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February 12, 2007

**HAND-DELIVERED**

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

Re: Case No. 13663; Application of Synergy Operating, LLC for Compulsory Pooling,  
San Juan County, New Mexico; Order No. R-12629

Dear Mr. Brooks:

On behalf of Jerry Walmsley, Trustee of the June H. Walmsley Bypass Trust, I provide this response to Mr. Bruce's February 7, 2007 letter requesting "an extension of time to complete the subject well".

Previously, the mineral lands underlying the W/2 of Section 8 T28NR11W were 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.

Based on the facts set forth both in Mr. Bruce's letter and in Mr. Larsen's letter, it would appear that 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 would also appear to be 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.

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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, it would appear that 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.

Correspondingly, in view of the guidance provided by the terms of the order and the statutory authorities in this situation, Synergy's request for extension is both untimely and unnecessary and should be denied.

Very truly yours,

MILLER STRATVERT P.A.



J. Scott Hall

JSH/glb

cc: James Bruce, Esq.  
Derek Larson, Esq.  
Bill Eden, Esq.

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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