick Hegarty who has been previously qualified as an
11 expert.

12 EXAMINER CATANACH: Mr. Hegarty has been
13 qualified in a previous case. Is there any objection to
14 this witness?

15 MR. HALL: No objection.

16 MR. LARSON: No objection.

17 EXAMINER CATANACH: Okay.

18 PATRICK HEGARTY,

19 the witness herein, after having been first duly sworn upon
20 his oath, was examined and testified as follows:

21 DIRECT EXAMINATION

22 BY MR. BRUCE:

23 Q. Mr. Hegarty, could you identify Synergy's Exhibit
24 1 and just briefly identify that for the Examiner?

25 A. Exhibit 1 is just basically a plat showing that

1 the northwest quarter is federal and the southwest quarter
2 is fee.

3 Q. Okay, and this is the west half of Section 8, 29-
4 12?

5 A. Yes.

6 Q. This acreage was previously pooled for a well in
7 the northwest quarter by -- in Case Number 13,486; is that
8 correct?

9 A. That's correct.

10 Q. And Synergy was designated operator of that
11 Fruitland Coal well?

12 A. Yes.

13 Q. Okay. We are here today to pool that same
14 acreage for a well, an infill well, in the southwest
15 quarter; is that correct?

16 A. That's correct.

17 EXAMINER CATANACH: Mr. Bruce, let me interrupt
18 you there. The advertisement for this case says 11 West,
19 Range 11 West.

20 MR. BRUCE: Well --

21 MR. LARSON: It is 11, I think 12 is a mis-type.
22 In fact, the last order from the Commission of March 23rd
23 shows as a finding of fact Range 12, and then on a
24 subsequent page Range 11.

25 MR. BRUCE: That's right, that's right. Exhibit

1 1 is incorrect, Mr. Examiner.

2 EXAMINER CATANACH: Okay.

3 MR. BRUCE: I've cycled through this exhibit four
4 times and it's still incorrect, so...

5 Q. (By Mr. Bruce) Now with respect to the west
6 half, the northwest quarter, that's federal, who owns that
7 acreage, the working interest owner?

8 A. Burlington Resources.

9 Q. Okay. And so the acreage that needs to be pooled
10 is the fee tract or portions of the fee tract in the
11 southwest quarter?

12 A. That's correct.

13 Q. Okay. Could you identify Exhibit 2 for the
14 Examiner?

15 A. Exhibit 2 is the breakout of ownership in the
16 southwest quarter of 29 North, Range 11 West.

17 Q. Okay. And which party -- which interest owners
18 do you seek to pool in this hearing?

19 A. The parties that we seek to pool is the Walmsley
20 Estate --

21 Q. Well, no, no, you don't --

22 A. Oh, that's right, because they signed the
23 operating agreement, I'm sorry. The Smith interest.

24 Q. Okay, so the Edwin Smith or Edwin Smith, LLC,
25 interest is who you seek to pool today?

1 A. That's correct.

2 Q. And there's some other comments in here on title,
3 and we'll get into that later, will we not, Mr. Hegarty?

4 A. Yes.

5 Q. Next, what is Exhibit 3?

6 A. That's the letter that was mailed to Edwin Smith
7 and basically discussing the second well and asking for his
8 participation in that well.

9 Q. Did you follow up that letter with a phone call
10 to Mr. Smith?

11 A. There were a number of telephone calls that I had
12 with Mr. Smith, yes.

13 Q. Okay. And at this point are you aware that Mr.
14 Smith does not want to sign a JOA with Synergy?

15 A. Yes.

16 Q. In your opinion, has Synergy made a good-faith
17 effort to obtain the voluntary joinder of Edwin Smith or
18 Edwin Smith, LLC, in this well?

19 A. Yes.

20 Q. What is Exhibit 4?

21 A. Exhibit 4 is an AFE, an earlier AFE that was
22 produced in October of 2005 for the Duff 29-11-8 Number 105
23 well, to be drilled in the southwest quarter of Section 8
24 of 29-11.

25 Q. Okay, and what is the approximate cost of this

1 well?

2 A. The approximate cost is \$440,000.

3 Q. Well, this says --

4 A. Oh, I'm sorry --

5 Q. -- \$379,000.

6 A. Oh -- oh, I'm sorry, I'm looking at the wrong
7 exhibit. \$379,000, yes.

8 Q. Okay. Now this Exhibit 4, there's actually two
9 AFEs attached, one for the signature of Edwin Smith, LLC,
10 and one for the Walmsley Trust; is that correct?

11 A. That's correct.

12 Q. It's the same AFE, just a different signature
13 line?

14 A. Yes.

15 Q. Is the proposed cost of the Number 105 well fair
16 and reasonable and in line with the cost of other wells
17 drilled to this depth in this area?

18 A. Well, the -- Yes, it is.

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

21 A. Yes, we do.

22 Q. Do you have a recommendation for the amounts
23 which the operator should be paid for supervision and
24 administrative expenses?

25 A. Yes, we do.

1 Q. And what are those amounts?

2 A. That's \$5000 for the drilling overhead and \$500
3 for the operation.

4 Q. And are these costs in line with the costs
5 charged by other operators for this type of well?

6 A. Yes.

7 Q. Do you request that the rate be adjusted
8 periodically as provided by the COPAS accounting procedure?

9 A. Yes.

10 Q. And was Edwin Smith, LLC, notified of this
11 hearing by certified mail?

12 A. Yes.

13 Q. And is that reflected in Exhibit 5?

14 A. Yes.

15 MR. BRUCE: Mr. Examiner, there is no Exhibit 6,
16 so -- I simply used prior exhibits, and a gap occurred in
17 the numbering of the exhibits.

18 Let's just go into -- Looking at Exhibit 2, Mr.
19 Hegarty, which is a list of interests, there is a
20 handwritten note -- a bracket, and it says "Now Synergy
21 25%" Those are the interests that Synergy claims in the
22 southwest quarter of Section 8, is it not?

23 A. That's correct.

24 Q. And you acquired those interests by the
25 assignments marked Exhibit 7?

1 A. That's correct.

2 Q. Now, there is a title dispute over this acreage,
3 is there not?

4 A. Yes, there is.

5 Q. And there is currently pending, filed by Mr.
6 Larson on behalf of several parties, a quiet title suit in
7 San Juan County?

8 A. That's correct.

9 Q. Let's just run through the exhibits real --
10 remaining exhibits real quick. What is Exhibit 8?

11 A. Exhibit 8 is a document that was prepared by
12 Earnest R. Smith -- well, let's see, it was by Ed Smith,
13 and it shows that an Earnest R. Smith, Sr., was the
14 operator, but it was for the Claude Smith Number 1 well,
15 and it was a summary of cash receipts and disbursements for
16 the operation of the well from October 1, 2004, through
17 December 31st of 2004.

18 Q. And Synergy is noted as a working interest owner?

19 A. That's correct.

20 Q. And that was based on the assignment submitted as
21 Exhibit 7?

22 A. That's correct.

23 Q. What is Exhibit 9?

24 A. Exhibit 9 is a quiet title court decree that was
25 issued back in 1958, and it was my understanding that

1 Claude Smith, who is Ed Smith's father, was one of the
2 parties that initiated this quiet title action.

3 Q. And the parties whose title is at issue -- Mr.
4 Smith's title is not at issue?

5 A. No.

6 Q. Or Edwin Smith, LLC's, title --

7 A. No --

8 Q. -- is not at issue --

9 A. -- not at issue.

10 Q. -- in the quiet title suit? It has to do with
11 the Hasselman heirs; isn't that correct?

12 A. Yes.

13 Q. And it is under this quiet title decree that, I
14 think it's fair to say, both you and the Walmsley Trust
15 claim certain interests?

16 A. Yes.

17 Q. Next, let's move on to Exhibit 10. This is just
18 a few pages of a JOA. Has a JOA been entered into with
19 Burlington Resources?

20 A. Yes, they --

21 Q. And this is just the first page of the JOA and
22 the signature page by Burlington --

23 A. Right.

24 Q. -- toward the end?

25 A. Right.

1 Q. Did Jerry Walmsley also sign the JOA?

2 A. Yes, he did.

3 Q. And that is included within Exhibit 10 also?

4 A. Yes.

5 Q. And so you do not seek to force pool the Walmsley
6 Trust interest?

7 A. No.

8 Q. Next on Exhibit 2 there's an interest attributed
9 to Joseph Robbins. What is Exhibit 11?

10 A. This is a farmout agreement with Joseph C.
11 Robbins.

12 Q. And this is dated in May or June of 2005?

13 A. Yes.

14 Q. And Synergy had a year to perform under this
15 agreement, did they not?

16 A. That's correct.

17 Q. And you have, in fact, performed under that
18 agreement?

19 A. Yes, we have.

20 Q. Finally, what is Exhibit 12?

21 A. This is Form C-101 that is filed with the Oil
22 Conservation Division, and it's an application for a permit
23 to drill.

24 Q. And this is for the proposed 105 well?

25 A. The Duff 29-11-8 Number 105 well, yes.

1 Q. What is the footage location?

2 A. The footage location in the southwest quarter is
3 1885 feet from the south line and 1085 feet from the west
4 line.

