

David C.

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. 13,486
Order No. R-12376

APPLICATION FOR STAY

Edwin Smith, LLC, a New Mexico limited liability company, (Edwin Smith, member-manager) ("Smith"), by and through its undersigned attorneys, Sutin Thayer & Browne, A Professional Corporation, requests that the Division Director of the New Mexico Oil Conservation Division ("the Director") grant a stay of Division Order No. R-12376 pursuant to Rule 1220(B) of the Rules and Regulations of the Oil Conservation Division, 19 NMAC 15.N.1220(B) (7-15-99).

1. On July 1, 2005, the Oil Conservation Division issued Order No. R-12376, granting Synergy Operating, LLC's ("Synergy") application for compulsory pooling of all mineral interests in the West ½ of Section 8, Township 29 North, Range 11 West.

2. Contemporaneously with the filing of this Application for Stay, Smith applied to the Division pursuant to Rule 1220(A), 19 NMAC 15.N.1220.B., for a *de novo* review of Order No. R- 12376 by the Oil Conservation Commission (hereinafter referred to as "the Commission").

3. When Synergy's filed its application for compulsory pooling, Smith objected, and continues to object, to Synergy's application on the grounds that Synergy does not have standing to apply for compulsory pooling because Synergy does not have a present possessory interest in the property.

4. A hearing was held in this matter on June 16, 2005.

5. Smith's objections to Synergy's application at this hearing continue to have merit. First, the assignments upon which Synergy bases its standing purport to convey a 25% interest in the subject property but are invalid because the assignors did not have valid title to the subject property when they assigned it to Synergy. Records and documents supporting this argument were introduced into the record at the June 16th hearing. Significantly, Synergy's principal, Patrick Hegarty, testified at the June 16th hearing in this matter that he disregarded a recorded 1981 deed, which deed appears to validly transfer the subject interest to another party. 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. Therefore, if the 1981 joint tenancy deed is valid, the assignments to Synergy are invalid.

6. Second, Smith objected to Synergy's application because the other interests in land that Synergy purports give it standing to force the compulsory pool at the hearing either amount to nonpossessory interests or are otherwise insufficient to grant standing here. Additionally, these interests may have been procured in reliance on Synergy's potential misrepresentation that it already had standing to force the compulsory pool.

7. At the June 16th hearing, Synergy argued that it had standing to apply for a compulsory pool based on a farm-out agreement from Mr. Joe Robbins. First, the farm out agreement does not grant Synergy a present possessory interest in the property. Instead, the farm-out agreement only grants Synergy a *future contingent royalty* interest in the property, which is not adequate for standing to apply for a compulsory pool. See Exhibit 1 attached and incorporated hereto.

8. The Order states that the farmout agreement between Mr. Robbins and Synergy assigns Mr. Robbins' working interest to Synergy. The farmout agreement clearly states, however, that the only interest conveyed to Synergy is the ability to obtain a 20% future royalty interest. Even if the farmout actually granted a present interest, which it does not, the interest it would convey is a nonpossessory royalty interest. Synergy cannot use the farmout agreement to obtain standing to force the pool.

9. The farmout agreement may be invalid because, based on conversations Smith has had with Mr. Robbins, Mr. Robbins maintains that he entered into the farmout with Synergy solely in reliance on Synergy's representation that it could force Mr. Robbins into a pool if he did not consent to participate in the pool or farmout. Because Synergy maintained prior to the hearing that it based standing on its purported 25% interest, Smith did not have available the testimony of Mr. Robbins at the hearing to confirm that Mr. Robbins entered the farmout solely on Synergy's representation that it had separate standing to force the pool. Smith is prepared to present this testimony at a *de novo* hearing on this matter before the Commission.

10. The farmout agreement may further be invalid because it does not appear to contain consideration and does not describe the interest in property being conveyed with sufficient clarity.

11. Synergy also argued that it had standing to apply for compulsory pooling based on a joint operating agreement ("JOA") signed by Mr. Jerry Walmsley. First, the JOA does not give Synergy a present possessory interest in the property, and does not confer standing on Synergy. Second, Mr. Walmsley joined in Smith's objection and was present at the June 16th hearing through counsel. Mr. Walmsley's presence, through counsel, at the hearing, supported Smith's assertion that Mr. Walmsley objected to Synergy's standing to apply for a compulsory pool. Mr. Walmsley's assertion that he objected to Synergy's interest in the property will be further elaborated at the *de novo* hearing before the Commission.

