

IN THE MATTER OF THE HEARING CALLED BY THE OIL CONSERVATION DIVISION FOR THE PURPOSE OF CONSIDERING:

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

Case No. 14,497

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

SUPPLERMENTAL RESPONSE IN OPPOSITION TO ARRINGTON'S MOTION TO STAY

Marshall & Winston, Inc. ("M&W") submits this supplemental response in opposition to the motion to stay Order No. R-13372 submitted by David H. Arrington Oil & Gas, Inc. ("Arrington"):

M&W submits the Affidavit of Tom Brandt, attached hereto as Exhibit 1, in support of its response. This affidavit shows that, based on statements by Arrington's own engineer, the well is uneconomic in the Morrow formation.

WHEREFORE, for the foregoing reasons M&W requests that Arrington's motion be denied.

Respectfully submitted,

Jámes Bruce

Post Office Box 1056

Santa Fe, New Mexico 87504

(505) 982-2043

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 ______ day of April, 2011 by facsimile transmission:

William F. Carr Ocean Munds-Dry Larry Montano Holland & Hart LLP P.O. Box 2208 Santa Fe, New Mexico 87504 (505) 983-6043

James Bruce

FIRST JUDICIAL DISTRICT COURT COUNTY OF SANTA FE STATE OF NEW MEXICO

DAVID H. ARRINGTON OIL & GAS, INC.

v.	Case No. D-0101-CV-2011-

MARSHALL & WINSTON, INC.

Arriva	AVII	OF I	JIYI	BKAL	(L)

COUNTY OF MIDLAND)
) ss.
STATE OF TEXAS)

Tom Brandt, being duly sworn upon his oath, deposes and states:

- 1. I am over the age of 18, and have personal knowledge of the matters stated herein:
- 2. I am President of Marshall & Winston, Inc., and am a petroleum engineer by education and training. I have 30 years of experience as a petroleum engineer.
- 3. Marshall & Winston, Inc. is the operator of the M&W Fee Well No. 1, f/k/a the Green Eyed Squealy Worm Well No. 1, located in the NE/4SE/4 of Section 26, Township 15 South, Range 34 East, N.M.P.M.
- 4. Marshall & Winston, Inc. has access to the M&W Fee Well No. 1 well under a Surface Use and Compensation Agreement with the surface owner (Caswell Farms Inc.), a true and correct copy of which is attached hereto as Exhibit A.
- 5. Marshall & Winston, Inc. has commenced recompletion operations on the M&W Fee Well No. 1. It has placed a plug between the Morrow formation and the Cisco/Canyon formation, which is the target zone in the recompletion.
- 6. Marshall & Winston, Inc.'s re-entry operations in the Cisco/Canyon formation will not damage the Morrow formation.
- 7. It is my opinion that the M&W Fee Well No. 1 cannot economically produce hydrocarbons from the Morrow formation.

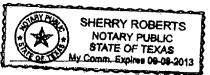


- 8. Art Carrasco, David H. Arrington Oil & Gas Completion Engineer, as stated in his letter dated July 3, 2007; "this well is currently perforated in the Upper Morrow (12,993' to 13,004'). This well has not produced in commercial quantities since January 2006. The coil tubing cleanout and Foam Frac performed on the Morrow interval was not successful in regaining production. The well fraced at a high frac gradient (1.08 psi/ft) and communicated with the Lower Morrow wet interval at \pm 13,055' to 13,100'. It would be uneconomical to remediate the communication and restimulate the Upper Morrow Interval. The high frac gradient would make it too difficult to re frac the Upper Morrow without treating out of zone". Marshall & Winston, Inc. participated in this procedure.
- 9. Marshall & Winston, Inc. owns or controls 100% of the working and royalty interests in the N/2 SE/4, Section 26, Township 15 South, Range 34 East, Lea County, New Mexico.

Tom Brandt

SUBSCRIBED AND SWORN TO before me this <u>13th</u> day of April, 2011 by Tom Brandt.

