

2/9/06 OCC Hearing

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

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

Case No. 13,486

2006 FEB 2 PM

**EDWIN SMITH, LLC'S HEARING STATEMENT RE:
DE NOVO REVIEW OF ORDER No. R-12376**

Edwin Smith, LLC ("Smith"), and Joseph C. Robbins ("Robbins"), by and through their attorneys Sutin, Thayer & Browne, a Professional Corporation (Derek V. Larson and Germaine R. Chappelle) object to Synergy's application on the grounds that Synergy does not have standing to apply for compulsory pooling because it does not own any interest in the property. In support thereof, Smith and Robbins submit the following for consideration at the Hearing of this matter:

Statement of the Case

This matter involves property situated on the west half of Section 8, Township 29 North, Range 11 West, N.M.P.M., San Juan County, New Mexico (the "Property").

On April 19, 2005, Synergy Operating, LLC ("Synergy") filed an Application for compulsory pooling and amended this application on June 1, 2005. A hearing was held on June 16, 2005. On July 1, 2005, the Oil Conservation Division issued Order No. R-12376, granting Synergy's application for compulsory pooling of all mineral interests in the West ½ of Section 8, Township 29 North, Range 11 West.

Also on July 1, 2005, Smith applied to the Division for a *de novo* review of Order No. R-12376 by the Oil Conservation Commission (the "Commission").

At the June 16th hearing, Smith objected, and continues to object, to Synergy's application because the deeds upon which Synergy claims to own a portion of the Property, and which Synergy claims give it standing to force-pool, are invalid. Smith based this belief on a preliminary title search which indicated that the property validly passed to June Walmsley in 1981 and not to the assignors that purportedly conveyed Synergy's claimed interest in 2004. Based on the transfer of joint tenancy, these assignors did not have title to the Property they purportedly conveyed to Synergy in 2004. Significantly, Synergy's principal, Patrick Hegarty ("Hegarty"), testified at the June 16th hearing that he was aware of the 1981 recorded deed and disregarded it. Hegarty cited no authority, legal or otherwise, for invalidating the 1981 recorded deed.

Synergy did not produce any recorded or non-recorded documents that invalidate the 1981 deed. The 1981 joint tenancy deed is valid, and the 2004 assignments to Synergy are invalid.

At the June 16th hearing Synergy also argued that it had standing to apply for a compulsory pool based on a farm-out agreement it entered into with Robbins. Robbins maintains that he entered into the farm-out with Synergy solely based upon several representations made by Hegarty, including a statement that Synergy owned an interest in the property, that Synergy had separate standing to force the pool, and that Synergy could force Robbins into a pool if he did not consent to participate in the pool or farm-out. As described in more detail herein, many of those representations are now known to be false. Therefore Robbins has rescinded the farm-out agreement and has filed such a Notice of Rescission herewith.

Analysis of Opposition to Synergy's Application for Compulsory Pooling

Smith owns a 0.46875 interest in mineral rights in the Property. Robbins owns a 0.03125 interest in the mineral rights in the Property. Walmsley owns the remaining half interest in the Property. Synergy owns no interest in the Property.

As a result of Synergy's claim of an interest in the Property, Walmsley and Smith filed a quiet title action in the Eleventh Judicial District (Cause No. CV 06-59-6) on January 18, 2006.

A previous quiet title action had been filed in 1957 in the Eleventh Judicial District (Cause No. 5994). A title report was prepared at that time by San Juan County Abstract & Title Company. The following documents were discovered in the first title search:

Warranty Deed conveying undivided one-half interest in the Property from Margaret Hasselman Jones, Julia Hasselman Keller, May Hasselman Kouns, and Jennie Hasselman Hill to Earl Kouns, on April 28, 1951.

Warranty Deed conveying the same undivided one-half interest in the Property from Earl Kouns to Margaret Hasselman Jones, Julia Hasselman Keller, May Hasselman Kouns, and Jennie Hasselman Hill as joint tenants with a right of survivorship, on April 28, 1951.

On August 19, 1958, a Judgment was entered in Cause No. 5994 confirming ownership of the same undivided one-half interest in the Property by Margaret Hasselman Jones, Julia Hasselman Keller, May Hasselman Kouns, and Jennie Hasselman Hill. The court order, while silent as to the type of tenancy, did not effect a conveyance and did not change the fact that the owners owned the property in joint tenancy. Generally, once property has been conveyed by deed, the property must be "re-conveyed" before the law will recognize another person as having acquired title. *Gonzales v. Gonzales*, 166 N.M. 838, 845, 867 P.2d 1220, 1227 (1993). Further, the only way for Synergy to have validly obtained an interest in the Property is if the 1951

deed was transformed from joint tenancy to tenancy in common. There are no documents to suggest that joint tenancy was ever severed.