12. Significant and documented doubts continue to exist as to whether Synergy has the present possessory interest in the property required to confer standing

to apply for a compulsory pool, based on both title questions and reliance issues. Therefore, Smith's objections are based on tangible and documented questions of fact.

13. At the June 16th hearing, Patrick Hegarty of Synergy testified that Synergy would begin drilling immediately upon receipt of a favorable order in this matter.

14. As required by Rule 1220(B) of the Rules and Regulations of the Oil Conservation Division, 19 NMAC 15.N.1220(B) (7-15-99), a stay is necessary in this matter to prevent gross negative consequences to Smith and other affected parties. Synergy plans to begin drilling immediately. If Smith is forced into a pool that is later found to be invalid because Synergy had no standing, his property will be irreparably damaged.

15. Also as required by Rule 1220(B), a stay is necessary in this matter to protect correlative rights. As an owner of the property whose title is unquestioned, Smith has the correlative right to a fair opportunity to extract any oil and gas himself or in conjunction with the other owners. Smith does not oppose drilling in general. Smith's objection has always been based solely on questions regarding Synergy's interest in the property and standing to apply for a compulsory pool. If Synergy has no such standing, Smith and the other owners have the right to drill on their own terms using the operator of their choosing. If Synergy begins drilling based on the present order, Smith and the other owners' right to drill on their own terms will be jeopardized. Synergy's partial drilling will significantly hamper Smith and the other owners' ability to proceed with drilling operations on their own terms.

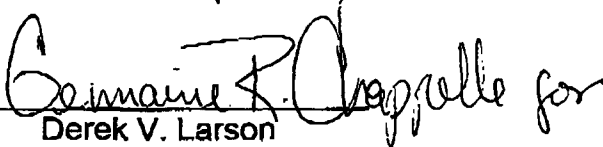
16. Order No. R-12376 does not prevent waste or gross negative consequences for Synergy because the opportunity to drill at a later time will still be available to them if it is determined that they have standing. Consequently, staying the order will not create waste or gross negative consequences to Synergy.

17. A proposed form of Order of Stay is enclosed with this Request.

WHEREFORE, Edwin Smith, LLC (Edwin Smith, member-manager) requests that the Director grant a stay pending the *de novo* proceedings before the Commission in this matter.

Respectfully submitted,

SUTIN THAYER & BROWNE,
A Professional Corporation

By 
Derek V. Larson
Sarita Nair

Attorneys For Edwin Smith
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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 1 day of July, 2005, as follows:

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By, Germaine R. Chappelle

WORKING COPY



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Joseph C. Robbins
2136 N. Lakeshore Drive
Chapel Hill, North Carolina 27514

May 31, 2005

Re: Farmout Agreement - Surface to the base of Fruitland Coal Formation
Duff 28-11-8#104 well, SW/4 Section 8, T29N, R11W
San Juan County, New Mexico

Dear Mr. Robbins:

Synergy Operating, LLC (Synergy) hereby proposes to farmin your mineral interest in the southwest quarter of section 8 of Township 29 North, Range 11 West San Juan County, New Mexico ("the Lands") from Joe Robbins, necessary to drill a new well involving your minerals in order to produce hydrocarbons, subject to the following terms and conditions:

1. Synergy in its sole discretion will test any and all potentially prospective formations, involving the Lands, from the surface of the earth to the base of the Fruitland Coal Formations (hereinafter referred to as "Said Operations") no later than one year after your execution of this Agreement. This Agreement will terminate if Synergy fails to timely commence Said Operations. If in drilling, or completing the test well, or option well, Synergy encounters difficulties which in Synergy's opinion, make it impracticable to continue, Synergy may plug and abandon the test well, and will have a thirty (30) day period following the plugging and abandonment procedure to commence, or cause to be commenced Said Operations for a substitute test well at a location in the same section as the abandoned well, and will complete Said Operations with due diligence.

3. Said Operations conducted hereunder will be at no cost, risk, or expense to the Joe Robbins. Further, Synergy agrees to assume all the liabilities associated with the captioned well to be located in the SE NW NW of section 32, Township 27 North Range 9 West.