My Commission Expires:



Notary Public State of Texas

SURFACE USE AND COMPENSATION AGREEMENT

STATE OF NEW MEXICO

COUNTY OF LEA

KNOW ALL MEN BY THESE PRESENTS:

Frence

Caswell Bretters 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



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 Granter, 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 it 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 fives 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 Breshors Inc.
By: Slave Cornell
lt's
Grantee:
Marshally & Winston, Inc.
By: Im M Brands
lom m. Brandt President

S MUTS	1		Led Prinsh	prefe Alins	1	1910		~···	** Earl Fam.That D	gryumin zai sa	1	T
oron g P	Yotes Pel, etal	ADITI rates - stra el, eral \ 3		Oil Oil	Yeter Pet. etal : 1 . 2006 V:5094	Long Stor	Ster Phili Yates Peties		Yates Pet, etal 9 1 2005 V 5952		ell Dil Ya	res Pet,etal
10343	V-6045 19212	1 · 2005 /=174 · 6061	Yates Pet, etcl	2.82	D.A. Tipten	Yotes Pet, etal	Sun M.M.St	va-395 ′ "ATA"	216	<u> </u>		V-4826 Da
i	1010303	106 छ क्षणांद्री.	Amin. V.M. St. TD10700	I 'o O O	1	11111		34		\$20000\$7 35_	Eth Chil Cycloge TO WARM CT	on Ocal Apico per
	Amini	1	γ.• ⊗	A TOTAL STATE	Shinnery of	issue Yates Pet., etal	State Tex.	اور	Yote	s Pet etal	(Arrington,etal)	oles Pet, etal
٠.	Amini Superpor St. 4 Shae ij ja Tuba i		Alidwest . Shell Sr		10,10,658 0	V-5054 50 28 Cartie Deer. Cartie 500.	, IR PIPE	Yates Pet. , (Prot Papalates , (Atbea Disc.)	State	1007 1007 Chrosposid	10:13:1884	Bam" #1
L	Stote		B/A 2 8 70 Sr	(Felmont) Ficherenty (TO MARK) OTO (TO MARK) OTO (TO MARK)	Shortway St	074 BIA 6-16-10	`€′ ,	1014	Trust (S)	Tray C. Fort		an, etal, M.T. . Janes
(PROBLE)	TOU OF WASSULE WELL	gton OE,G	Yotes Per etol	1000,(10)	The state of the s	Cheropenke	Kaiser-francis Texacu	j Yates Pet, etal		1 . 5003	Yates Pet cityl	1
R-R0 4204 3-18-3006	7 19 1007 V-455B 3-1941 7 11952	TXO	CHAP JIGI.	S EXCUSIVELY	[[-34]: Peri	Cressoreghs (Contro Acr)	6-17-75 L-3013- 17-27 Sanders Pel, etal	10 · 1 · 2006	+ "	71 B +	12000	Emilia
		Sec.	CM. Provide (Troine	il etal re Gross etal) se Ener 161 Evard Expretalis	Pioncer Nat.Rea	A "Tres Populates"	1.000	62 25		2	ļ.	Sales Let Goules (
	Bi, 100. T		I Par	Elh Oit	Pr printing.	Francis etal	T	J	Yole	Pel, eloi 1 2005 5 5659	Γ	1 0 20 0 0
Ficheverry Reh. Ltd.	Deta 1		Etcheverry Rch. Yales	Pel etal	(Sanders Pet, etal to 10580	Sarders Pet, etal fe 11,000	Ì			879		(Chesopeoke)
Prinshp.	Ath. ud Fine	heverry Lid Primety	V- \$60	1014	'Morton Solid St Shote Unit'			Tom. Trust (5)	1, 6	ert fem. Trust, is)	Such es_Joon C	L.E. Cynin etal Jones
