

BEFORE THE NEW MEXICO OIL CONSERVATION DIVISION

2005 AUG 3 PM 2 40

APPLICATION SYNERGY OPERATING,
LLC FOR COMPULSORY POOLING,
SAN JUAN COUNTY, NEW MEXICO.

Case No. 13,486
Order No. R-12,376

SYNERGY OPERATING, LLC'S MOTION TO DISMISS
APPLICATIONS FOR HEARING DE NOVO

Synergy Operating, LLC ("Synergy") moves to dismiss the Applications for Hearing *De Novo* filed by Edwin Smith, LLC, attached as **Exhibit A**, and by Jerry Walmsley, Trustee of the June H. Walmsley Trust (the "Trust"), attached as **Exhibit B**. In support thereof, Synergy states:

I. FACTS.

This case concerns the pooling of interests from the surface to the base of the Basin-Fruitland Coal Gas Pool underlying the W½ of Section 8, Township 29 North, Range 11 West, N.M.P.M., San Juan County, New Mexico. Synergy proposes to drill its Duff 29-11-8 Well No. 104, in the NW¼ of Section 8, and seeks to dedicate the W½ of Section 8 to the well to form a standard 320 acre gas spacing and proration unit.

Synergy sought to pool several people, including Edwin Smith, individually. See Hearing Transcript, attached as Exhibit C, at p. 9. Although Synergy initially sought to pool the Trust, before the hearing the Trust signed an operating agreement. See Hearing Exhibit 10, attached as Exhibit D. As a result, Synergy did not seek to pool the Trust. **Exhibit C, at pp. 10 and 19.**

II. LAW.

The right to a hearing *de novo* is established by NMSA 1978 §70-2-13, which provides in part that, after an Examiner's decision is rendered, "any party of record adversely affected" may file an application. The statute is attached as **Exhibit E**.

III. ARGUMENT.

A. Edwin Smith, LLC's Application: Exhibit A was filed on behalf of "Edwin Smith, LLC, a New Mexico limited liability company." However, Edwin Smith, LLC is not a party of record to this case. The only party of record other than the Trustee was Edwin Smith, individually. **Exhibit C, at pp. 4, 6**. In addition, the comments of counsel for Edwin Smith at hearing clearly show that the appearance was for Edwin Smith, individually. **Exhibit C, at pp. 35, 36**.

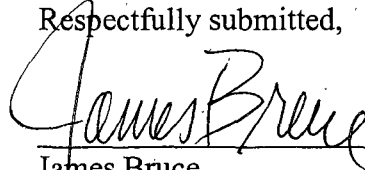
"Edwin Smith, LLC" was not a party of record, as required by statute, and therefore was not entitled to file an application for hearing *de novo*. As a result, its application is invalid and must be dismissed.

B. Trustee's Application: The Trustee was a party of record. **Exhibit C, at p. 5**. However, Synergy expressly stated that it was not pooling the trustee. **Exhibit C, at p. 10**. In fact, the Trustee has signed an operating agreement. **Exhibit C, at p. 19; Exhibit D**. Compulsory pooling is not available when the parties have entered into a voluntary agreement. **NMSA 1978 §70-2-17.C**. More importantly, **the Trustee is not subject to Order No. R-12376**, and thus cannot be adversely affected by the order.¹ Therefore, the Trustee's application for hearing *de novo* must also be dismissed.

¹ The Trustee's dispute is over its quantum of working interest. **Exhibit C, at p. 30**. That issue is outside the jurisdiction of the Division or the Commission, and must be resolved in District Court.

WHEREFORE, Synergy requests that the Applications for Hearing *De Novo* filed by Edwin Smith, LLC and by Jerry Walmsley, Trustee of the June H. Walmsley Trust, be dismissed.

