

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

2013 APR -1 A 10: 59

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

**APPLICATION OF MARSHALL & WINSTON, INC.
FOR A NON-STANDARD OIL SPACING AND
PRORATION UNIT AND COMPULSORY POOLING,
LEA COUNTY, NEW MEXICO.**

Case No. 14,962

MOTION TO EXCLUDE WITNESSES AND TESTIMONY

Marshall & Winston, Inc. ("Applicant") submits this motion to exclude the witnesses listed in the pre-hearing statement filed by Endurance Resources, LLC ("Endurance"), and in support thereof, states:

1. In this case Applicant seeks an order approving a 320-acre non-standard oil spacing and proration unit (project area) in the Bone Spring formation comprised of the S/2 of Section 3, Township 19 South, Range 32 East, NMPM. Applicant further seeks the pooling of all mineral interests in the Bone Spring formation underlying the S/2 of Section 3 to form a non-standard 320-acre oil spacing and proration unit (project area) for all pools or formations developed on 160 acre spacing within that vertical extent, including the East Lusk-Bone Spring Pool. The unit is to be dedicated to the TJG Fed. Com. 3 Well No. 1H.

2. This case was heard on March 7th. Endurance entered an appearance and requested, over Applicant's objection, that the case be continued. Endurance stated that it does not oppose the drilling of the proposed well, but wants a larger fracture stimulation than proposed by applicant. The continuance was granted. The parties have met, but their positions are unchanged.

3. The case is currently scheduled for the April 4th hearing. According to Endurance's pre-hearing statement, it plans on presenting evidence regarding stimulation practices and related economics.

4. Applicant submits that such testimony is improper in this case, and should be excluded, for the following reasons:

(a) Different fracture stimulation procedures and other such operational matters are not parameters which the Division can or should mandate.

(b) This is a routine pooling case, where Applicant sent well proposals to the working interest owners in August 2012. **There is no opposing pooling application.** In such matters, where the parties cannot agree on voluntary participation, NMSA §70-2-17.C mandates that the Division "shall pool" the interest owners in the well unit.

(c) In this case 80% of the working interest owners in the proposed well have signed Applicant's JOA and have agreed to its proposed stimulation procedure. Endurance, with a minority 14.5% working interest, should not have the right to mandate a procedure which the overwhelming majority find unnecessary.¹

(d) Endurance is not adversely affected by the drilling of the well as proposed by Applicant. Endurance can join in the well or go non-consent if it thinks the well is uneconomic. In addition, Applicant has made an offer to acquire Endurance's interest.

For the foregoing reasons, the evidence Endurance intends to present is irrelevant and immaterial, and should be excluded.

WHEREFORE, Applicant requests that Endurance's witnesses be excluded and that the matter be taken under advisement.

¹ The owners of the remaining 5% working interest are unlocatable or have not responded to well proposals.

Respectfully submitted,



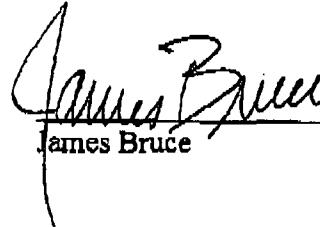
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served upon the following counsel of record this 1st day of April, 2013 by facsimile transmission:

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