5 Q. And is this a standard Fruitland Coal gas well
6 location?

7 A. Yes, it is.

8 Q. And this APD has been approved by the Division?

9 A. Yes, it has.

10 Q. Were Exhibits 1 through 5 and 7 through 12 either
11 prepared by you or under your supervision or compiled from
12 company business records?

13 A. Yes, they were.

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

17 A. Yes, it is.

18 MR. BRUCE: Mr. Examiner, I'd move the admission
19 of Exhibits 1 through 5 and 7 through 12.

20 EXAMINER CATANACH: Any objection?

21 MR. LARSON: We object to Exhibit 4 as lack of
22 foundation.

23 EXAMINER CATANACH: I'm sorry, lack of
24 foundation?

25 MR. LARSON: I'm sorry, I'm -- Yes, lack of

1 foundation, that is the objection, but I meant to specify
2 Exhibit Number 8, thank you.

3 Q. (By Mr. Bruce) Mr. Hegarty, could you explain
4 how you received this exhibit?

5 A. This exhibit was mailed to us by Mr. Smith, and
6 it included a check as well. And that's Exhibit -- or the
7 second page of Exhibit 8?

8 A. Yes.

9 Q. I mean, you do not know who prepared the exhibit
10 itself? I mean, you presumed Mr. Smith; is that correct?

11 A. Yes.

12 Q. But it came in the mail from Mr. Smith?

13 A. Yes.

14 Q. And it came together with a check -- the attached
15 check from Mr. Smith?

16 A. Yes.

17 Q. As payment of Synergy's share of production from
18 the well for that three-months period, two- or three-months
19 period?

20 A. Yes.

21 Q. And you cashed that check?

22 A. Yes.

23 EXAMINER CATANACH: Okay, I'm going to allow that
24 to be entered.

25 Is there any other objection?

1 MR. LARSON: No.

2 EXAMINER CATANACH: Okay, Exhibits 1 through 5
3 and 7 through 12 will be admitted.

4 Mr. Hall?

5 EXAMINATION

6 BY MR. HALL:

7 Q. Mr. Hegarty, I wonder if you could explain to us.
8 You indicated that you're seeking to pool only the Smith
9 interest; is that correct?

10 A. That is correct, but the -- That's correct, yeah.

11 Q. If you would turn to your Exhibit 2, it shows
12 additional interests for the heirs of Margaret H. Jones,
13 Margaret Hasselman Jones.

14 A. Right.

15 Q. How are those interests being treated in the
16 context of this proceeding?

17 A. They're not being force pooled.

18 Q. Are they joined in the well?

19 A. We're in the process of joining those people to
20 this well.

21 Q. And have they been provided with notification of
22 this hearing?

23 A. No.

24 Q. And you say you're in the process of obtaining
25 the joinder of those individuals. Who are you dealing

1 with?

2 A. The heirs.

3 Q. And has the Margaret H. Jones interest been
4 probated?

5 A. To my knowledge, we're not sure, we don't know.

6 Q. Have you searched the records in San Juan County
7 to determine whether or not the interest has been probated?

8 A. It's not been probated -- There's no record of it
9 being probated in San Juan County.

10 Q. Okay. Can you tell me the names of the
11 individuals you're working with?

12 A. I'd rather not.

13 Q. Can you tell me?

14 A. No.

15 Q. Do you know who they are?

16 A. Yes.

17 Q. Tell me, please.

18 MR. BRUCE: I would object, only on the basis,
19 Mr. Examiner, that Mr. Hegarty stated he is attempting to
20 acquire their interests, and this is a competitive
21 situation, and we would rather not -- it took -- Mr.
22 Hegarty can testify, it took months and months and months
23 to locate these people, and at such time as those interests
24 are acquired Mr. Hegarty would be glad to provide that
25 information, but he doesn't want to give that information

1 away at this point.

2 MR. HALL: Mr. Examiner, I would ask that you
3 direct the witness to answer the question. I don't think
4 there's a sufficient basis to make any sort of claim that
5 this information might be proprietary or trade secret.

6 MR. BRUCE: It's proprietary in the fact that
7 they're acquiring them, and they're not pooling them.

8 EXAMINER CATANACH: What's the relevance to this
9 information, Mr. Hall?

10 MR. HALL: There's obviously a question over the
11 ownership of that interest. It's an interest that my
12 clients claim, and the reason it is of some significance to
13 you here today, these interests will be -- Let me back up.
14 These interests were pooled for the 104 well as unlocatable
15 mineral interest owners. And the effect of those interests
16 having been pooled authorized, and I think authorizes,
17 Synergy to withhold well costs from that interest, as well
18 as the risk penalty.

19 Now, that's an interest that's the subject of the
20 quiet title proceeding, and we're fearful that if those
21 interests continue to be regarded as force-pooled
22 interests, then my client will lose the ability to protect
23 its interest and -- a position of the risk penalty, and
24 recoupment of well costs out of that contested interest is
25 inappropriate.

1 We'd like to know who the individuals are who are
2 claiming that interest. It may be necessary for us to join
3 them in the quiet title lawsuit, and I think it's certainly
4 relevant to the inquiry here. If they're not being force
5 pooled here, we need some clarification on that. What is
6 the status of that interest? If there's no evidence
7 brought to you today that those interests are, in fact,
8 joined in the well, where does that put us?

9 MR. BRUCE: Mr. Examiner, I would point out that
10 if acquired, which Mr. Hegarty believes he will do, they
11 won't be subject to any force pooling at all, certainly not
12 this case because they haven't been notified, and in the
13 prior case because they will then be part of the working
14 interest of Mr. Hegarty and they will receive their royalty
15 interest.

16 The second point is that Mr. Hegarty spent a
17 substantial amount of time and effort to locate these
18 people, and there's nothing preventing the Walmsley Trust
19 or Mr. Smith from doing that same effort to track them
20 down.

21 As I said, at such time as they're acquired, we
22 will notify the Division and the other parties who they
23 are. But we do not want anything to interfere in our
24 acquisition of this interest.

25 Furthermore, just like in the last case, when

1 Burlington had not yet signed a JOA, we did not force pool
2 them. They have since signed a JOA. We are not seeking to
3 force pool the heirs of Margaret H. Jones and David F.
4 Jones at this point in time, and that's --

5 EXAMINER CATANACH: Well, the difference is, you
6 disclosed Burlington in the last case, though, even though
7 you weren't force pooling them.

8 MR. BRUCE: Well, and we -- But in the last
9 hearing we didn't -- we knew who -- yes, we knew who
10 Burlington was, but we also knew that Burlington was not
11 going to sell its interests.

12 MR. LARSON: Mr. Hearing Examiner, at some point
13 I'd like to make a comment before there's a decision.

14 EXAMINER CATANACH: Go ahead, Mr. Larson.

15 MR. LARSON: I'm concerned about what I'm seeing
16 as a trend of practice with Synergy. In the last case we
17 saw that Synergy attempted to either obtain a joint
18 operating agreement with certain parties based on partial
19 information without full disclosure of all possible
20 ownerships of interests. They were able to obtain a
21 farmout agreement from one of that parties in this manner,
22 and also a joint operating agreement with Burlington.

23 We will explain a little bit later in our case
24 that one of those parties, Mr. Robbins, when he learned of
25 the other interests and the misrepresentations rescinded

1 that agreement. This very week, when Ed Smith contacted
2 Burlington to discuss and obtain approval from Burlington
3 to join in Mr. Smith's application for permit to drill the
4 subject 105 well, we learned that Burlington was not aware
5 and had not been made aware of any of the questions of
6 interest with regard to Synergy.

7 In the prior hearing that I sat through just
8 before this one of Case Number 13,662, the witness, Mr.
9 Hegarty, testified -- and I quote -- that, Prudent
10 practices dictate to notify everyone in a chain of title.
11 Here it does not appear that everyone has been notified.
12 He obviously has identified some parties, and they have not
13 been given notice of this hearing.

14 Mr. Hegarty also stated, quote, No operator in
15 its right mind would drill without certainty of title.
16 Well, we certainly do not have certainty of title in this
17 case where we have a quiet title complaint filed.

18 The reality is that Synergy has proven that they
19 are willing and intend to go forward and drill a well and,
20 in effect, *de facto* obtain a determination of parties'
21 interest, even though a court later might determine
22 otherwise.

23 In fact, Synergy drilled the Duff 104 well
24 beginning on February 13th, prior to the Commission's order
25 of March 23rd granting it permission to do so.

1 In the prior hearing, Synergy -- June 16th of
2 last year before the Hearing Officer, Mr. Catanach --
3 testified that Synergy was -- had obtained a preliminary
4 title opinion and was obtaining a formal title opinion.

5 At the February 9th hearing we learned that the
6 preliminary title opinion was given by Mr. Hegarty himself,
7 that no formal title opinion had been obtained, and Synergy
8 indicated that they did intend to drill the well without
9 the formal title opinion and in spite of the joint
10 operating agreement requirement that a formal title opinion
11 be obtained prior to drilling.