Respectfully submitted,



James Bruce
Post Office Box 1056
Santa Fe, New Mexico 87504
(505) 982-2043

Attorney for Synergy Operating, LLC

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served upon the following counsel of record, in the manner indicated, this 3rd day of August, 2005:

Hand Delivered

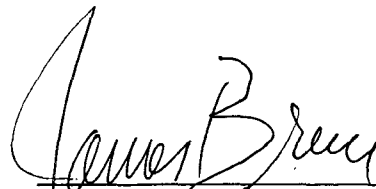
David K. Brooks
Oil Conservation Commission
1220 South St. Francis Drive
Santa Fe, New Mexico 87505

Via Fax and U.S. Mail

J. Scott Hall
Miller Stratvert P.A.
P.O. Box 1986
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(505) 989-9857

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Derek V. Larson
Sarita Nair
Sutin, Thayer & Browne
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Albuquerque, New Mexico 87103
(505) 888-6565



James Bruce

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

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

Case No. 13,486
Order No. R-_____

APPLICATION FOR REHEARING DE NOVO
BEFORE THE OIL CONSERVATION COMMISSION

Edwin Smith, LLC, a New Mexico limited liability company, (Edwin Smith, member-manager), a party of record in the above-captioned matter and adversely affected by Division Order R-12376 entered July 1, 2005, by and through undersigned counsel and pursuant to NMSA 1978, § 70-2-13 (1981) and Rule 1220(A), 19 NMAC 15.N.1220.A (8-29-03), hereby requests a rehearing of this matter *de novo* before the Oil Conservation Commission.

SUTIN, THAYER & BROWNE
A Professional Corporation

By Gemma R. Chappell
Derek V. Larson

Sarita Nair

Attorneys For Edwin Smith
Post Office Box 1945
Albuquerque, New Mexico 87103-1945
Telephone: (505) 883-2500



Certificate of Service

I hereby certify that a true and correct copy of the foregoing Application for Rehearing was faxed to counsel of record on the 1 day of July 2005, as follows:

James Bruce, Esq.
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Gail McQuesten, Esq.
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A Professional corporation

By Gemmaine R Chappell

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. 13486
ORDER NO. R-12376

APPLICATION FOR HEARING DE NOVO

Jerry Walmsley, Trustee, Bypass Trust U/W June H. Walmsley, pursuant to NMSA 1978
Section 70-2-13, requests this matter be set for hearing de novo before the New Mexico Oil
Conservation Commission.

MILLER STRATVERT P.A.

By: J. Scott Hall

J. Scott Hall
Attorneys for Jerry Walmsley, Trustee,
Bypass Trust U/W June H. Walmsley
Post Office Box 1986
Santa Fe, New Mexico 87504-1986
(505) 989-9614

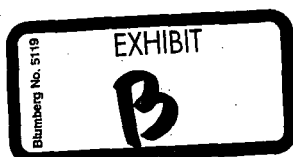
Certificate of Service

I hereby certify that a true and correct copy of the foregoing was faxed to counsel of
record on the 18th day of July, 2005, as follows:

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J. Scott Hall
J. Scott Hall

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:)

CASE NO. 13,486

APPLICATION OF SYNERGY OPERATING,)
 L.L.C., FOR COMPULSORY POOLING,)
 SAN JUAN COUNTY, NEW MEXICO)

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGSEXAMINER HEARING

RECEIVED

BEFORE: DAVID R. CATANACH, Hearing Examiner

JUN 30 2005

June 16th, 2005 Oil Conservation Division
 1220 S. St. Francis Drive
 Santa Fe, New Mexico Santa Fe, NM 87505

This matter came on for hearing before the New Mexico Oil Conservation Division, DAVID R. CATANACH, Hearing Examiner, on Thursday, June 16th, 2005, 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.

* * *



STEVEN T. BRENNER, CCR
 (505) 989-9317

A P P E A R A N C E S

FOR THE APPLICANT:

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

FOR JERRY WALMSLEY:

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

FOR EDWIN SMITH:

SUTIN, THAYER & BROWNE, P.C.
By: SARITA NAIR
6565 Americas Parkway, N.E.
Suite 1000, #2 Park Square
P.O. Box 32500
Albuquerque, New Mexico 87190

* * *

1 WHEREUPON, the following proceedings were had at
2 9:07 a.m.:

3 EXAMINER CATANACH: At this time I'll call Case
4 Number 13,486, the Application of Synergy Operating,
5 L.L.C., for compulsory pooling, San Juan County, New
6 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 EXAMINER CATANACH: Additional appearances?

12 MR. HALL: Mr. Examiner, Scott Hall, Miller
13 Stratvert, P.A., Fe, appearing on behalf of Jerry Walmsley,
14 trustee of the June H. Walmsley Trust.

