

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

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

CASE NO. 13663

**PRE-HEARING STATEMENT**

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

**APPEARANCES**

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**APPLICANT**

Synergy Operating, LLC

**OPPONENT**

Jerry Walmsley, Trustee

Edwin Smith, LLC

## STATEMENT OF THE CASE

### JERRY WALMSLEY, TRUSTEE

Synergy Operating, LLC is required to explain to the Division why the Duff No. 105 Fruitland Coal infill well was not drilled and completed within the deadlines set forth in Order No. R-12629. The burden will be on Synergy to prove that good grounds exist for the reinstatement of Order No. R-12629.

The mineral lands underlying the W/2 of Section 8 T28NR11W were previously force-pooled under Order No. R-12376 pursuant to an application filed on behalf of Synergy. Because of changes in record title interests since the issuance of Order No. R-12376, and in order to establish a 320 and a 160-acre unit Synergy did not invoke the provisions of Rule 36 for the drilling of the Duff No. 105 infill well, choosing instead to file a new application for compulsory pooling. Correspondingly, the Division issued Order No. R-12629 with new terms, including the requirement that the subject well be drilled "*and completed*" within 120 days after commencement.

It is undisputed that Synergy Operating, LLC did not complete the Duff Well No. 105 within the 120-day timeframe for doing so set forth in Order No. R-12629. Therefore, on the 121<sup>st</sup> day, by its own terms, Order No. R-12629 was no longer effective.

It is also undisputed that Synergy did not seek an extension of time from the Division's Director before Order No. R-12629 automatically terminated. Consequently, the opportunity to seek an administrative extension was lost. The provisions of NMSA 1978 §70-2-23 would thus apply.

Regardless of the automatic termination of the order, there is nothing to prevent Synergy from completing its well. Synergy has asserted, and the Division has previously found, that

Synergy has the right to drill in the W/2 of Section 8 T28NR11W. This right is unaffected by the termination of Order No. R-12629. However, with the termination of Order No. R-12629, Synergy has lost the ability to invoke the cost-recovery provisions of the order. Consequently, Synergy is without any authority to recover well costs, a risk penalty, or supervision charges. It would also follow that Synergy's authority to retain funds for estimated drilling costs tendered by force-pooled parties has also terminated.

As a further consequence of having allowed Order No. R-12629 to expire, it would appear that Synergy has assumed the risk for drilling and completing the well, which of course it is free to do. However, once it places the well on production, Synergy would be obliged to allocate production to all the respective tracts in the unit, and to account to the owners of those tracts, without deduction of costs, in accordance with NMSA 1978 §70-2-17 C. This result is consistent with the February 5, 2007 Order of the San Juan County District Court in the related quiet title proceeding<sup>1</sup> directing Synergy to suspend all proceeds attributable to the disputed interests in the Duff 104 and Duff 105 wells. The Division should not accord relief that would be inconsistent with the rulings of the San Juan County District Court.

#### **PROPOSED EVIDENCE**

JERRY WALMSLEY, TRUSTEE

WITNESSES

None.

EXHIBITS

#### **PROCEDURAL MATTERS**

None.

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<sup>1</sup> Edwin Smith, LLC et al. v. Synergy Operating, LLC, et al.; 11<sup>th</sup> Judicial District Cause No. D-1116 CV 06-59-6

MILLER STRATVERT P.A.

By:

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**Certificate of Service**

I hereby certify that a true and correct copy of the foregoing was faxed to counsel of record on the 8<sup>th</sup> day of March 2007, as follows:

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