12 So for these reasons we believe that it is
13 premature to consider this Application for pooling until
14 all parties that may have any interest have been notified
15 of these proceedings, so that they can be given the
16 opportunity to review these proposed well drilling costs.
17 When Mr. Smith gets on the stand, he'll testify that he has
18 not been provided with the estimated costs for this 105
19 well, but that he did compare and review the costs for
20 drilling the 104 well and believes that they are 20 to 30
21 percent above what they could have been drilled for. And
22 that just points out that these unnamed or absent potential
23 owners are going to be deprived of the opportunity to
24 comment on those costs and to object to them.

25 Finally, Mr. Hegarty also testified at the

1 hearing before ours of the extreme expense and difficulty
2 of challenging Synergy after a pooling order has been put
3 in place. Those were his words. For these reasons, we
4 believe it's premature to consider this Application.

5 Thank you.

6 MR. HALL: Mr. Catanach, may I make an additional
7 comment, which I think is directly to the relevance issue
8 here?

9 If you would refer in the Oil and Gas Act to
10 Section 70-2-18.B, that's the applicable statutory
11 provision here. Synergy has come before you, and they're
12 going to ask you to fashion a compulsory pooling order that
13 must, one way or another, deal with the interests of the
14 heirs of Margaret Hasselman Jones.

15 Now, Synergy must do one of two things. They
16 must either consolidate those interests through voluntary
17 joinder or through force pooling. With respect to
18 voluntary joinder there is, up to now, an utter failure of
19 proof. And at the same time they are telling you that they
20 don't wish to have those interests force pooled. What do
21 you do with those interests in a force pooling order?

22 Well, my reading of the Statute 70-2-18.B, those
23 interests, if they are not joined, must be accounted for at
24 a full 8/8 without deduction for any cost whatsoever,
25 including a risk penalty.

1 That also precipitates an additional question.
2 How can this well receive an allowable if all the interests
3 aren't consolidated?

4 So I think those are issues you have to deal
5 with. It's what Synergy has brought to the table. And I
6 think that's why the inquiry is relevant.

7 MS. MacQUESTEN: Mr. Hall, are you saying that we
8 shouldn't issue pooling orders piecemeal? Is that your
9 concern, that it creates inequalities in treatment of the
10 various interest owners?

11 MR. HALL: If in fact that's what happens, you
12 need to address the unjoined interests one way or another.
13 I think you probably can pool without a hundred percent of
14 the interest owners, but under the statute, I think it
15 directs what happens with respect to the unpooled or
16 unjoined interests. There must be an accounting to someone
17 for 100 percent of 8/8 proceeds attributable to that
18 interest. Who is it? Who's asserting conflicting claims
19 to that interest, and is it something that the Division can
20 allow without any evidence whatsoever about the claims to
21 that interest. I mean, I think the Application puts you in
22 a very awkward position.

23 And again, what is the purpose of issuing a
24 pooling order at all? If you don't have 100 percent of the
25 interests consolidated one way or another, you can't get an

1 allowable for the well.

2 MR. BRUCE: Mr. Examiner, I'll address the last
3 point first. I've never seen any Division regulation that
4 says you have to have every interest committed before an
5 allowable is given for the well.

6 Secondly, I would point out that a few weeks ago
7 the Division heard a case by one of Mr. Hall's clients
8 where they not only drilled the well long before they ever
9 had any interest, and they after that resisted seeking
10 pooling. We are here seeking pooling of Mr. Smith only.
11 If the heirs of Margaret H. Jones -- if Mr. Hegarty doesn't
12 acquire those interests, that's his risk. There is nothing
13 in the pooling statute that says everyone has to be pooled
14 or pooled at one time. Mr. Hegarty has not testified as to
15 the steps taken to acquire that interest, because we're not
16 pooling them. They're not at issue in this hearing.
17 That's his risk.

18 And one final thing, I would note that Mr. Larson
19 said something about drilling before the Commission
20 Hearing. If you went into that case file, Mr. Examiner,
21 you'd find that the other parties sought to stay the
22 drilling of the well, the Division Director denied any stay
23 of the drilling of that well, so Mr. Hegarty was free to
24 drill that well at any time, including before the
25 Commission Hearing.

1 We are only here seeking to force pool Mr. Smith.
2 The testimony has shown and will show that he refuses to
3 join in this well under a JOA. What are we supposed to do
4 to drill the well? We need to force pool him. Mr. Hegarty
5 has testified he's acquiring the Walmsley -- excuse me, the
6 Margaret H. Jones interests. We do not need to pool them,
7 pure and simple.

8 As I said before -- I'll say it again -- as soon
9 as that interest is tied up, we'll inform everybody. But
10 at this point, because of the litigation filed by our
11 opponents, we can't give them the names and these people.

12 EXAMINER CATANACH: Mr. Hegarty, what is the
13 status of your negotiation with that party, or with those
14 parties?

15 THE WITNESS: The status is that an offer has
16 been made and is being considered.

17 (Off the record)

18 EXAMINER CATANACH: Mr. Bruce, I think that we've
19 decided to require the witness to provide that information.
20 If Synergy is not comfortable with that, your other option
21 is to continue the case, tie up those interests, and come
22 back. Or include them in the pooling order.

23 THE WITNESS: That's no problem.

24 MR. LARSON: Which one?

25 THE WITNESS: That we'll continue it.

1 EXAMINER CATANACH: Do you want to continue the
2 case?

3 THE WITNESS: Yeah.

4 EXAMINER CATANACH: Okay, is that --

5 MR. BRUCE: Continue it for six weeks?

6 THE WITNESS: Yeah, that should be enough time.

7 EXAMINER CATANACH: Any comment from this side?

8 MR. LARSON: Could we have just a second?

9 EXAMINER CATANACH: Yeah. Why don't we take five
10 minutes, and we'll organize here.

11 (Thereupon, a recess was taken at 10:35 a.m.)

12 (The following proceedings had at 10:42 a.m.)

13 EXAMINER CATANACH: Okay, the Applicant has a
14 request on the table to continue this case for six weeks.

15 MR. HALL: Mr. Examiner, I think what
16 precipitated the request was our demand that the identity
17 of the parent claimants of the Margaret Hasselman Jones
18 interest be disclosed. It's our preference -- We will
19 withdraw that demand at this point. It's our preference to
20 continue with the hearing today.

21 EXAMINER CATANACH: Is that agreeable, Mr. Bruce?

22 MR. BRUCE: Yeah.

23 THE WITNESS: Sure.

24 EXAMINER CATANACH: Okay, let's proceed then.

25 MR. HALL: Let's see, I believe it was me, wasn't

1 it?

2 EXAMINER CATANACH: Yeah, you're on.

3 Q. (By Mr. Hall) Mr. Hegarty, just so the record is
4 clear on this, referring back again to your Exhibit Number
5 2, which is the breakout of the interests for the 320-acre
6 unit, you will agree, won't you, that there are conflicting
7 claims by my client and by Synergy to the interests for the
8 heirs of Julia H. Keller, the heirs of May H. Kouns, the
9 heirs of Jennie H. Hill and the heirs of Margaret H. Jones,
10 correct?

11 A. Yeah, I just want to qualify one point. You said
12 that this was a representation of the 320, and it's just a
13 representation of the southwest.

14 Q. I beg your pardon.

15 A. Okay.

16 Q. I beg your pardon, you're correct about that.

17 A. But in answer to your question -- and I'll
18 rephrase it that there's a title dispute or a title
19 question between Mr. Walmsley and ourselves, referring to
20 the heirs of Julia H. Keller, Kouns, Hill, and Margaret H.
21 Jones, that's your question?

22 Q. Yes, sir.

23 A. Yes.

24 Q. And that issue is currently before the San Juan
25 County District Court in a quiet title proceeding?

1 A. Correct.

2 Q. With respect to the Margaret H. Jones heirs'
3 interest, did Synergy offer anyone, any claimant to that
4 interest, the opportunity to elect to participate in the
5 infill well?

6 A. Right now we are in the process of solidifying
7 and -- what their ownership is. And so it's a discovery
8 process, and -- but no, there's been no offer to
9 participate in this well, because until we can confirm all
10 that we have researched, confirm it via -- you know,
11 probably an attorney will have to take a look at this, most
12 assuredly, because it's -- you know, with the quiet title
13 court decree we will be able -- this -- all of this
14 evidence will be presented in court at that setting and
15 will be qualified and I'm sure reviewed by you or, you
16 know, some other attorney or a group of attorneys, as to
17 its validity.

18 So the process of, you know, going through and
19 documenting, properly documenting the paperwork, is --
20 that's the process in which we are in at this moment.

21 MR. LARSON: I'll object to the part of the
22 response other than "no" as being nonresponsive.

23 Q. (By Mr. Hall) Yeah, let's clarify. The short
24 answer to my question is, no well proposal has been
25 submitted to the Margaret H. Jones heirs?

1 A. Yes, that's correct.

2 Q. With respect to the initial well where those
3 interests were pooled, how are you treating the Margaret H.
4 Jones interest with respect to the recoupment of well costs
5 and the risk penalty?