15 That's W-a-l-m-s-l-e-y.

16 I have no witnesses this morning.

17 EXAMINER CATANACH: I'm sorry, is that on a
18 prehearing statement somewhere?

19 MR. HALL: No, hired yesterday. You do have an
20 entry of appearance for me.

21 EXAMINER CATANACH: Okay, Jerry Walmsley,
22 Trustee?

23 MR. HALL: Yes.

24 EXAMINER CATANACH: Okay, that's who you're
25 appearing on behalf of?

1 MR. HALL: Yes.

2 MS. NAIR: Mr. Examiner, Sarita Nair for Sutin,
3 Thayer and Brown. We represent Edwin Smith. He's also an
4 owner. We entered our appearance yesterday as well.

5 EXAMINER CATANACH: Let me see if I can find
6 that.

7 MS. NAIR: Thank you.

8 EXAMINER CATANACH: And you don't have any
9 witnesses, Ms. Nair?

10 MS. NAIR: We have Edwin Smith, who is here and
11 available to testify.

12 EXAMINER CATANACH: Okay, will the witness please
13 stand to be sworn in?

14 (Thereupon, the witnesses were sworn.)

15 PATRICK HEGARTY,
16 the witness herein, after having been first duly sworn upon
17 his oath, was examined and testified as follows:

18 DIRECT EXAMINATION

19 BY MR. BRUCE:

20 Q. Would you please state your name for the record?

21 A. My name is Patrick Hegarty.

22 Q. Where do you reside?

23 A. Aztec, New Mexico.

24 Q. What is your relationship to Synergy Operating,
25 the Applicant in this case?

1 broke down the interest into the heirs and basically showed
2 that the heirs of Julia H. Keller and the heirs of May H.
3 Kouns is now owned by Synergy and comprises 25-percent
4 ownership of the southwest quarter of Section 8.

5 The rest of the interest is the heirs of Jennie
6 H. Hill, which Mr. Walmsley represents -- that's a 12.5-
7 percent interest in the southwest quarter -- and the heirs
8 of Margaret H. Jones, which her husband -- after her death
9 it went to him, and that was David F. Jones, and that's
10 12.5 percent.

11 Also there's two other individuals, Joseph C.
12 Robbins owns a 3.125 percent, and the heirs of Claude
13 Smith, being Edwin and Earnest Smith, and they own the
14 remaining interest in the southwest quarter, being 46.875
15 percent.

16 Q. Now, there's some title matters regarding these
17 fee interests, regarding the clients of Mr. Hall and Ms.
18 Nair. Will we discuss that toward the end of your
19 testimony?

20 A. Yes, we will.

21 Q. Now, on this -- the people on Exhibit 2, who do
22 you seek to pool?

23 A. The people we seek to pool are the heirs of
24 Claude Smith, being Edwin and Earnest Smith, and also the
25 heirs of Margaret H. Jones, which we have not been able to

1 locate.

2 Q. You do not seek to pool the Walmsley Trust?

3 A. No, we do not.

4 Q. Let's discuss your efforts to obtain the -- well,
5 before that, Mr. Smith -- you know where he is, and you
6 have his address; is that correct?

7 A. Yes, we've corresponded and spoken on many
8 occasions.

9 Q. Okay. Are there certain unlocatable interest
10 owners?

11 A. Yes, there are.

12 Q. Okay, and we'll get into that in a minute.

13 A. Okay.

14 Q. Now regarding your efforts to obtain the
15 voluntary joinder of the Smiths' interest, let's discuss
16 your contacts with them. What is Exhibit 3?

17 A. Exhibit 3 basically comprises letters, and there
18 are three of them, the first being May 19th -- I'm sorry,
19 the first being March --

20 Q. Well, start with the top one.

21 A. Okay, all right. November 4th, 2004, is a
22 certified letter that we sent to Mr. -- to the attention of
23 Earnest Smith, and at two locations that was given to us by
24 his CPA whom we originally corresponded with, and that was
25 a Steven R. Jones.

1 severed out the Fruitland Coal or anything like that?

2 A. No, there was not.

3 Q. Okay. So in your opinion there's nothing to
4 separate Pictured Cliffs ownership from Fruitland Coal
5 ownership in the southwest quarter of Section 8?