	Arrington ac	,o	Yafes Pe	- elo 200 s	Store Unit Store Unit Melodor 8-18-86 L-4801 18-15 Single Store Sorders Pe	Market Colon	Karago Provide 1 49 1 100 1 1 49 2 120 1	Marathen 8 + 2005 V - 5911	Devon Ener 29.73 Yates Pet. etal 9 - 2 - 2006	(Devon Ener 29.79%) Yotas Pet, etal	Deven (n sa 11 10) Tote 9 Per., etal Devid Per Us total 3 - 0 - 207) U-11-1005	Chevron 0/3077
	Arrington CEG Alpha 7		V. \$371 15 <u>61</u> Clements	Ì	9(35)	1.23	Sanders Relicial	10615	ermian tupl.	1	10 10 100) 10 10 100) 10 10 100) 10 100 1 100	Featherstene Feet Union
Keh Live Armung	7		10,740 10,740	- 4'	1	79 11 000	State MartinArregu		1 14 2001 (w/z)	Santala Armai	Party Flore L	union and
crington Win water	ънь ?	Nobil® ¹	OTIS S	ST.UT.		Pet.,etal		10 10avid (1 Pet. \ 11:14-1001)	Devon Ener 29 759 Yates Pet, etal	(1-17) TO 15 10 10 10 10 10 10 10 10 10 10 10 10 10 10 1	Devon Ener 13.75 % Yolds Pat. etcly.	Foster OLR
10 10 40 E	الاسبعة	10116 T	LYATES	PET.(OP.)		· 1586 487			74.00	Total Total	Reed Com."	fosten Fa Boller
nsha	Ach. Lid. Prins	hp.	Sin	**	St	ete	State C.A.Fort,Est,(S)		Overen Erner 20 May (17) Secretal Values Park (17) Secretal Values For Francisco Values Value		Reed Com Pabrier Pabrier To. Ared	
	(R.F. Fert) 3 · 21 · 2006 Arrington O.C.	. 0	0 1	Pet, etal 2005 2213		Pet, chal	Yates Pet _i etal	Yates Peticetal	N.B Hunt,To Starte TO 14865 OVAIT-21-54	1	Hoodington, E.	TO STA
	Arrington Occ	Ww.	Ì	390	YA-138T 1981		6 1 2005 7 1 2003 V 5941 VA 1790 B4 19 16 1		TO14865 K. O. Buffer OANITALISAN Fasken Ld. f. Minn. LG 1428			
Greeny, Tr Pickson, MI	MIDLA.			7		6		5	V.60#2 (61 <u>₹Ω</u>	Englishing	c A fort, Est	CA Fort Est
•	Jan 7 10		Yates Pel, et al		NEW GRASS ST.UT.				OANT-21-34 Forsher L 65, form. C6 - 18.29 1 - 2006 C6 122 Forsher L 60 - 18.29 C6 122 Forsher L 70, 18.25 C7 C7 C7 C7 C7 C7 C7		Votes fet, etal Chevron	
	anner al		200	Phillips Source 1-B TDHS00 &				Yotes Pel.			(Chevron)	,
'	Elcheverry Rch. Ltd. Prins	קלו	517	TO DIAS-4-68	store 15 34		34 cst	34 Stote ACEL DIRECT		State "St." CA Fort, Est, (5)		Phillips u.g. to tawnsend & cort, Est, (5) JA 14 86
	Votes Pet, e	lai.	Yates Pet, ctal			s Petyetal .	Yates Pet etal 6 · 1 2005	Yates /I Pet.etal	Yates Pet, etal 11 1 2003 VA 1858	Yates Pet, etal	<u> </u>	oles Pet, etal - 1 2005 V 5848
	2165 214 7		25647	169 A		A-1791 HBP	V• 5842 97 €F	V 5529	15 9 ASS/ A	A//)	"Arm G	110311 THE SE UP: "
	71.71. y— — 19 — .		· 1	•	Sw. 2	- T-	CA./o	d Est, (5)	2	}		rick Eck, (E)
	t Yotes Pet.e	tal os	-	3	David Per		r (Davi Yates	Pet., eta)	, ©		David Pet, trat 3 - 16 - 24-6 3-ts-tsor, 3-th-tas Yares fet, etcl	Yotes Pet. Arreguy Com.
	ann 7 ans sun.					Sitie		Yoles Pel.	(C.P. Duolie)		1:10:2006 A.C.Pellif,elal.M.I Mary L.Hagans, II.	
I, Prishp	State		See	·	Etcherery Reh.		Olen E, La C	oyce (oswel)	CA.	ort, Est. (5)	(3/	07(137.23)