Prior to filing the 2006 quiet title action, Walmsley, Smith, and Robbins hired a professional landman (Tammy Sloan Smith) to research the San Juan County Real Property Records from the date of the previous quiet title ruling, August 19, 1958, to the present. The documents obtained by Ms. Sloan Smith were then provided to Nancy M. King, Esq., Montgomery & Andrews P.A., for analysis. After analyzing the documents, Ms. King concluded the following:

In 1974, Jennie Hasselman Hill became the last remaining joint tenant to the 1951 joint tenancy deed when her remaining surviving sister died. Her interest was passed to June Hill Walmsley by a Warranty Deed conveying the same undivided one-half interest in the Property from Jennie Hasselman Hill, as the surviving joint tenant of Margaret Hasselman Jones, Julia Hasselman Keller, May Hasselman Kouns, and Jennie Hasselman Hill, to June Hill Walmsley, dated September 8, 1981 and recorded on September 16, 1981. June Hill Walmsley's interest passed to her heirs through the probate of her will and is now held by J. Truman Walmsley, Trustee of the Bypass Trust under the Will of June H. Walmsley, Deceased, dated April 7, 1992.

Synergy bases its claimed interest in the Property on the Assignments to Synergy Operating, LLC, made by the heirs of joint tenants May Hasselman Kouns and Julia Hasselman Keller in October and November of 2004. The title opinion confirms that May Hasselman Kouns and Julia Hasselman Keller owned their interests in the Property as joint tenants with Jennie Hasselman Hill and Margaret Hasselman Jones. May Hasselman Kouns and Julia Hasselman Keller (and Margaret Hasselman Jones) died before Jennie Hasselman Hill. The joint interests of these three passed to Jennie Hasselman Hill upon their respective deaths. Therefore, by operation of law, the heirs of May Hasselman Kouns and Julia Hasselman Keller had no interest in the property to convey to Synergy.

Thus, the assignments upon which Synergy bases its claimed interest in the Property are invalid because the assignors never held any title in the Property, including at the time they granted the assignments to Synergy.

Further, any interest Synergy claimed through the farm-out agreement with Robbins has been extinguished pursuant to the Notice of Rescission.

Finally, Smith is the operator of an existing well on the Property. Smith intends to drill a well in the same location in which Synergy has wrongfully attempted to obtain an interest. The remaining interest owners in the Property, Walmsley and Robbins, have communicated their intent to voluntarily participate in the drilling of that well by Smith. Thus, no forced pooling order is required, warranted, or appropriate. Synergy's attempted hijacking of an interest in the Property in order to force-pool is inappropriate and the Commission should not facilitate that effort by granting Synergy an order to drill.

Smith, Walmsley, and Robbins' correlative rights must be protected. Synergy has stated that it plans to begin drilling immediately. Walmsley, Robbins, and Smith will suffer gross negative consequences if Synergy is allowed to do so. If Synergy begins drilling based on the present order, Smith, Walmsley, and Robbins will be unable to proceed with drilling operations on their own terms.

Witnesses:

Edwin Smith may be present to testify;

Joseph Robbins, by affidavit [previously filed herein on July 28, 2005].

Exhibits:

See list of exhibits attached hereto.

Time Needed to Present Smith's Case:

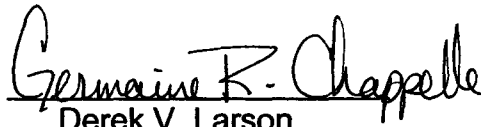
30 minutes.

Procedural Matters That Need to be Resolved Prior to Hearing:

Synergy previously filed a motion to dismiss Walmsley's and Smith's applications for rehearing, superficially claiming that Smith was not a party of record and that Walmsley's interests were not adversely affected. Smith and Walmsley believe the Division has de facto denied Synergy's motion to dismiss by setting the hearing for de novo review of Order R-12376. Further, in order R-12376-A the Division recognized Smith as a respondent party (Finding (2)) and Order R-12376 recognized that Walmsley owns an interest in the Property (Finding (4)) and is therefore adversely impacted by the order. The Division's denial of Synergy's motion to dismiss should be upheld and Smith and Walmsley's standing should be confirmed.

Respectfully submitted,

SUTIN THAYER & BROWNE,
A Professional Corporation

By 
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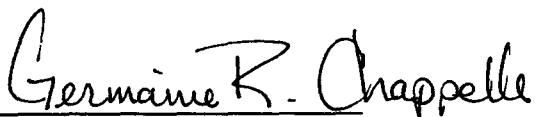
Attorneys For Edwin Smith, LLC and
Joseph Robbins

Certificate of Service

I hereby certify that a true and correct copy of the foregoing was hand-delivered to the following counsel of record on the 2nd day of February 2006:

James G. Bruce
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Santa Fe, NM 87501

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Sutin, Thayer & Browne
A Professional Corporation

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Case No. 13,486
Order No. R-12376