6 A. No, there's not.

7 Q. Now finally, what is Exhibit 10?

8 A. Exhibit 10 is the first page and the signature
9 page with the Exhibit A describing the ownership of the
10 well, and a check from Mr. Walmsley in the amount of
11 \$21,250, which is his proportionate share of the cost to
12 drill the Duff 29-11-8 Number 104 well.

13 Q. Okay, so he -- Mr. Hall's client did sign a JOA
14 designating Synergy as operator?

15 A. Yes, he did.

16 Q. And paying for its share of well costs?

17 A. That's correct.

18 Q. And apparently agreeing to the breakdown, Exhibit
19 A, the contract area of the JOA?

20 A. Yes.

21 Q. Okay. Were Exhibits 1 through 10 prepared by you
22 or under your supervision, or compiled from company
23 business records?

24 A. Yes, they were.

25 Q. And in your opinion, is the granting of this

1 Application in the interest of conservation and the
2 prevention of waste?

3 A. Yes, it is.

4 MR. BRUCE: Mr. Examiner, I'd move the admission
5 of Synergy Exhibits 1 through 10.

6 EXAMINER CATANACH: Any objection?

7 MR. HALL: No objection.

8 MS. NAIR: No objection.

9 EXAMINER CATANACH: Exhibits 1 through 10 will be
10 admitted.

11 Mr. Hall?

12 MR. HALL: Yes, sir.

13 EXAMINATION

14 BY MR. HALL:

15 Q. Mr. Hegarty, your Application proposes the
16 drilling of a parent well and an infill well; is that
17 correct?

18 A. The -- That's correct.

19 Q. And is it the 104 well, to be the initial well?

20 A. That's correct.

21 Q. By the way, are the interests of Burlington
22 committed under the JOA?

23 A. Not currently.

24 Q. What is Synergy's right to drill the 104 well on
25 the northwest quarter currently?

1 I'm sorry, the Walmsley interest; is that right? -- has
2 signed -- is committed to the well; is that correct?

3 A. That's correct.

4 Q. Okay, they've signed the JOA?

5 A. Yes, they have.

6 Q. So you're just pooling the Edwin and Earnest
7 Smith interests at this time, and the David Jones interest?

8 A. That's correct.

9 EXAMINER CATANACH: Okay, I don't have anything
10 else of this witness at this time.

11 Is there anything further that you have?

12 MR. BRUCE: I have no further questions of the
13 witness.

14 EXAMINER CATANACH: Okay.

15 MR. HALL: Mr. Examiner, briefly, I would ask
16 that the case be continued until such time as we're
17 provided with the title opinion and have had a chance a
18 chance to review that.

19 There is a question about the quantum of interest
20 owned by my client in the southwest quarter, and the title
21 opinion may shed some light on that, may be helpful to you
22 in making your decision in the case.

23 It appears that my client did execute the AFE --
24 I'm sorry, the JOA -- but I would point out that my client
25 is not familiar with the industry and is unsure about the

1 place and get our wells drilled, and workovers, and so on
2 and so forth.

3 So we do have a means to get this done, and we've
4 already drilled four wells this year under that basis.

5 Q. Hm. Do you have any reason to believe that your
6 title opinion is going to show anything different than what
7 you've shown here today, Mr. Hegarty?

8 A. None whatsoever.

9 EXAMINER CATANACH: I think I'm going to go ahead
10 and deny the request to continue. I would request that you
11 provide us with a copy of the farmout agreement from the
12 Robbins interest.

13 THE WITNESS: Will do.

14 EXAMINER CATANACH: And --

15 MS. NAIR: Excuse me, sir, may I have a chance to
16 put these title documents into the record and explain our
17 argument to the Examiner, please?

18 EXAMINER CATANACH: Sure. Are you going to put a
19 witness on, Ms. Nair?

20 MS. NAIR: I don't need to, I can just walk you
21 through these documents.

22 By way of background, we do not dispute all of
23 the notice that Mr. Hegarty has provided to Mr. Smith. We
24 don't dispute that all those negotiations went on. In
25 fact, Mr. Smith was ready to participate until we became

1 aware of this title question as a result of yet another
2 well, the Jones well, that is also on this property.

3 What we've attached here as Exhibit A is the
4 original deed conveying the one-half interest in the
5 property from the Hasselman sisters to Earl Kouns. This
6 was back when they used to use a straw man to change a
7 tenancy in common to a joint tenancy.