6 A. I'd have to refer to Jim Bruce, being our
7 attorney. I could -- I mean, he's the attorney. It would
8 probably be more appropriate for him to --

9 Q. Let me ask it this way. Is Synergy now recouping
10 the well costs and the risk penalty out of the Margaret H.
11 Jones interest?

12 A. Well, the well is not -- there's no production,
13 it hasn't been completed yet, it's only been drilled.

14 Q. From the initial well?

15 A. Right.

16 Q. I see. What are your plans for doing so?

17 A. Our plans is to abide by the dictates of the
18 order as, you know, Jim Bruce, you know, tells us is the
19 proper thing to do. This is our first force pool process,
20 so when we get to the point of production and the
21 recoupment of costs, we'll make certain to, you know, run
22 by whatever we do with Jim Bruce, make certain that we not
23 put ourselves in a precarious position.

24 Q. Would you be willing to place all the proceeds
25 attributable to the Margaret H. Jones interest into

1 suspense?

2 MR. BRUCE: Mr. Hall, I'd simply say that at this
3 point I think that would have to be deferred to -- I'm not
4 the attorney in the quiet title suit, and I do not want to
5 have Mr. Hegarty say anything or say anything myself that
6 would affect the decisions of the parties in the quiet
7 title lawsuit.

8 My only concern, Mr. Examiner, is that if Mr.
9 Hegarty agrees to do something, it might be held against
10 him in the --

11 EXAMINER CATANACH: I concur with that, Mr.
12 Bruce.

13 MR. BRUCE: -- in the lawsuit.

14 MR. HALL: I'll withdraw the question.

15 Q. (By Mr. Hall) Mr. Hegarty, in turning to your
16 Exhibit 3, you have attached to that two AFEs -- I'm sorry,
17 there is one AFE attached to Exhibit 3, and then Exhibit 4
18 is a separate AFE. Which is the operable AFE here?

19 (Off the record)

20 THE WITNESS: Yes. Oh, there's -- okay, this --
21 Basically, the AFE that is marked Exhibit 4, that's an AFE
22 that -- I think that was the AFE that I prepared to submit
23 with this hearing, and -- Did I give you these this
24 morning? Anyway, but --

25 MR. BRUCE: Mr. Examiner, I believe I pulled

1 Exhibit 4 out of my file, and it could have been from the
2 original hearing some time ago, I do not know.

3 THE WITNESS: Yeah, basically the AFE that's
4 attached to this letter was produced by our engineer,
5 drilling engineer, a gentleman by the name of Glen Papp.
6 And then these AFEs that are marked Exhibit 4 were what I
7 prepared for this hearing. And I just basically, you know,
8 took an AFE, amended it -- and it appears that when I took
9 this, that it was an older AFE, because the numbers have --
10 you know, the \$379,000, we can't -- because of the increase
11 in service company costs, the -- you know, the costs of
12 drilling wells have increased significantly over the past
13 five years, so, you know, AFEs, we're -- he's constantly in
14 the process of calling the service companies and checking
15 on the price of steel for pipe and service company costs
16 for doing things, and so it appears that the one that I got
17 was an earlier version of the AFE.

18 Q. (By Mr. Hall) Now let me ask you, with respect
19 to the interest owners currently under the JOA, which AFE
20 was offered to them for purposes of them making the
21 election to participate in the infill well?

22 A. The \$440,000 figure.

23 MR. LARSON: Which exhibit is that?

24 THE WITNESS: That's the -- attached to the
25 letter. And if you look at the -- you know, any of the

1 prior hearings, that \$440,000 figure is -- I think is the
2 number.

3 Q. (By Mr. Hall) Could you tell the Hearing
4 Examiner what your actual well costs were for the 104 well?

5 A. Boy, I don't know that.

6 Q. Does \$346,000 sound about right?

7 A. For the 104?

8 Q. Yes, sir.

9 A. Well, we've only drilled it, we haven't completed
10 it.

11 Q. Okay, so completion costs have not been incurred
12 yet?

13 A. Right, exactly.

14 Q. Mr. Hegarty, if you would turn to your Exhibit 10
15 now, it's a brief form of your joint operating agreement.
16 The last page of that shows signatures on behalf of
17 Burlington Resources Oil and Gas Company, and then to the
18 right of that it shows "Heirs of Claude Smith" force
19 pooled.

20 A. Yes.

21 Q. Is it your view that you're regarding the terms
22 of the operating agreement applicable to the force pooled
23 interests now?

24 A. No.

25 MR. HALL: No? I have nothing further.

1 EXAMINER CATANACH: Mr. Larson?

2 CROSS-EXAMINATION

3 BY MR. LARSON:

4 Q. Mr. Hegarty, did you provide an authorization for
5 expenditure to Joseph Robbins for the 105 well?

6 A. No.

7 Q. Why not?

8 A. He's farmed in.

9 Q. Did you receive a copy of the rescission notice
10 that Mr. Robbins had us execute on his behalf?

11 A. Yes.

12 Q. Did you then have a telephone conversation with
13 Mr. Robbins about that rescission afterwards?

14 A. I did.

15 Q. Did you object in writing to Mr. Robbins'
16 rescission?

17 A. I don't think I did.

18 Q. Did you give Mr. Robbins any consideration for
19 this farmout agreement?

20 A. The drilling of a well, yes.

21 Q. Now that well that you're referring to, you
22 drilled after the time that he rescinded the farmout
23 agreement; isn't that correct?

24 A. We drilled it under the terms of our agreement,
25 which said we had till May 31st of 2006, so we're in

1 complete compliance with the agreement that he signed.

2 MR. LARSON: Objection as nonresponsive.

3 Q. (By Mr. Larson) Did you drill the well after the
4 date of his rescission?

5 A. I don't --

6 MR. BRUCE: I would object to the fact that -- it
7 is our position that the rescission is ineffective, and if
8 he's trying to ask -- trying to get him to admit that the
9 rescission is effective, we object to that.

10 EXAMINER CATANACH: I concur with Mr. Bruce.

11 Q. (By Mr. Larson) Have you informed these new
12 heirs, unidentified heirs, of any dispute of title or
13 question of title?

14 A. Well, first we're in the process of properly
15 documenting that they actually own the interest, so that
16 has to be established first, before we can discuss anything
17 further.

18 Q. Let me ask the question differently. Have you
19 informed them of the existence of the current quiet title
20 suit?

21 A. No.

22 Q. Do you have any proof of service of Exhibit
23 Number 3 to Ed Smith, which is, I suppose, the witness'
24 cover letter to an authorization for expenditure?

25 A. No, I purposely didn't send this by certified

1 mail in an attempt -- and I had telephone calls with Mr.
2 Smith, you know, basically trying to work out some means of
3 his participation. And so I did not want to make this
4 letter appear to be legalistic by any stretch of the
5 imagination, because I truly felt that we could work out
6 some means of his participation. It just -- what he's
7 doing doesn't make any sense, and -- to me it didn't. And
8 so I talked to him on a number of occasions. And so
9 anyway, that's -- our discussion of the drilling of these
10 wells went on between me and Mr. Smith.

11 MR. LARSON: I'll object to the portion of the
12 answer other than "no" as nonresponsive.

13 Q. (By Mr. Larson) And you -- This letter that you
14 claim to have mailed of November 16th, that you mailed or
15 is addressed to Edwin Smith directly, is despite his
16 counsel's request that you direct all communication through
17 counsel and not to him directly; is that correct?

18 MR. BRUCE: Mr. Examiner, I'll state that at some
19 point I received a communication from Mr. Larson asking Mr.
20 Hegarty to contact -- not to contact Mr. Smith, but I don't
21 know if it was before or after that well -- I mean before
22 or after that letter. I believe it was after the letter
23 that I received that.

24 MR. LARSON: Well, we can pull it out. It was
25 June of last year, and the letter is November.

1 Q. (By Mr. Larson) Did you direct your attorney to
2 provide an authorization for expenditure, for Mr. Smith's
3 or Smith LLC's interest, to counsel?

4 A. No.

5 Q. And you did not -- or Synergy did not mail one to
6 counsel either, directly to counsel?

7 A. No, no. Well, as I said, I really did feel this
8 matter could be handled outside of the attorneys, and
9 should be, and -- because when you drill a good well
10 everybody wins. I just felt there a need to try and
11 resolve this outside of the attorneys.

12 Q. Even those that haven't been given an opportunity
13 or even known of the well being drilled, will win?

14 A. Excuse me?

15 Q. Even those persons that don't know that a well is
16 being drilled or haven't been given notice of any pooling
17 or anything like that, do those parties win?

18 A. Everybody wins when a well is drilled.

19 MR. LARSON: No further questions.

20 EXAMINATION

21 BY EXAMINER CATANACH:

22 Q. Mr. Hegarty, the AFE that you intend to use for
23 this well is the one that went out with the Edwin Smith
24 letter --

25 A. Yeah.

1 Q. -- correct?

2 A. Yes.

3 Q. So the interest of Burlington is subject -- it's
4 already under a JOA --

5 A. Yes.

6 Q. -- so that's not an issue at all?

7 A. No, not at all.

8 EXAMINER CATANACH: I don't believe I have any
9 other questions of this witness.

10 Is that all we have of this witness?

11 MR. BRUCE: I just had one follow-up question.

12 REDIRECT EXAMINATION

13 BY MR. BRUCE:

14 Q. After you sent that November letter to -- mailed
15 that November, 2005, letter to Mr. Smith, did you confirm
16 its receipt with him?

