

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

**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**

**PRE-HEARING STATEMENT**

This pre-hearing statement is submitted by Marshall & Winston, Inc. as required by the Oil Conservation Commission.

**APPEARANCES**

**APPLICANT**

Marshall & Winston, Inc.  
P.O. Box 50880  
Midland, Texas 79702

Attention: Kevin Hammit

**APPLICANT'S ATTORNEY**

James Bruce  
P.O. Box 1056  
Santa Fe, New Mexico 87504  
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**OPPONENT**

David H. Arrington Oil & Gas Inc.

**OPPONENT'S ATTORNEY**

William F. Carr  
Michael Feldewert

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**STATEMENT OF THE CASE**

**MARSHALL & WINSTON, INC.**

This case involves operatorship and operations to be conducted on a well located in the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 26, Township 15 South, Range 34 East, NMPM. The well, when originally drilled by David H. Arrington Oil & Gas Inc. ("Arrington"), was named the Green Eyed Squealy

Worm Well No. 1. Marshall & Winston, Inc. (M&W) is now the operator of the well, which it has re-named the M&W Fee Well No. 1. It is referred to simply as the "Well."

In May 2010 Arrington filed Case No. 14497, seeking an order pooling all mineral interests from the surface to the base of the Morrow formation underlying the S $\frac{1}{2}$  of Section 26, to form a standard 320-acre gas spacing unit for all pools or formations developed on 320-acre spacing, and the SE $\frac{1}{4}$  of Section 26 to form a standard 160-acre gas spacing unit for all pools or formations developed on 160-acre spacing.

In June 2010 M&W filed Case No. 14538, seeking an order canceling the authority of Arrington to operate the Well, and terminating the S $\frac{1}{2}$  of Section 26 spacing unit dedicated to the Well. M&W further requested that it be approved as operator of the Well.

In March 2011 the Division entered Order No. R-13372 denying Arrington's application and granting M&W's application.

#### Facts

1. Arrington drilled and completed the Well in the Morrow formation as a producer in 2004. M&W participated in the Well. The S $\frac{1}{2}$  of Section 26 was dedicated to the Well, and the working interest owners executed a Joint Operating Agreement ("JOA") covering the S $\frac{1}{2}$  of Section 26 as to all depths.

2. 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.

3. In July 2007 Arrington proposed re-working the Well in the Cisco/Canyon formation, but the workover was never done.

4. The well has not produced since 2007, and the JOA covering the S $\frac{1}{2}$  of Section 26 subsequently expired. The Well was never plugged and abandoned.

5. As of March 2010 M&W owned or controlled 100% of the working interest in the N $\frac{1}{2}$ SE $\frac{1}{4}$  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 S $\frac{1}{2}$  of Section 26.

6. 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.* M&W declined to participate in Arrington's proposal.

7. In May 2010 Arrington proposed a Morrow re-completion for the Well, *and simultaneously filed a pooling application*. M&W informed Arrington that it was not interested in a Morrow re-completion attempt.

8. 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.

9. In June 2010 Arrington obtained an easement from the surface owner of the N $\frac{1}{2}$ SE $\frac{1}{4}$  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.)

10. 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.

#### M&W's Position

A. Bad Faith Pooling: Under NMSA 1978 §70-2-17.C, Arrington was required to make a good faith effort to obtain voluntary joinder of the working interests before filing a pooling application. Based on the foregoing facts, it did not do so. The pooling application was filed in an effort to coerce M&W into agreeing to jointly develop its acreage with Arrington, which M&W does not wish to do.

B. The Well Is Uneconomic: Engineering and economic show that another Morrow workover of the Well, *even if successful*, would be uneconomic. Thus, granting Arrington's application will cause waste.

#### M&W's Request

M&W requests that the Commission affirm the Division's order.

If Arrington's pooling application is granted, M&W requests that the order (i) require that any completion attempt be done within 60 days of the order, and (ii) provide that, at such time as production from the Morrow formation again ceases or becomes uneconomic, Arrington be prohibited from plugging and abandoning the Well.

DAVID H. ARRINGTON OIL & GAS, INC.

**PROPOSED EVIDENCE**

APPLICANT

<u>WITNESSES</u>	<u>EST. TIME</u>	<u>EXHIBITS</u>
Kevin Hammit (landman)	30 min.	Approx. 6
John Savage (engineer)	40 min.	Approx. 12

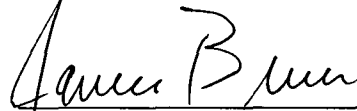
OPPONENT

<u>WITNESSES</u>	<u>EST. TIME</u>	<u>EXHIBITS</u>
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**PROCEDURAL MATTERS**

Marshall & Winston, Inc. requests that Case Nos. 14497 and 14538 be consolidated for hearing.

Respectfully submitted,



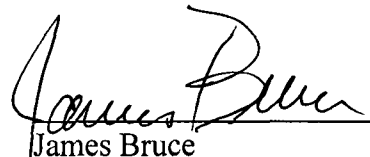
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Attorney for Marshall & Winston, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served upon the following counsel of record this 1<sup>st</sup> day of December, 2011 by hand delivery:

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