8 Then on the same day, Exhibit B, there's a
9 warranty deed conveying that same undivided one-half
10 interest from Earl Kouns back to the Hasselman girls as
11 joint tenants.

12 Exhibit C, the court order, merely confirms that
13 same ownership. Although this is a legal question that's
14 probably outside the scope of this hearing, we don't think
15 that the law supports that a court order is going to
16 destroy an existing joint tenancy unless it affects a
17 conveyance.

18 And then finally Exhibit D is the warranty deed
19 about which I asked Mr. Hegarty, the 1981 deed from Jennie
20 Hasselman Hill as surviving joint tenant of the Hasselman
21 sisters to June Hill Walmsley.

22 And again, the reason for the continuance is so
23 that my client, Mr. Edwin Smith, can be comfortable with
24 the state of title. As both Mr. Hegarty and I have stated,
25 we were ready to participate, but as long as there are

A.A.P.L. FORM 610-1982

MODEL FORM OPERATING AGREEMENT

OPERATING AGREEMENT

DATED

MARCH 1, 2005

OPERATOR

SYNERGY OPERATING, LLC

CONTRACT AREA: **W/2 SECTION 8, T.29N, R11W, N.M.P.M.**

Fruitland Coal Formation

COUNTY OR PARISH OF **SAN JUAN** STATE OF **NEW MEXICO**

COPYRIGHT 1982 - ALL RIGHTS RESERVED
AMERICAN ASSOCIATION OF PETROLEUM
LANDMEN, 4100 FOSSIL CREEK BLVD., FORT
WORTH, TEXAS, 76137-2791, APPROVED
FORM. A.A.P.L. NO. 610 - 1982 REVISED



OIL CONSERVATION DIVISION

CASE NUMBER

EXHIBIT NUMBER **10**

Fruitland Coal Formation

ARTICLE XVI
MISCELLANEOUS

This agreement shall be binding upon and shall inure to the benefit of the parties hereto and to their respective heirs, devisees, legal representatives, successors and assigns.

This instrument may be executed in any number of counterparts, each of which shall be considered an original for all purposes.

IN WITNESS WHEREOF, this agreement shall be effective as of the 1st day of March, (year) 2005.

Synergy Operating, LLC, who has prepared and circulated this form for execution, represents and warrants that the form was printed from and with the exception listed below, is identical to the AAPL Form 610-1982 Model Form Operating Agreement, as published in diskette form by Forms On-A-Disk, Inc. No changes, alterations, or modifications, other than those in Articles _____, have been made to the form.

OPERATOR

SYNERGY OPERATING, LLC

Patrick Hegarty
Patrick Hegarty, PRINCIPAL

NON-OPERATORS

BURLINGTON RESOURCES OIL & GAS COMPANY

The Heirs of Claude Smith

Earnest Smith, Executor of Estate

WALMSLEY

June Walmsley Estate

Jermy T. Walmsley
Jermy T. Walmsley
Jermy T. Walmsley, Executor of Estate

**SIGN & RETURN
THIS COPY**

EXHIBIT "A"

Duff 29-11-8#104, W/2 Sec. 8, T29N, R11W

Attached to and made a part of that certain Operating Agreement dated March 1,
between Synergy Operating, LLC, as Operator, and Burlington Resources Oil &
Gas Company et al. as Non-Operators.

UNIT AREA, DEPTHS AND FORMATION COVERED

W/2 of section 8 of Township 29 North, Range 11 West San Juan Co., N.M.
Limited to the Fruitland Coal formation.

ADDRESS OF THE PARTIES

OPERATOR:

Synergy Operating, LLC
PO Box 5513
Farmington, New Mexico 87499

NON-OPERATORS:

Burlington Resources Oil & Gas Co.
P.O. Box 4289
Farmington, New Mexico 87499

June Walmsley Estate
c/o Jerry T. Walmsley
801 West Paradise Road
Spokane, WA 99224

The Heirs of Claude Smith
c/o Ed Smith
40758 Jasper Drive (mailing Address)
Kingsberg, CA 93631-1316

Joseph C. Robbins
The Heirs of George B., Bessie H., J.R. & India B. Robbins
2136 Lakeshore Drive
Chapel Hill, North Carolina 27514