17 A. Basically we discussed the drilling of the second
18 well and drilling of the wells in general and the
19 operations and basically just tried to work out a means of
20 -- you know, of trying to communicate and do something that
21 we could, you know, drill this well jointly. And so
22 through those discussions I was comfortable that he was
23 very definitely aware of our plans to drill and operate
24 this well and trying to work out -- and I still am, as a
25 matter of fact, and if he ever wants to call me up and work

1 something out where he can participate in this well, we're
2 ready, able and willing to do that.

3 Q. On the same -- I don't have an Exhibit 3 in front
4 of me. What is the date of that letter, Mr. Hegarty?

5 A. Oh, November 16th.

6 Q. At about the same time, did you mail a well
7 proposal on the 105 well to Mr. Walmsley?

8 A. Yes.

9 Q. And he did receive that, did he not?

10 A. I'm not sure. Did -- Maybe Scott Hall can --

11 MR. BRUCE: Well, I do have a letter from Mr.
12 Hall referring to the well proposal, so I presume -- Mr.
13 Hall, could you confirm that Mr. Walmsley received a
14 letter?

15 MR. HALL: There's no dispute about that.

16 THE WITNESS: Okay. We sent them out on the same
17 day.

18 MR. BRUCE: Although he's not being pooled, and
19 it was sent out at the same time and --

20 THE WITNESS: Yeah.

21 MR. BRUCE: -- I do have a letter confirming that
22 from Mr. Hall.

23 That's all I have, Mr. Examiner.

24 EXAMINER CATANACH: Okay, this witness may be
25 excused.

1 ^o And are you going to put a witness on, Mr.
2 Larson?

3 MR. LARSON: Yes, if you'd -- Would you like to
4 do the witnesses, argument? Do you want to take it in a
5 particular order, or just -- with Mr. Smith?

6 EXAMINER CATANACH: What argument is that?

7 MR. LARSON: Well, maybe a couple procedural
8 matters. Rather than going through everything that's
9 transpired with regard to the 104 well, obviously there's a
10 transcript of the June 16th hearing. We would move to
11 incorporate that transcript into the record for this well,
12 as well as the transcript of the February 9th, 2006,
13 hearing on *de novo* review by the full Commission.

14 EXAMINER CATANACH: Any objection to that, Mr.
15 Bruce?

16 MR. BRUCE: I have no objection, and I would note
17 for the record that -- I had an extra copy of the order
18 issued by the Commission in that decision, which I didn't
19 give to the Division's attorney, which I would note found
20 that Synergy did have the right to drill the well.

21 EXAMINER CATANACH: Okay, I will incorporate the
22 record in the previous case and the *de novo* case.

23 MR. LARSON: Correct.

24 EXAMINER CATANACH: Okay.

25 MR. LARSON: And we're providing to you here a

1 set of exhibits for today's hearing, and that order that
2 Mr. Bruce was referring to is behind Tab Number 6.

3 EXAMINER CATANACH: Okay.

4 MR. LARSON: We would like to summarize, first,
5 that Mr. Smith and Mr. Robbins' positions are that Synergy
6 does not have any standing to move to pool today, that its
7 title, if any, is at best questionable and subject to the
8 quiet title suit.

9 At the June 16th, 2005, hearing resulting in the
10 order of the Division R-12,376 which is behind Tab 7 of
11 your book, and in the later *de novo* review by the full
12 Commission resulting in Order R-12,376 behind Tab 6, both
13 of those -- those are not -- excuse me, I apologize, I've
14 got 1, 2, 3's, and I guess the copies that you have are A,
15 B, C's, so that's...

16 Both of those orders, in any event, found that
17 Synergy did have standing based on, first, the question and
18 the acknowledged questionable title through the Walmsley
19 interests, but then ultimately granted the pooling
20 Application based on what was believed to be a valid
21 farmout agreement with Mr. Robbins. We will show that that
22 farmout agreement was obtained through misrepresentation
23 and fraud, lacked consideration and was validly rescinded
24 on January 26th of this year, prior to the drilling of the
25 Duff 104 well. And so Synergy does not have any interest

1 via Robbins, and therefore no interest at all. As we
2 presented -- And we'll be providing a memo to that effect,
3 a bench memorandum on the law of rescission and unilateral
4 contracts.

5 As we demonstrated at the February 9th hearing --
6 and I do encourage you to look at that -- we pointed out
7 that the joint operating agreement that is in place between
8 Burlington and the Walmsleys and Synergy, there are two
9 important aspects of that.

10 The first one is that the joint operating
11 agreement requires as a prerequisite to any drilling of a
12 well that a formal title opinion be obtained, and the
13 record reflects, and Mr. Hegarty's testimony on February
14 9th, that none was obtained by Synergy.

15 We did offer at the February 9th hearing, and
16 also enclosed in this book of exhibits, a formal title
17 opinion that was obtained by Ed Smith and Mr. Walmsley,
18 which shows that Synergy does not have the interest that it
19 claims. Therefore, having failed to satisfy its own title
20 opinion or to prove its title, under the joint operating
21 agreement it has no right to drill.

22 Furthermore, the joint operating agreement
23 requires that its parties have an interest in the
24 properties and that if any party does not have an interest,
25 it may not serve as the operator. Therefore under that

1 agreement, Synergy may not serve as the operator and may
2 not participate in the pooling of those properties.

3 When we communicated with Burlington earlier this
4 week about this question of title, they indicated that they
5 intended to seek to have the operation of the 104 well, the
6 one that's currently drilled, transferred to their own
7 operation. And we are in discussions with them about
8 voluntarily participating in the drilling of the 105 well.

9 I would like to offer to you now a bench memo on
10 the law of rescission on this issue, and I would ask if
11 everyone would turn to Exhibit K of your book of exhibits.
12 One of the additional reasons that the full Commission
13 granted the order pooling was that it determined that the
14 rescission had not been properly verified. And its
15 statement in its order that because of the Robbins farmout
16 there is no evidence that the Applicant no longer owns an
17 interest, there is no evidence that the nonoperators --
18 excuse me, that's not the portion I was referring to.

19 Respondents -- that was us -- presented an
20 unsworn statement by Joseph Robbins. So we're curing that
21 here with Exhibit K, which is an affidavit of Joe Robbins,
22 which has been sworn and which recites that the notice of
23 the rescission which was executed on January 26th, 2006,
24 before the drilling of the 104 well, is his signature and
25 that he did execute it on that date. So we have cured that

1 arguable defect in the affidavit.

2 Our position, and therefore Mr. Robbins'
3 position, is that he does own the interest in the well, the
4 3.125-percent interest, that he was not provided with an
5 authorization or a request to participate in the well, and
6 therefore the Application should be denied for that reason
7 alone.

8 And we'd like to put on Mr. Smith now.

9 EDWIN L. SMITH,

10 the witness herein, after having been first duly sworn upon
11 his oath, was examined and testified as follows:

12 DIRECT EXAMINATION

13 BY MR. LARSON:

14 Q. Can you state your name for the record?

15 EXAMINER CATANACH: Can you hang on just a
16 second?

17 MR. LARSON: Sure.

18 EXAMINER CATANACH: You may proceed.

19 Q. (By Mr. Larson) Would you please state your name
20 for the record?

21 A. Edwin Smith, Senior.

22 Q. And what is your position with regard to Edwin
23 Smith, LLC?

24 A. I'm the sole owner and manager of the Edwin
25 Smith, LLC.

1 Q. Do you have a copy before you of Mr. -- of
2 Synergy's exhibits?

3 A. Part of them, yes.

4 Q. You do? Okay. Can you please turn to what's
5 been marked as Exhibit Number 3, and let me ask if you
6 would take a look at that and let me know if you've ever
7 seen that letter before.

8 A. I don't recall this letter, no.

9 Q. Let me ask you to look at the authorization for
10 expenditure that's attached to it and ask you if you've
11 ever seen that before either?

12 A. No.

13 EXAMINER CATANACH: Mr. Larson, are you going to
14 qualify your witness as an expert in some area?

15 MR. LARSON: No, didn't intend to. He's simply a
16 fact witness as to what he's received and that sort of
17 thing.

18 EXAMINER CATANACH: Okay.

19 Q. (By Mr. Larson) Mr. Smith, Mr. Hegarty
20 referenced some conversations that he had had with you in
21 the past, and I believe he testified that he'd had
22 discussions with you about the cost for this 105 well. Do
23 you recall any such conversations with him regarding this
24 105 well?

25 A. No.

1 Q. Isn't it true that you directed us as your
2 attorneys to ask that Mr. Hegarty and Synergy not contact
3 you directly?

4 A. Yes, I did.

5 Q. And isn't it true -- or is it true that Mr.
6 Hegarty continued to send correspondence to you and to
7 telephone you after that request?