4. Upon completion of Said Operations Synergy will earn an Assignment of all of Joseph C. Robbins' right, title, and interest in and to the Lands subject to the Joe Robbins retaining an inclusive 20.00% royalty interest, delivering to Synergy an eighty percent net revenue interest.

**SIGN & RETURN
THIS COPY**

Ex 1

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

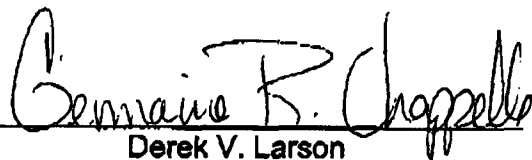
IN THE MATTER OF THE APPLICATION
OF SYNERGY OPERATING, LLC FOR
COMPULSORY POOLING, SAN JUAN
COUNTY, NEW MEXICO

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 
Derek V. Larson

Sarita Nair

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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:

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By Gemaine R Chappell

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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. 13,486
Order No. R-12376

ORDER ON APPLICATION FOR STAY

BY THE DIVISION DIRECTOR:

THIS MATTER, came before the Division Director of the New Mexico Oil Conservation Division ("the Director") pursuant to Rule 1220(B) of the Rules and Regulations of the Oil Conservation Division, 19 NMAC 15.N.1220(B) (7-15-99), on motion of Edwin Smith, LLC, ("Smith") for stay of Division Order No. R-12376 and the Director on this 1st day of July 2005, being fully advised in the premises,

FINDS:

1. The Application for Stay is well taken and should be granted.
2. This matter is before the Oil Conservation Commission ("the Commission") pursuant to Smith's application for hearing *de novo* pursuant to NMSA 1978, § 70-2-13 and Rule 1220(A), 19 NMAC 15.N.1220.A (8-29-03).
3. After filing for review *de novo*, Smith applied to the Division pursuant to Rule 1220(B), 19 NMAC 15.N.1220.B., for an order staying Order No. R-12376 of the Oil Conservation Division pending review by the Commission.
4. Synergy Operating, LLC ("Synergy"), opposes the application for stay.
5. Rule 1220(B) provides that a stay pending review by the Commission may be granted if unopposed or "under other circumstances [as necessary] to prevent waste, protect correlative rights, protect public health and the environment or prevent gross negative consequences to any affected party."
6. Synergy bases its standing to force the compulsory pool on several assignments of possessory interests. However, Smith raises a colorable argument, supported by recorded documentation, that that these assignors did not own the possessory interests they purported to assign to Synergy. If Smith is correct, Synergy's claimed possessory interests are not valid and Synergy does not have standing to force the compulsory pool.

7. Synergy also claims it has standing to force the compulsory pool in the form of a farm-out agreement and joint operating agreement. Smith raises a colorable argument that these documents do not provide Synergy with sufficient interest to have standing to force the compulsory pool.

8. At the hearing on June 16, 2005, before the Hearing Examiner, Synergy communicated its plans to begin drilling within the area subject to the compulsory pool at issue here.

9. Smith has a possessory interest in the subject area and has standing to object to Synergy's standing to force the compulsory pool.

10. A stay is necessary to prevent gross negative consequences to Smith and other affected parties because Synergy plans to drill immediately in the subject area before Synergy's standing can be confirmed.

11. Smith and the other owners have the right to extract oil and gas on their own terms if Synergy does not have standing. A stay is thus necessary to protect the correlative rights of Smith and the other owners.

12. A stay of Order No. R-12376 does not have gross negative consequences to Synergy because Synergy may begin drilling after standing has been determined.

13. A stay of Order No. R-12376 does not create waste because Synergy or another party with standing can force the compulsory pool after Synergy's standing has been determined.

14. Smith raises a colorable argument about Synergy's standing to force a pool and demonstrates that Smith's interests need to be protected to prevent gross negative consequences to his interest and to protect his correlative rights. Therefore, pursuant to Rule 1220(B), a stay should be granted to preserve the status quo until Synergy's standing to force a compulsory pool in the subject area is confirmed or denied.

IT IS THEREFORE ORDERED THAT:

1. Order No. R-12376 of the Division shall be and hereby is stayed pending final decision in this matter by the Oil Conservation Commission.

2. Jurisdiction of this case is retained for the entry of such further orders as the Division may deem necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

Director

SEAL

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:

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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 18th day of July, 2005, as follows:

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