

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

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**IN THE MATTER OF THE HEARINGS CALLED
BY THE OIL CONSERVATION COMMISSION FOR
THE PURPOSE OF CONSIDERING:**

**APPLICATION OF MARSHALL & WINSTON, INC.
TO CANCEL AN OPERATOR'S AUTHORITY AND
TERMINATE A SPACING UNIT, AND APPROVE A
CHANGE OF OPERATOR, LEA COUNTY, NEW MEXICO.**

Case No. 14,538

**APPLICATION OF DAVID H. ARRINGTON OIL &
GAS INC. FOR COMPULSORY POOLING, LEA
COUNTY, NEW MEXICO.**

Case No. 14,497

**MARSHALL & WINSTON, INC.'S
PROPOSED FINDINGS AND CONCLUSIONS**

Marshall & Winston, Inc. submits the following proposed findings and conclusions to the Oil Conservation Commission.

FINDINGS.

1. In Case No. 14497, David H. Arrington Oil & Gas Inc. ("Arrington") seeks an order pooling all mineral interests from the surface to the base of the Morrow formation underlying the S½ of Section 26, Township 15 South, Range 34 East, N.M.P.M., to form a standard 320-acre gas spacing unit for all pools or formations developed on 320-acre spacing, and the SE¼ of Section 26 to form a standard 160-acre gas spacing unit for all pools or formations developed on 160-acre spacing. The acreage is to be dedicated to the re-entered Green Eyed Squealy Worm Well No. 1 (the "Well"), located in the NE¼SE¼ of Section 26.

2. In Case No. 14538, Marshall & Winston, Inc. (M&W) seeks an order canceling the authority of Arrington to operate the Well, and terminating the S½ of Section 26 spacing unit dedicated to the Well. M&W further requested that it be approved as operator of the Well.

3. In March 2011 the Division entered Order No. R-13372, denying Arrington's application and granting M&W's application. Arrington filed an application for hearing *de novo*.

4. M&W presented the following evidence at the *de novo* hearing:

(a) Arrington drilled and completed the Well in the Morrow formation as a producer in 2004. M&W participated in the Well. The S½ of Section 26 was dedicated to the

Well, and the working interest owners executed a Joint Operating Agreement ("JOA") covering the S½ of Section 26 as to all depths.

(b) Arrington re-worked the Well in 2007, and production from the Morrow formation ceased shortly thereafter due to the re-working efforts. Arrington informed the Well's working interest partners at that time that it had watered out, and recommended that the Well be abandoned in the Morrow formation.

(c) In July 2007 Arrington proposed re-working the Well in the Cisco/Canyon formation, but the workover was never done. M&W consented to the proposed re-entry.

(d) The well has not produced since 2007, and the JOA covering the S½ of Section 26 subsequently expired. The Well was never plugged and abandoned.

(e) As of March 2010 M&W owned or controlled 100% of the working interest in the N½SE¼ of Section 26 as to all depths (and still owns such interest). M&W's interest is not subject to an operating agreement. Arrington owns working interests in the remaining 240 acres of the S½ of Section 26.

(f) In March 2010 Arrington sent a proposal to M&W for a re-completion of the Well in the Cisco/Canyon formation, which is spaced on 40 acres. *Arrington owned no interest in the Cisco/Canyon formation, and thus the proposal was improper.* Accepting such proposal would reduce M&W's interest to 50%, and M&W declined to participate in Arrington's proposal.

(g) In May 2010 Arrington proposed a Morrow re-completion for the Well under the terms of the original JOA, *and simultaneously filed a pooling application* (Case No. 14497). Accepting such proposal would further reduce M&W's interest to 26%, and M&W informed Arrington that it was not interested in a Morrow re-completion attempt.

(h) In May 2010 M&W filed an APD with the Division to re-enter the Well to test the Cisco/Canyon formation. However, the Division's records still listed Arrington as operator of the Well, and the APD was denied. After receiving notice of Arrington's pooling application, M&W filed its application.

(i) In June 2010 M&W filed Case No. 14538.

(j) In June 2010, after M&W filed its application, Arrington obtained an easement from the surface owner of the N½SE¼ of Section 26. Arrington claims that the easement gives it the sole right to access the wellbore of the Well. M&W subsequently obtained a surface use agreement with the surface owner.

(k) In July 2010 M&W filed suit in Lea County District Court to obtain a release of the expired JOA from Arrington. Arrington subsequently released the JOA.

(l) At the *de novo* hearing, Arrington did not submit any well proposals as evidence.

(m) Under NMSA 1978 §§70-2-17, 18, Arrington was required to make a good faith effort to obtain voluntary joinder of the working interests before filing a pooling application. M&W asserts that Arrington did not comply with this obligation.

(n) Another Morrow workover of the Well, *even if successful*, would be uneconomic. Thus, granting Arrington's application will cause waste.

5. Arrington presented the following evidence at the *de novo* hearing:

(a) Allowing the M&W to re-complete the Well in the Cisco formation, above the Morrow formation, would complicate if not prevent Arrington from ever re-entering the Morrow formation.

(b) Arrington only requested permission to re-enter the Well to test the Morrow formation, and did not request any other relief.

(c) Any re-entry of the Morrow would be conducted within 90 days of the entry of an order by the Commission.

CONCLUSIONS.

1A. Alternative 1. Division Order No. R-13372, denying Arrington's application and granting M&W's application, is hereby affirmed.

1B. Alternative 1. The application of David H. Arrington Oil & Gas Inc. in Case 14497, seeking an order pooling all mineral interests from the surface to the base of the Morrow formation underlying the S½ of Section 26, Township 15 South, Range 34 East, N.M.P.M., to form a standard 320-acre gas spacing unit for all pools or formations developed on 320-acre spacing, and the SE¼ of Section 26 to form a standard 160-acre gas spacing unit for all pools or formations developed on 160-acre spacing, is hereby granted, subject to the following conditions:

(a) *Only formations from the base of the Cisco/Canyon formation to the base of the Morrow formation shall be pooled by this order.* Any completion attempt above the Cisco/Canyon formation would complicate if not prevent M&W from ever re-entering the Cisco/Canyon formation.

(b) The acreage is to be dedicated to the re-entered Green Eyed Squealy Worm Well No. 1 (the "Well"), located in the NE¼SE¼ of Section 26.

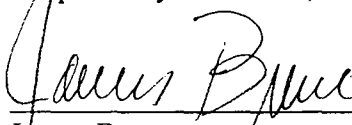
(c) Any re-completion attempt by Arrington shall be completed within 90 days of the date of this order.

(d) If the re-entry of the Well is unsuccessful or uneconomic, or at such future time as production from the Morrow formation ceases or becomes uneconomic, Arrington shall turn over operation of the Well to M&W.

(e) Arrington shall not plug and abandon the Well before turning operations over to M&W.

(f) Arrington shall fully inform M&W of work conducted on the well and of its condition when operations are turned over, so that M&W can conduct its re-entry operations properly.

Respectfully submitted,



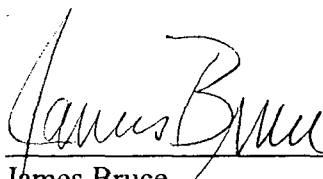
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served upon the following counsel of record this 11th day of January, 2012 by facsimile transmission and U.S. Mail:

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