8 A. Yes.

9 Q. Can you turn to Exhibit Number 8?

10 A. I don't know that I have that. I have A, B, C.

11 Q. This should be in the same stack of exhibits that
12 we were looking at. No, this is not the same set. Do you
13 have another set?

14 MR. HALL: Here, Derek.

15 MR. BRUCE: That was from the Commission Hearing,
16 Derek.

17 Q. (By Mr. Larson) Okay. And let me ask you now
18 to look at what is Exhibit Number 3 in this package. We're
19 going to go back and confirm the same question as to
20 whether you've seen this letter or not.

21 A. No, I have not.

22 Q. Okay. Now turn, if you would, to Exhibit Number
23 8.

24 A. Okay.

25 Q. Have you seen this before?

1 A. Yes.

2 Q. Now, Mr. Hegarty testified that you prepared
3 this. Is that true?

4 A. It was my accountant.

5 Q. All right. Can you tell me -- Do you know when
6 this was prepared?

7 A. This was prepared January of 2005.

8 Q. And at that time did you have any understanding
9 as to whether or not Synergy owned any interest in the
10 Claude Smith well?

11 A. At that time I had received deeds from Mr.
12 Hegarty stating that he had an interest in the well, and
13 because of the deeds and the -- at that time, the knowledge
14 of the deeds, we sent a disbursement to him.

15 Q. Did that understanding as to any interest in the
16 well later change, after the creation of this document?

17 A. Yes, shortly after this document, these came
18 forth, I got a letter from Mr. Walmsley with a joint
19 tenancy with right of survival. I then notified everyone
20 that there was a problem and that I would be holding funds
21 until that problem was resolved.

22 Q. All right. And I would refer the Hearing
23 Director to the discussion at the February 9th hearing of
24 the various deeds in the chain of title leading up to --
25 culminating in the title opinion by Nancy King.

1 MR. LARSON: Can I borrow from the court reporter
2 the exhibits that were given him so that the witness will
3 have a copy?

4 COURT REPORTER: Yes.

5 MR. LARSON: What tab is that, Germaine?

6 MS. CHAPPELLE: D.

7 MR. LARSON: Tab D.

8 Q. (By Mr. Larson) And Mr. Smith, after you've had
9 a chance to look at it, the question I'll ask you is, is
10 this the deed that you're referring to that you received
11 from --

12 A. Yes, it is.

13 Q. -- Mr. Walmsley? And you received that from Mr.
14 Walmsley?

15 A. Yes, I did.

16 Q. And that was after -- to the best of your
17 knowledge, after the time that Exhibit 8 had been created?

18 A. Correct.

19 Q. Thank you. Mr. Smith, let me ask you, what is
20 the intent of Ed Smith, LLC, with regard to the drilling or
21 the proposed drilling of the 105 well?

22 A. We would like to proceed. We have been in
23 contact with Burlington, we have contacted numerous people,
24 getting bids and proposals for drilling this well. We
25 would like to go forth as soon as we get a decision from

1 you people.

2 Q. Have you retained a driller for the drilling of
3 that well?

4 A. Yes.

5 Q. Have you prepared an application for permit to
6 drill?

7 A. Yes, we have.

8 Q. All right, and has that been filed yet?

9 A. No, I believe it's in the process. There was a
10 problem with the bonding, the letter of bond. It was -- My
11 father passed away, and we're in the process of changing
12 over from getting all of the documents and everything
13 straightened out, and the bond was one of the items that
14 needed to be updated. We do have that bond now, and it's
15 ready -- and I think our application is ready for -- it's
16 prepared.

17 Q. All right. So if that permit -- when that permit
18 is granted, you'll be in a position that you'll be ready --
19 As soon as you've completed the cost estimates and provided
20 those to the interest owners, will you be in a position to
21 drill the well?

22 A. Yes.

23 Q. Okay, and will you be -- When do you hope to
24 commence drilling that well?

25 A. Soon, as soon as we get the figures, the bids.

1 Q. Have you communicated with Mr. Walmsley -- Well,
2 let me ask it this way. Have you communicated with the
3 other rightful interest owners in the southwest quarter of
4 Section 8 about drilling the well?

5 A. I have communicated with them an interest that
6 we'd like to drill a well. We still have the title
7 question and the bids to get taken care of, and then we
8 would be prepared to drill.

9 Q. Specifically, who have you communicated with,
10 either yourself or through counsel?

11 A. Mr. Walmsley and Mr. Robbins.

12 Q. Okay, and didn't you earlier say that you also,
13 in negotiations with Burlington, as --

14 A. Yes, yes, we've had communications with
15 Burlington.

16 MR. LARSON: Okay, I don't have any further
17 questions for the witness.

18 EXAMINER CATANACH: Mr. Bruce?

19 MR. BRUCE: Just a couple.

20 CROSS-EXAMINATION

21 BY MR. BRUCE:

22 Q. Looking at the Synergy exhibits, Mr. Smith,
23 Exhibit 8, you arranged to pay Mr. Hegarty's company after
24 he had provided you with the assignments marked Exhibit 7.
25 Do you recall receiving those assignments?

1 A. I'm not sure whether it was before or after.

2 Q. Okay, but you did receive some assignments from
3 Synergy, copies of assignments, and then you --

4 A. I believe so.

5 Q. -- and then you put Synergy in a pay status on
6 this well, at least for the first few months?

7 A. Right, because of the deeds that they sent to us.

8 Q. Okay. Before you paid Synergy, were you paying
9 the heirs of -- these other Hasselman heirs that Synergy --

10 A. Yes, we had not been notified that the -- of this
11 deed, nor the fact that these people had passed away.

12 Q. Okay, so you had been paying these -- well, I
13 don't even know the names of them all, but you had been
14 paying on this particular well the heirs of Julia Keller,
15 the heirs of May H. Kouns, on production from this well?

16 A. Yes, I believe so.

17 Q. And is it fair to say that you had been paying
18 them for decades and decades?

19 A. The exact time I couldn't say. The well has been
20 existent, and when these people passed away, I can't tell
21 you, so I don't know when that was.

22 Q. But people have been paid on a regular basis ever
23 since --

24 A. Yes.

25 Q. -- you or your father or grandfather have been

1 operating this well?

2 A. Yes.

3 Q. And then look at Synergy Exhibit 5. On the last
4 page of that exhibit there's a copy of a certified mail
5 green card. Is that your signature on that green card?

6 A. Yes.

7 Q. And I can't read your date of delivery. It looks
8 like you did receive it in February at some point?

9 A. Apparently.

10 Q. Okay. So for a number of weeks you've been aware
11 that Synergy wants to drill the 105 well in the southwest
12 quarter?

13 A. Yes.

14 Q. Did you or your attorney ever contact Mr. Hegarty
15 and request an AFE for the well?

16 A. I have not, and I do not know whether my
17 attorneys have.

18 MR. BRUCE: That's all I have, Mr. Examiner.

19 EXAMINER CATANACH: Any redirect?

20 MR. LARSON: No.

21 EXAMINER CATANACH: Mr. Hall?

22 MR. HALL: No.

23 EXAMINATION

24 BY EXAMINER CATANACH:

25 Q. Mr. Smith, you testified that you did not receive

1 the letter, Exhibit Number 3, from Synergy and that you
2 don't recall talking to them about the well; is that
3 correct?

4 A. I do not recall receiving this. I have not
5 talked to Mr. Hegarty or Synergy by phone in regards to
6 this last well, this 105.

7 Q. You did go on to testify that you have been
8 contacted by Synergy with disregard to your wishes that
9 they contact your attorney. What was that contact for, if
10 you have been in contact with them?

11 A. This request was made some time back, even in
12 regards to the first well, and that pertains to documents
13 of the -- in regards to the first well, and since --

14 MR. LARSON: Mr. Commissioner -- or Hearing
15 Officer, I think -- I perceive a little confusion in your
16 question as to -- I think you asked -- or is it something
17 like, you have been in contact with Synergy? And my
18 understanding -- and perhaps we should ask the witness this
19 -- is that Mr. Smith has not called to Mr. Hegarty but that
20 Mr. Hegarty has been the one that has been placing the
21 phone calls to Mr. Smith, who has simply answered the
22 phone. And I don't know if that was what your question was
23 about or not.

24 EXAMINER CATANACH: Well, that's part of it.

25 MR. LARSON: Okay.

1 Q. (By Examiner Catanach) You have spoken to Mr.
2 Hegarty?

3 A. Perhaps a year or so ago.

4 Q. It's your testimony that you have not spoken to
5 Mr. Hegarty regarding the new well, the 105 well?

6 A. Right.

7 Q. Okay, that clears it up. The Claude Smith Number
8 1 well, is that still producing?

9 A. Yes.

10 Q. And that is in the southwest quarter?

11 A. Yes.

12 Q. Where is that producing from?

13 A. It's the Pictured Cliff.

14 Q. PC. And that has dedicated to it the southwest
15 quarter of that section?

16 A. Yes.

17 EXAMINER CATANACH: I'm a little confused again,
18 Mr. Bruce. You are seeking to pool a 160-acre unit
19 comprising the southwest quarter in a section --

20 MR. BRUCE: Oh, Mr. Examiner, I -- that's in
21 error and I withdraw that. It's only to force pool the
22 second Fruitland Coal well. I thought I had only -- I was
23 doing two of these at once.