el elol · zoor	Dayld Pet			rt., etal · 2002 · 688	Prinshp.	ru Pich a la lines	David U·(·	Fet. 1005 ·	Ø Attraction	(Yutes Pet, etal)	Dovid Pet	Taken Kir
18 18	2 225 15 2 225 15	à	15 (15 (15 (15 (15 (15 (15 (15 (15 (15 (Yntes Peti, eta	Davle Per d			TO 108 00 Marion 8	Misselli ell. erel _e M{ _U }		Arreguy Union
	30 7 (1) (1)		10 m (m) 14 m (m) 2 m	9	Schenory "	8 & & & Crest 12 M.A. Dovid Pet.	2		post Hardin &	Welson, Inch.	M.S Wood et al, M. C.A. Fort. Est. (3) 2	/04mmn1
190 692 (4 1136		7		ļ	A 10 4 18	9-1-2006 £439/1	10 4 1001	R.Y. Wells	hordered aftitude principlinate	Started to the	Arrington Green Zacal Squrenty train Devos (A) Arrington 0	. ⊗⊙
17:15:61	W.L.C. W.G.Luber Mer		"Calfrope State	: !	"Calfrope St. Ut." State	Victing erof M.I. K. Roberts, M.I. Book F.J.	Susan vicente	Near burg Fred Prossioneds - (9) 10 14652 0/4 2:4 77 42 Danisla et al	Atypolo Lea Heartista Cara	Arrington OLG etalls	(Opsid Pet	Listel Accordance (Listell States) States (Listell Sta
rete T	W.L.e. W.G.Lybe AS a Str. Dan Field (S) Roy LAN	por ks.	Ray t, Alme	Dougles, et al	State Storm Field E.R.L. Love (5) Great Western	LaDoyce Cornell	OWNE, Laus	Notes Percent	Hearticle A Chang	Laborce Council		
•	1 3.	id Pet. 4 · 2005 10 · 2004	Yates Pe 11 · · · · 20 VA-15 15 ©	001 J	Great Western Opvoil \$576 17444	David Dovid Pet. II-1-2006	Dovid Pet. 11-13-2007 1-14-7008,4-19-2000	10 10 6 9 9 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	10avid Pri. 10 fes 3 1 1 2006 (-0 - 1006 Arrington Oc.6 200 4 - 12 - 100 - 11 400 - 200 6 10 405 8 4 - 11 - 100 5 417 - 1004 1 - 1005 417 - 1004	9-1-2001 X-1-2009 Usered Pri 8-17-2004 (0-5-2004 (9-73-2004 (6-15-2007)	9 · 1 · 2006 V · 6145 IO · 529	(Exxon) £-735
	8 · 1	4 - 2005 E/I	15 G	•	Humber F87.E#on ز OAt-16-55		toles Pet archnodis Childrena Home Fair	10 35 % O 40	1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1	1001	Y-645 V-645 Pers Ent. Bess 51. Oval bise.	ai _{13es}
1	Dan Field (5)		CALFROPE	<u>ਵਾ ਹਵਾ</u>	05(6)6(50,12) 3.	And to	A.G. Kaspar 3		Al-Ali		1 Tu	6— _{(64,64} ,64,46
	Yotes Petiletal 1-1-2006 4/6268 107 E		YATES PET	(AO):	Yetes Pet, etal 3 · l · 2011 103833 410 tt.	Freid, (b)		**************************************	,TOWNSEN	O UNIT NEED	Halaming (Paris 1879) All (Paris 1879) A	Number V. CHT
	Mike	e, Dan , M.I. Sch.,Inc.	510		•	102	Signal Support	199 27 76	BASS ENT	OUNIT SILE (OPER) STORY	Yotes net atal 3 1 2006 V 6146 362 19 0 54	Right of
(2)	augistina Cougha, TCH A		Ray E Alma Do		Dan Fie		Con we into		Clon P. La Days	4 casme(125)		
Q	1 34E		i FF	A, Soi	uthwes	t	ı	6	1	5 .755	ı	•
ц	JTL		And The State of t						H	35E		

Owne

eandree Information