

JAMES BRUCE
ATTORNEY AT LAW

POST OFFICE BOX 1056
SANTA FE, NEW MEXICO 87504

369 MONTEZUMA, NO. 213
SANTA FE, NEW MEXICO 87501

(505) 982-2043 (Phone)
(505) 660-6612 (Cell)
(505) 982-2151 (Fax)

jamesbruc@aol.com

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December 7 2011

Jami Bailey, Director
Oil Conservation Division
1220 South St. Francis Drive
Santa Fe, New Mexico 87505

Re: Cases 14497 & 14538 *de novo* (Arrington/Marshall & Winston)

Dear Ms. Bailey:

Marshall & Winston submits herewith six copies of its proposed Exhibit 5A, which it may use at hearing. I apologize for submitting this late -- it was mailed to me and I didn't receive it until today.

Very truly yours,



James Bruce

Attorney for Marshall & Winston, Inc.

cc: William F. Carr &
Larry Montano w/encl. (via fax)

SURFACE USE AND COMPENSATION AGREEMENT

STATE OF NEW MEXICO

COUNTY OF LEA

KNOW ALL MEN BY THESE PRESENTS:

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~~Faems~~
Caswell ~~Brothers~~ Inc whose address is 1702 Gillham, Brownfield, Texas 79316, hereinafter referred to as "Grantor", grants to Marshall & Winston, Inc., whose address is 6 Desta Drive, Suite 3100, P. O. Box 50880, Midland, Texas 79710, hereinafter referred to as "Grantee", its successors and assigns, the right to ingress, egress, easement, rights of way and use the following described tracts of land (the "Land") situated in Eddy County, New Mexico.

TOWNSHIP 15 SOUTH RANGE 34 EAST

Section 26: S/2

Section 27: SE/4

Section 34: E/2

Containing 680 acres more or less.

In consideration of the terms, conditions and covenants hereinafter recited, the receipt and sufficiency of which are hereby acknowledged, it is agreed and understood that such consideration shall cover any such matters of ingress, egress, easement and rights of way necessary and any such damages resultant from or associated with the drilling and completion of well(s) located on the Land described on Exhibit "A" attached hereto.

1.) Grantee shall pay Grantor the cash sum of \$8,000.00 for each drillsite location, which Grantor constructs and utilizes for a re-entry of a plugged and/or abandoned well or the drilling of a new oil and/or gas or injection well(s) located on the Land. This amount shall represent surface damages for the reasonable use of the surface of the Land for the drillsite location, including, without limitation, the drillsite and reserve pit. Any injury or damage occurring to groundwater, lands adjacent to the drillsite location, other lands owned by Grantor or damage to any cattle as a result of the operations of Grantee is not hereby released.

2.) All pits used by Grantee shall be lined with plastic material of sufficient thickness to prevent the escape of saltwater and other materials on or into the Land. Grantee shall fence off the entire well location, including drillsite pad, reserve pit and if applicable, tank batteries and pumping units, in order to prevent Grantor's livestock from coming onto the drillsite location. If livestock enter upon the drillsite location and ingest oil, or become otherwise injured as a direct result of Grantee insufficiently fencing off locations, Grantee shall be liable to Grantor for such damages.

3.) Grantee shall stockpile, adjacent to the location, the topsoil taken during the building of the drillsite location. If the well is a producer, Grantee shall redistribute the topsoil over the reserve pit area and restore the surface as near as reasonably possible to its condition prior to drilling operations. Grantee shall continue to be entitled to retain for its use as much of the Land as is reasonable and prudent for the performance of its operation. If the well is a dry hole, Grantee shall remove the caliche pad, redistribute the topsoil over the drill site location and restore the surface as near as is reasonably possible to its condition prior to drilling operations.

4.) Upon completion of the drilling operations, Grantee agrees to reduce the size of the well pad to a size required for the operations and maintenance of and for a producing the well, the reserve pit will be allowed to evaporate until dry, after which all plastic and contents of the pit shall be removed and disposed of off-site of the Land. Clean margins will be established both horizontally and vertically in the removal of reserve pit contents. The reserve pit shall be backfilled with the top layer containing topsoil 3' in depth. Grantee agrees to purchase topsoil owned by Grantor from Grantor for \$7.00 per cubic yard to back fill reserve pit, if necessary. The pit shall be leveled, leaving such land suitable for replanting. Rocks larger than 3" in diameter will be buried below

Oil Conservation Commission

Case No. _____

MFW

Exhibit No. 5A

ground level. After the above procedures are completed, Grantee shall reseed the reserve pit area with native grass seed. Grantee will cooperate with Grantor as to the type and quantity of seed to be planted and the time of year and technique of planting grass seed.

5.) Grantee agrees to purchase from and pay Grantor the cash sum of \$0.50 per barrel for water obtained from Grantor's wells for drilling and completion operations; provided that Grantor's water wells are capable of supplying the quantity of water required by Grantee for its operations. Grantee shall furnish all necessary equipment for pumping, metering and delivery of the water to the well, and shall obtain the necessary permit(s) from the New Mexico State regulatory office with jurisdiction for the same. No fresh water from beneath the Land shall ever be used for secondary recovery or repressor operations (or any like operations) by Grantee.