24 Well, Mr. Examiner, I am seeking to pool 160
25 acres that might be above the Basin, just in case,

1 Fruitland sand or something like that. Not the PC. The
2 Application does state that it's from the surface to the
3 base of the Fruitland Coal.

4 Q. (By Examiner Catanach) Okay. Mr. Smith, I'm a
5 little curious about your plan to drill a well in the
6 southwest quarter. Do you plan to drill this well at the
7 same location as is being proposed by Synergy?

8 A. Yes, generally.

9 Q. Now, you are aware that the west half of this
10 section has already been force pooled and is already
11 committed -- it's already an active proration unit in the
12 Basin-Fruitland Coal?

13 A. Yes.

14 EXAMINER CATANACH: Okay, there may be some
15 issues with regards to that, your proposal, but I'm not
16 going to go into that.

17 (Off the record)

18 EXAMINER CATANACH: Okay, I think that's all the
19 questions I have of Mr. Smith.

20 Is there any other questions?

21 MR. LARSON: I have a follow-up, just from one of
22 yours with regard to the Claude Smith well.

23 REDIRECT EXAMINATION

24 BY MR. LARSON:

25 Q. Mr. Smith, can you tell us, have you done

1 anything with the proceeds as far as placing any of the
2 proceeds from the Claude Smith well in suspense pending the
3 quiet title suit?

4 A. Yes, we have. We've had -- there was some
5 question on the overriding royalties and also on the
6 ownership of the Hasselman, quote, Walmsley families, so we
7 put everything in suspension with the exception of the
8 12 1/2 percent that has been acknowledged that Walmsley
9 owns.

10 MR. LARSON: All right, I have no further
11 questions of Mr. Smith.

12 EXAMINER CATANACH: You may be excused.

13 MR. LARSON: And we'd also like to move the
14 Hearing Examiner for admission of our Exhibits A through K.

15 EXAMINER CATANACH: Any objection?

16 MR. BRUCE: Yeah, Mr. Examiner, I would object to
17 the admission of Exhibits H, I, J and K with respect to
18 anything signed by Mr. Robbins. There's nothing -- I have
19 not been able to -- there's been no cause shown why he
20 couldn't attend and testify, I am unable to cross-examine
21 the witness. And as a result, these -- even though,
22 regardless of whether or not they are in affidavit form,
23 these exhibits are hearsay and are inadmissible, and I
24 would object to them. No one has testified to the
25 preparation or the provenance of these exhibits, and I

1 object to Exhibits I through -- excuse me, H through K.

2 MR. LARSON: And if I may note for the Hearing
3 Examiner that these same exhibits, with the exception of
4 Exhibit K, were offered and, over the same objection from
5 Mr. Bruce, accepted by the Commission, the full panel, at
6 the February 9 hearing, again with the exception of Exhibit
7 K, which is a new exhibit, and which has been properly
8 authenticated.

9 MS. MacQUESTEN: Are these the same exhibits from
10 which the Commission drew the conclusion that there was no
11 evidence of the farmout being revoked?

12 MR. LARSON: With the exception of the last one.
13 Their conclusion was that as a technicality the rescission
14 had not been authenticated, and so Exhibit K, by affidavit,
15 is an authentication of what is -- what is attached behind
16 it as the rescission.

17 MR. BRUCE: They were admitted -- I agree with
18 Mr. Larson that the exhibits were admitted, Mr. Examiner.
19 I think they were admitted subject -- or noting the
20 exception, and they were admitted just because the
21 Commission accepted everything into the record in that
22 case.

23 EXAMINER CATANACH: Well, I think I'll admit them
24 in this case, to the extent that I'll use them.

25 MR. BRUCE: I just wanted to note my objection.

1 EXAMINER CATANACH: Okay. So Exhibits A through
2 K will be admitted as evidence in this case.

3 MR. LARSON: In summary, then, we believe that Ed
4 Smith and Joe Robbins have shown that Synergy does not have
5 standing to force pool.

6 In addition, there has not been proof, and in
7 fact Mr. Smith, Ed Smith LLC, nor Joe Robbins have received
8 any -- until just now, the estimate of expenses for the 105
9 well and have not been able to prepare to comment to their
10 reasonableness or otherwise.

11 And finally, if Synergy has any title it is at
12 least, or at a minimum -- excuse me, or at most, colorable
13 title. And I would like to refer the Commission to a case
14 out of Oklahoma, construing Oklahoma statutes which are
15 very similar to New Mexico -- it's the case of *Samson*
16 *Resources vs. the Oklahoma Corporation Commission*, recorded
17 at 859 Pacific 2nd 1118; that's three 1's and an 8, and
18 it's a Court of Appeals of Oklahoma 1993 -- for the
19 proposition that color of title is insufficient for an
20 application to -- for the right to pool it or to drill.

21 And so we ask that Synergy's Application be
22 denied. Or, in the event that the Hearing Officer is
23 inclined to grant the Application, as a second request we'd
24 ask that the matter be stayed until this quiet title suit
25 has been decided and these parties that have now come out

1 of -- come into the light, be provided with a notice to
2 enter their appearance and respond accordingly.

3 If the order is to be granted allowing drilling,
4 we request that there be language in it that specifically
5 prohibits that drilling to go forward until all time for
6 any appeals or motions for rehearing have expired and that,
7 as I stated, the last 104 well was drilled before the
8 Commission had even issued its formal order from the
9 February 9th hearing.

10 That's all.

11 EXAMINER CATANACH: Mr. Hall?

12 MR. HALL: Mr. Catanach, if I might briefly
13 summarize where I believe we are based on the status of the
14 proof provided to you in the course of this hearing, what
15 we know now is, apparently Synergy does not regard the
16 interests of the heirs of Margaret Hasselman Jones as
17 having been force pooled to the well, to the unit, at least
18 not as to the infill well.

19 Frankly, I'm a little uncertain how you are to
20 treat those interests here. But in the context of a
21 compulsory pooling proceeding for participation in an
22 infill well in a previously pooled unit, it's my
23 understanding that under Section 70-2-18 an operator must
24 still provide an interest owner with the opportunity to
25 elect to participate or not.

1 With respect to the Margaret Hasselman Jones
2 interest, the evidence before you now is clearly that
3 opportunity was not provided. And if Synergy does not
4 regard those interests as having been pooled or joined in
5 any other way, they are out there, and I don't think that
6 allows you to enter a compulsory pooling order for the
7 second well at all.

8 In addition, there is no evidence before you of
9 the election of other interest owners in the well, whether
10 by virtue of the original compulsory pooling order or by a
11 joint operating agreement. Election letters may have gone
12 out to certain interest owners, but there's no evidence
13 before you establishing who has elected and the quantum of
14 their interest. Of course, there is no evidence of the
15 election of Margaret Hasselman Jones' heirs, there's also
16 no evidence that Burlington Resources has elected, and
17 there's no evidence that the Walmsley Estate has elected.
18 Mr. Examiner, that's 62 1/2 percent of the well hanging out
19 there.

20 The quality of the proof before you is just that,
21 it's just only a minority of the interests that Synergy
22 believes to be committed to the well, and it's an interest
23 that is being contested in a quiet-title proceeding in the
24 San Juan County District Court.

25 So what do you do as a Hearing Examiner? How do

1 you fashion a compulsory pooling order for the second well,
2 to allow these parties to participate or not? I mean, it's
3 fairly clear that there's been no good faith effort made to
4 join all of the interest owners, either by operating
5 agreement or compulsory pooling order. What do you do with
6 that?

7 We would urge you that under these circumstances,
8 first, you ought to deny the Application outright, given
9 the failure of proof in those essential items.

10 Secondly, alternatively, at the very least, if
11 pooling is to be granted for the second well, then what we
12 would ask you to do is to have the order provide that the
13 proceeds attributable to the litigation interests, the
14 interests of Julia H. Keller, the heirs of May H. Kouns,
15 the heirs of Jennie H. Hill and the heirs of Margaret H.
16 Jones, be placed into suspense. We believe it's
17 inappropriate for any of those proceeds to be disbursed,
18 pending the outcome of the quiet title action.

19 Third alternative. If the Division is not
20 willing to suspense those interests, at the very least I
21 think the order ought to provide that the interests of the
22 heirs of Margaret H. Jones be placed into suspense. It's
23 simply unfair that no interest owner at all who may have a
24 claim to those interests has been given the opportunity to
25 elect to participate or not.

1 Given that, I think it's also inappropriate to
2 allow the recoupment of well costs or the risk penalty out
3 of that interest if, in fact, the Division regards them as
4 having been force pooled at all. It seems to me because of
5 all these questions about whether they are pooled or not,
6 the Division shouldn't provide for that in any event and
7 should suspense them.

