

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

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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

RESPONSE IN OPPOSITION TO ARRINGTON'S MOTION TO STAY

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

1. Standards: In considering motions for a stay, the Division uses the general factors for granting an injunction under District Court rules. **NMRA 1-066.** Under those standards Arrington must show (a) a likelihood of success on the merits, and (b) a balancing equities which would favor Arrington. Arrington cannot succeed on either element.

2. Success on the merits: With respect to likelihood of success on the merits, there are two issues on which Arrington must show it can succeed: (a) the well can be economically recompleted in the Morrow; and (b) it has made a good faith effort to voluntarily pool M&W into the well unit. These are expanded upon below.

(a) Economics:

(i) Arrington drilled and completed the subject well as a Morrow producer in 2004. M&W participated in the well.

(ii) Arrington re-worked the well in 2007, and production from the Morrow ceased shortly thereafter. Mr. Carrasco, Arrington's engineer, 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. **See hearing transcript and M&W's exhibits.**

(iii) Arrington proposed a re-work of the well in July 2007 in the Cisco/Canyon formation, but that workover was never done.

(iv) The well has not produced since 2007, and it was Arrington's workovers that caused the well to cease producing.

(v) Arrington did not present any evidence on well economics or reserves.

Ordering Paragraph IV.E. M&W presented economics which showed that a Morrow workover, *even if successful*, would be at best marginal, and probably uneconomic.

Ordering Paragraph III.B.2.

Because Arrington's proposed *third* Morrow completion will be uneconomic, there is no waste, and correlative rights are unaffected.

(b) **Good Faith Effort.**

(i) Under NMSA 1978 §70-2-17.C, Arrington has to make a good faith effort to obtain voluntary joinder of the pooled interests before filing a pooling application.

(ii) In March 2010 Arrington sent a Cisco/Canyon well proposal to M&W.

Ordering Paragraph III.B.1(g). Arrington owned no rights in the Cisco/Canyon, and thus that proposal was improper.

(iii) In May 2010 Arrington proposed a Morrow recompletion. **Ordering Paragraph III.B.1(h).** *Arrington simultaneously filed its pooling application.*

(iv) At the hearing in this matter, Arrington did not even present its Morrow proposal as an exhibit, but rather presented only the inapplicable March 2010 letter.

Arrington Exhibit 4.

Based on the foregoing, Arrington never made a good faith effort to pool the Morrow, and that failure cannot be cured after the fact.

3. Balancing of Equities: A review of the equities in the case shows that they favor M&W. These factors include:

(a) As noted in paragraph 2(a) above, it was Arrington's own operational failures that caused the subject well to cease producing in the Morrow formation.

(b) As noted in paragraph 2(b) above, Arrington did not conduct a good faith effort to obtain voluntary pooling. In addition, it did not present proper evidence of its efforts at the hearing.

(c) Arrington's May 2010 Morrow proposal falsely indicated that the prior JOA covering the subject well was still in effect. M&W had to subsequently file suit in Lea County District Court to obtain a release of the JOA from Arrington.

(d) After filing its pooling application, and learning of M&W's opposition, Arrington obtained an "exclusive" easement from the surface owner for access to the well. *Arrington is now claiming that such easement grants it the exclusive right to use the wellbore.* However, the applicable law is that M&W, as mineral owner/lessee of the wellsite, has the right to use the wellbore to access its minerals regardless of Arrington's easement.

(e) M&W has been delayed for a year in its plans to re-complete the well in the Cisco/Canyon formation, increasing its costs and causing it lost production in the intervening period.

It is clear that Arrington has acted inequitably, and the balancing factor favors M&W.

4. Bond: NMRA 1-066 requires a party moving for an injunction to obtain and file a bond to cover any damages caused to the enjoined party. Arrington has not offered to do so. This is another factor militating against Arrington.

5. Miscellaneous: Arrington's motion stated that M&W's APD to re-enter the well had been denied. That was because the well had not produced for more than two years, and an additional bond was required. M&W has filed the appropriate bond with the Division.

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

Respectfully submitted,

A handwritten signature in black ink, appearing to read "James Bruce", is written over a horizontal line.

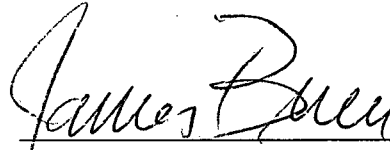
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served upon the following counsel of record this 12th day of April, 2011 by facsimile transmission:

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