EXHIBITS RE: FEBRUARY 9, 2006 *DE NOVO* REVIEW OF ORDER NO. R-12376

- A: 4/28/51** Warranty Deed by Margaret Hasselman Jones, Julia Hasselman Keller, May Hasselman Kouns and Jennie Hasselman Hill, grants to Earl M. Kouns an undivided one half interest in and to the Southwest Quarter of Section Eight (8) in Township Twenty-nine (29) North, Range Eleven (11) West, N.M.P.M. [recorded 6/2/51]
- B: 4/28/51** Warranty Deed by Earl M. Kouns grants to Margaret Hasselman Jones, Julia Hasselman Keller, May Hasselman Kouns and Jennie Hasselman Hill, an undivided one half interest in and to the Southwest Quarter of Section Eight (8) in Township Twenty-nine (29) North, Range Eleven (11) West, N.M.P.M. [recorded 6/2/51]
- C: 8/19/58** Judgment: Claude Smith, Margaret Hasselman Jones, Julia Hasselman Keller, Jennie Hasselman Hill, May Hasselman Kouns v. Caswell Silver, L.R. Lunsford, George B. Robbins, Apache Drilling, et al. [Case No. 5994] establishing that Margaret Hasselman Jones, Julia Hasselman Keller, Jennie Hasselman Hill And May Hasselman Kouns are the owners in fee simple of an undivided one half interest in and to the Southwest Quarter of Section Eight (8) in Township Twenty-nine (29) North, Range Eleven (11) West, N.M.P.M.
- D: 9/8/81** Warranty Deed (Joint Tenants) by Jennie Hasselman Hill, surviving joint tenant of Margaret Hasselman Jones, Julia Hasselman Keller and May Hasselman Kouns, grants to Jennie Hasselman Hill and June Hill Walmsley an undivided one half interest in and to the Southwest Quarter of Section Eight (8) in Township Twenty-nine (29) North, Range Eleven (11) West, N.M.P.M. [recorded 9/16/81]

- E: 10/28/04** Assignment of All Right, Title and Interest Surface to Base of Pictured Cliffs by Kimberly Brautigam (dealing with her sole and separate property and successor in interest to May Hasselman Kouns) to Synergy Operating LLC of all right, title and interest in and to the Claude Smith #1 well and the associated minerals in the southwest quarter of section 8, Township 29 North, Range 11 West, San Juan County, New Mexico, effective 10/1/04
- E: 10/29/04** Assignment of All Right, Title and Interest Surface to Base of Pictured Cliffs by Robert E. Kouns (dealing with his sole and separate property and successor in interest to May Hasselman Kouns) to Synergy Operating LLC of all right, title and interest in and to the Claude Smith #1 well and the associated minerals in the southwest quarter of section 8, Township 29 North, Range 11 West, San Juan County, New Mexico, effective 10/1/04
- E: 10/29/04** Assignment of All Right, Title and Interest Surface to Base of Pictured Cliffs by Annemarie Keller (successor in interest to Julia Hasselman Keller) to Synergy Operating LLC of all right, title and interest in and to the Claude Smith #1 well and the associated minerals in the southwest quarter of section 8, Township 29 North, Range 11 West, San Juan County, New Mexico, effective 10/1/04
- E: 11/1/04** Assignment of All Right, Title and Interest Surface to Base of Pictured Cliffs by Charla Varner (dealing with her sole and separate property and successor in interest to May Hasselman Kouns) to Synergy Operating LLC of all right, title and interest in and to the Claude Smith #1 well and the associated minerals in the southwest quarter of section 8, Township 29 North, Range 11 West, San Juan County, New Mexico, effective 10/1/04
- E: 11/2/04** Assignment of All Right, Title and Interest Surface to Base of Pictured Cliffs by Margaret K. Dunn (successor in interest to Julia Hasselman Keller) to Synergy Operating LLC of all right, title and interest in and to the Claude Smith #1 well and the associated minerals in the southwest quarter of section 8, Township 29 North, Range 11 West, San Juan County, New Mexico, effective 10/1/04
- E: 11/4/04** Assignment of All Right, Title and Interest Surface to Base of Pictured Cliffs by Jodie Yates (dealing with her sole and separate property and successor in interest to May Hasselman Kouns) to Synergy Operating LLC of all right, title and interest in and to the Claude Smith #1 well and the associated minerals in the southwest quarter of section 8, Township 29 North, Range 11 West, San Juan County, New Mexico, effective 10/1/04

- F:** 1/21/05 Petition for Condemnation by Public Service Company of New Mexico re: an easement
- G:** 6/16/05 Transcript of June 16, 2005 Hearing
- H:** 7/29/05 Affidavit of Joseph Robbins [filed herein July 28, 2005]
- I:** 9/9/05 Title Report prepared by Tammy Sloan Smith, Certified Professional Landman
- J:** 10/25/05 Title Opinion prepared by Nancy M. King of Montgomery & Andrews
- K:** 1/26/06 Notice of Rescission by Joseph Robbins

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