8 There's some question about your ability to do
9 that. I think you can refer to the force pooling statute.
10 Under 70-2-17.C it says that you may fashion a compulsory
11 pooling order on any terms that are just and reasonable.

12 And that same statute also provides that you may
13 pool interests without unnecessary expense. We would say
14 where there's been no opportunity afforded to the interest
15 owners, whoever they are, to elect to participate or not,
16 then they are unnecessarily incurring an unnecessary and
17 unreasonable expense with respect to the risk penalty and
18 perhaps some of the well costs.

19 Finally, given the question with respect to the
20 Margaret Hasselman Jones heirs' interest, 6 1/4 percent of
21 the well, given that it's apparently not force pooled now,
22 if we understand Synergy, what do you do? How do you issue
23 a compulsory pooling order?

24 I would say that under Rule 1104.C, that's the
25 Rule Mr. Bruce says he couldn't find, no allowable can be

1 assigned to this well at all until all the interests are
2 consolidated one way or the other. If they're not
3 proceeding to pool the Jones interest, then I think that is
4 a regulatory bar to pooling at all, and there's no reason
5 to issue a pooling order until all of those interests are
6 on board one way or another.

7 The question before you now, as we understand it,
8 is that you are not to pool the interests of the Margaret
9 Hasselman Jones heirs.

10 That's all I have, Mr. Examiner.

11 EXAMINER CATANACH: Thank you, Mr. Hall.

12 MR. LARSON: We would join in the request as to
13 the suspension of proceeds with regard to the interest of
14 Mr. Robbins, to the extent that the Hearing Examiner does
15 allow the order, does grant a pooling order.

16 EXAMINER CATANACH: Okay, can I get you guys to
17 summarize your requests in writing, please?

18 MR. LARSON: Certainly.

19 EXAMINER CATANACH: Mr. Bruce?

20 MR. BRUCE: First of all, Mr. Examiner, the
21 evidence presented today is no different from the evidence
22 presented before the Commission in Case 13,486 and in the
23 Division earlier in that case. Both times it found that
24 Synergy had the right to drill, and especially since it was
25 a Commission order I believe that is binding on the

1 Division, and therefore Synergy has the right to drill and
2 move forward with the well.

3 I know that the Director of the Division has said
4 in the past he does not like to proceed piecemeal, but I
5 think there is no bar to pooling one party, even if there
6 are one or more parties outstanding who we do not seek to
7 pool. This -- it happened in the first go-around, Case
8 13,486. We did not seek to force pool Burlington, and
9 Burlington signed a JOA. There's no harm in moving forward
10 on that basis.

11 The second matter is, if the Division is going to
12 allow wells to be drilled before pooling, which it did in
13 the TMBR/Sharp case down in -- I believe it's Section 25 of
14 16-35 -- as it did in the Chesapeake-Samson fight which is
15 over in Section 4 of 21-35, as it did recently in the LCX
16 case -- I do not know the number; that was just one of Mr.
17 Hall's recent cases -- if they are going to allow drilling
18 before any attempt at pooling whatsoever, then they can
19 allow drilling when only one party is sought to be pooled.
20 There's no question about it. I see no difference.

21 And in fact, at least Mr. Hegarty is moving
22 forward before drilling the well to obtain the majority
23 joinder in the well. As he testified earlier today, the
24 reason he did not seek to force pool the Jones heirs is
25 because he has tracked them down and hopes to get their

1 voluntary joinder in the well. There's nothing wrong with
2 that.

3 As a matter of fact, if those parties are not
4 pooled, they're simply carried in the well. I do not have
5 the case cite, but there's a case with our old friend, Jack
6 Grynberg, that issued a few years ago, a Supreme Court of
7 New Mexico case that said pooling -- in essence, it ignored
8 the pooling statute and said you could carry working
9 interest owners without pooling.

10 Therefore, all this fluff over the heirs of Jones
11 is meaningless. We are not seeking to pool them. And as I
12 stated earlier, if they are now locatable, if these are
13 indeed the heirs, I will state for the record that they're
14 not pooled into the first well yet until they -- because if
15 they're locatable, then notice wasn't given to them. We
16 thought we had them, but we didn't. And we can clear that
17 up at a later date. There is nothing wrong in doing that.

18 Secondly, I'll move on to this alleged
19 rescission. This is a contract signed between two parties,
20 Synergy and Mr. Robbins. One party cannot rescind that
21 contract, period. It's just a matter of simple contract
22 law. When you have an agreement between two parties, both
23 parties have to agree to rescind.

24 Furthermore, this memo says Robbins can rescind
25 when there has been no performance. Well, the farmout was

1 signed May 31, 2005. At that point Synergy was moving
2 forward, expending its time, effort and money to force pool
3 Mr. Smith's interest and to get an APD, causing other
4 matters to be done with respect to that well, getting an
5 APD, financing its well, consolidating Burlington
6 Resources' interest. It was acting under that farmout, and
7 therefore there was effort to -- there had been made effort
8 made to perform under that farmout way before the alleged
9 rescission.

10 Second thing they throw around,
11 misrepresentations by Mr. Hegarty. There's no evidence of
12 misrepresentation whatsoever, no admissible evidence of
13 misrepresentations regarding the farmout.

14 I would note that there is a quiet title action
15 going on, up in San Juan County. Mr. Robbins isn't a party
16 to that agreement -- to that lawsuit. Obviously he doesn't
17 think it's important enough to join in that quiet title
18 suit because his interest isn't affected. Fact of the
19 matter is, Synergy performed under that farmout, continues
20 to perform under that farmout, and it owns a valid
21 interest.

22 A couple of final points. Mr. Smith relies on
23 the JOA about -- certain terms of it about not moving
24 forward. Mr. Smith is not a party to that JOA, Mr. Robbins
25 isn't a party to that JOA. If you're not a party to a

1 contract, you can't rely on it.

2 Regarding title examination, at this time
3 anybody's title opinion is so much worthless paper, because
4 the only thing that will matter is the decree of the
5 District Court in that quiet title action.

6 Finally, with respect to a proposal to Mr. Smith,
7 Mr. Hegarty testified that he wrote that letter, placed it
8 in the mail. Mr. Smith testifies he didn't get it. I
9 don't know how to explain that. But once he was notified
10 of the hearing, no request was made for an AFE.

11 If you think additional time is necessary for Mr.
12 Smith to consider that AFE, I have no problem with that.
13 If the hearing needed to be continued for six months --
14 excuse me, for six weeks -- we have no objection to that,
15 to give him time to consider it.

16 Mr. Hegarty placed it in the mail, thought it had
17 been received, even spoke -- testified that he spoke with
18 Mr. Smith after he had mailed that letter. What happened
19 to it? Who knows? But as everyone in this room knows, the
20 newspapers have been lousy with stories about poor mail
21 service in New Mexico. I myself have been the victim of
22 that with orders being mailed to me by the Division and
23 getting them 30 days later. So what happened, I don't
24 know. If Mr. Smith requests more time to review it, that's
25 fine with us, we have no objection.

1 But there is no impediment whatsoever, legal or
2 factual, to granting this pooling Application and moving
3 forward with the drilling of the well, which at today's
4 prices protects everyone's correlative rights. The exact
5 percentages of the parties will be determined in the quiet
6 title suit. That does not impair correlative rights,
7 because the money and the production will be there to
8 satisfy those people.

9 Thank you.

10 EXAMINER CATANACH: Mr. Larson, is it your
11 opinion that additional time will benefit Mr. Smith in
12 helping him decide whether or not to participate in this
13 well?

14 MR. LARSON: Well, just given the costs that were
15 submitted with the first well, and assuming that these are
16 in line with those, we likely would at least be given the
17 opportunity to -- if he -- to provide an expert to address
18 the reasonableness of the proposed costs, because at first
19 glance, just now in comparing those with the earlier costs
20 for the 104, I do believe that we would have an objection.

21 EXAMINER CATANACH: Okay, let's do that then,
22 let's continue the case for six weeks and allow additional
23 time for the parties to talk or whatever, and see what
24 happens.

25 Anything further?

1 MR. BRUCE: I hope not.

2 EXAMINER CATANACH: Me too. I'll be retired in
3 16 months. Can you continue it that long?

4 MR. BRUCE: We can try.

5 EXAMINER CATANACH: Okay, there being nothing
6 further, this case, 13,663, will be continued to -- I don't
7 know when that date is, but --

8 MR. BRUCE: I think May 26th -- or 25th.

9 EXAMINER CATANACH: That is more than six weeks.

10 MR. BRUCE: Or is it May 11th?

11 EXAMINER CATANACH: May 11th, is that right? Is
12 that two weeks from the 27th? Okay, we'll tentatively
13 continue it to May 11th, subject to verification.

14 And I believe this hearing is adjourned.

15 MR. LARSON: Thank you for your patience.

16 EXAMINER CATANACH: Thank you.

17 (Thereupon, these proceedings were concluded at
18 11:45 a.m.)

19 * * *

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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 April 30, 2006.

David R. Catanach, Examiner
Oil Conservation Division

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 April 1st, 2006.



STEVEN T. BRENNER
 CCR No. 7

My commission expires: October 16th, 2006