6.) Grantee agrees to purchase caliche owned by grantor for the construction or modification of drillsite locations or access roads built on the Land from Grantor at a rate of \$3.00 per cubic yard.

7.) Upon written request of Grantor, Grantee agrees to bury all production lines, flow lines or injection lines, or any type of line, which Grantee may have installed or cause to be installed at least 24" beneath the surface and to thereafter clean and level the land affected thereby; with there being no mound over the ditch line and restore it as near as reasonably possible to its state of condition prior to burying thereof. Grantee shall have the right to transport any water purchased from Grantor through temporary water lines installed on top of and across the Land. Grantee agrees to remove the temporary water lines within two (2) weeks after the temporary water lines are no longer necessary or needed for Grantee's use.

8.) Grantee shall pay Grantor the cash sum of \$30.00 per rod for any new or existing road the Grantee shall use, whether one or more, which Grantee constructs or causes to be constructed on the Land. All roads to be built by Grantee on the Land shall be located as agreed upon by and between Grantor and Grantee, but Grantor may not unreasonably withhold permission to build a road on the Land and shall be reasonable in its location. Grantee shall consult with Grantor for the placement of any and all roads to be located on the Land.

9.) If any fence is cut by Grantee or its contractors, it shall properly brace same before cutting and shall install and maintain a proper cattle guard and at the request of Grantor, Grantee shall install a pipe gate across the cattle guard capable of being locked. Keys will be distributed to only those persons, as identified and determined by Grantee, requiring access to the Land. For so long as the road is used by Grantee, it shall maintain the road and shall not permit or cause production vehicles (or any other vehicles) to enlarge the margin of the road.

10.) When Grantee no longer uses the road to access its well(s) on the Land Grantee shall, upon written request of Grantor, remove the materials utilized to construct the road and restore the surface as near as reasonably possible to its condition prior to Grantee's drilling and/or production activities.

11.) Grantee agrees to remove the rig and its associated drilling equipment from the land as soon as reasonably possible following the completion of a well.

12.) If a well is plugged and abandoned, Grantee shall, within six (6) months, remove all equipment, all production lines and all other items of equipment used directly or indirectly by Grantee as it pertains to the well drilled by it on the Land, and restore the site, as near a reasonably possible, to its original condition. If Grantee should fail to remove all such equipment and lines within said six (6) months and if Grantee fails to remove same within fifteen (15) days after Grantor gives written notice specifying such failure to remove same, Grantors, at their option, shall be entitled, but is not obligated, to remove all or any part of same and dispose of it without further notice.

13.) Grantee shall pay Grantor the cash sum of \$30.00 per rod for any pipeline that Grantee builds on the Land, and shall pay Grantor the cash sum of \$100.00 per hole for each hole drilled or dug for installation of electrical poles used to support power line on the Land.

14.) Grantee shall exercise reasonable diligence to remove and/or remediate any and all soil and water contamination resulting from the Grantee's operations in accordance with the rules and regulations set forth by the New Mexico Oil Conservation Division. However, nothing contained herein gives Grantee the right to leave

in place or remediation on site contaminated soil unless there is a separate agreement between Grantor and Grantee for same.

15.) Grantee shall be solely responsible and liable for any harm or injuries caused to persons or property as a result of Grantee's operations, and shall indemnify and hold Grantor and their trustees, officers, employees and agents harmless from and against any and all claims, charges, assessments, damages, expenses, fines or penalties incurred in defense of Grantor as a result of Grantee's operations; provided, however that nothing herein shall be construed to require or obligate Grantee to indemnify Grantor against, or hold Grantor harmless from Grantor's own negligent acts or omissions. Further, Grantee shall indemnify and save Grantor and his trustees, officers, employees and agents harmless from any and all damages cleanup expenses, fines or penalties, resulting from a fire or any violation of, or non-compliance with, applicable local, state, or federal laws and regulations resulting from Grantee's operations.

16.) Notwithstanding anything herein contained to the contrary, this Agreement is made without prejudice as to the rights of Grantee pursuant to any existing Oil and Gas Lease or other agreement covering the Land and nothing herein shall be construed to lessen or alter Grantee's rights under any such Oil and Gas Lease or agreement.

THIS AGREEMENT shall be binding on the party's successors, assigns, agents and representatives. Grantee's agents and independent contractors who will enter upon the Land shall comply with the terms and conditions set forth herein. The covenants hereunder shall be performable in Chaves County, New Mexico.

IN WITNESS WHEREOF, this instrument is executed the 7th day of April, 2011.

Grantors:

Caswell ^{FARMS} Brothers Inc.

By: Glenn Caswell

It's _____

Grantee:

Marshall & Winston Inc.

By: Tom M Brandt
Tom M. Brandt

It's: President