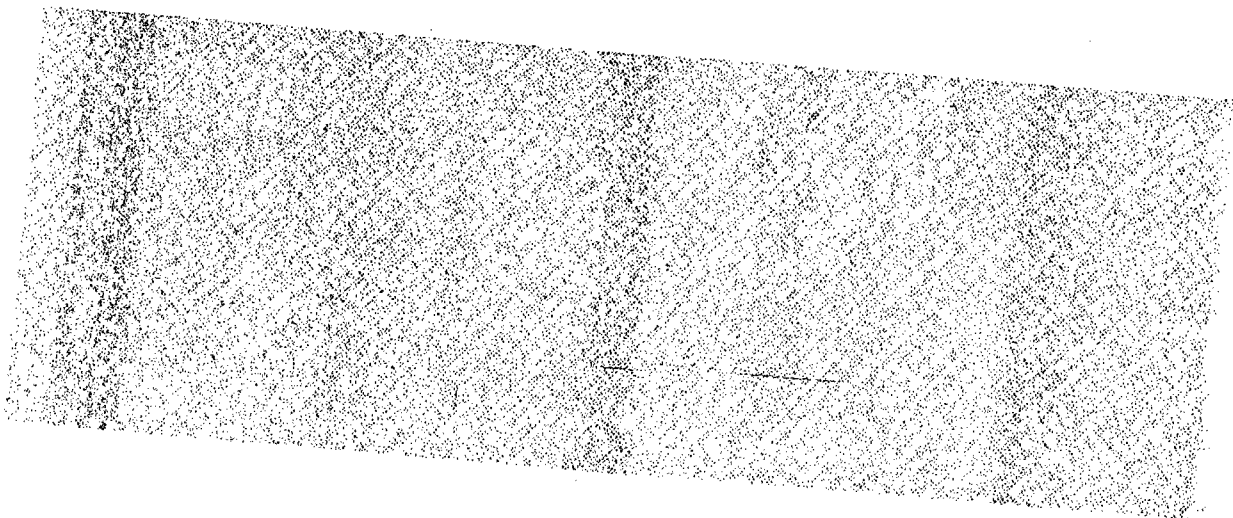
.015625 Division of Interest -	
Synergy Operating, LLC et al	18.7500%
June Walmsley Estate	6.2500%
The Heirs of Claude Smith	23.4375%
The Heirs of George B. Robbins	1.5625%

<u>Burlington Resources Oil & Gas Company</u>	<u>50.00%</u>
TOTAL	100.00%



Enter
Same as Hartman Check

Entered



70-2-13. Additional powers of commission or division; hearings before examiner; hearings de novo.

In addition to the powers and authority, either express or implied, granted to the oil conservation commission or division by virtue of the statutes of the state of New Mexico, the division is hereby authorized and empowered in prescribing its rules of order or procedure in connection with hearings or other proceedings before the division to provide for the appointment of one or more examiners to be members of the staff of the division to conduct hearings with respect to matters properly coming before the division and to make reports and recommendations to the director of the division with respect thereto. Any member of the commission or the director of the division or his authorized representative may serve as an examiner as provided herein. The division shall promulgate rules and regulations with regard to hearings to be conducted before examiners, and the powers and duties of the examiners in any particular case may be limited by order of the division to particular issues or to the performance of particular acts. In the absence of any limiting order, an examiner appointed to hear any particular case shall have the power to regulate all proceedings before him and to perform all acts and take all measures necessary or proper for the efficient and orderly conduct of such hearing, including the swearing of witnesses, receiving of testimony and exhibits offered in evidence subject to such objections as may be imposed, and shall cause a complete record of the proceeding to be made and transcribed and shall certify the same to the director of the division for consideration together with the report of the examiner and his recommendations in connection therewith. The director of the division shall base the decision rendered in any matter or proceeding heard by an examiner upon the transcript of testimony and record made by or under the supervision of the examiner in connection with such proceeding, and such decision shall have the same force and effect as if the hearing had been conducted before the director of the division. When any matter or proceeding is referred to an examiner and a decision is rendered thereon, any party of record adversely affected shall have the right to have the matter heard de novo before the commission upon application filed with the division within thirty days from the time any such decision is rendered.

History: 1953 Comp., § 65-3-11.1, enacted by Laws 1955, ch. 235, § 1; 1961, ch. 62, § 1; 1977, ch. 255, § 48; 1981, ch. 63, § 1.

