RECEIVED
MAY 12 1997
OIL CONSERVATION DIVISION

MILLER, STRATVERT & TORGERSON, P.A.
LAW OFFICES

RANNE B. MILLER
ALAN C. TORGERSON
ALICE TOMLINSON LORENZ
GREGORY W. CHASE
ALAN KONRAD
LYMAN G. SANDY
STEPHEN M. WILLIAMS
STEPHAN M. VIDMAR
ROBERT C. GUTIERREZ
SETH V. BINGHAM
MICHAEL H. HOSES
JAMES B. COLLINS
TIMOTHY R. BRIGGS
RUDOLPH LUCERO
DEAN G. CONSTANTINE
DEBORAH A. SOLOVE
GARY L. GORDON
LAWRENCE R. WHITE
SHARON P. GROSS
VIRGINIA ANDERMAN
MARTE D. LIGHTSTONE
JOHN R. FUNK
J. SCOTT HALL
THOMAS R. MACK
TERRI L. SAUER
JOEL T. NEWTON
JUDITH K. NAKAMURA
THOMAS M. DOMME
DAVID H. THOMAS III
C. BRIAN CHARLTON
RUTH O. PREGENZER
JEFFREY E. JONES
MANUEL I. ARRIETA
RALPH WM. RICHARDS
LEONARD D. SANCHEZ
ROBIN A. GOBLE
ALISON I. ARIAS
JAMES R. WOOD
DANA M. KYLE
KIRK R. ALLEN
RUTH M. FUESS
JAMES B. GREEN
KYLE M. FINCH
CYNDI A. MADRID
H. BROOK LASKEY
KATHERINE W. HALL
KENNETH B. BACA
FRED SCHILLER

WILLIAM K. STRATVERT, COUNSEL
PAUL W. ROBINSON, COUNSEL

ALBUQUERQUE, N.M.
500 MARQUETTE N.W., SUITE 1100
POST OFFICE BOX 25687
ALBUQUERQUE, N.M. 87125-0687
TELEPHONE: (505) 842-1950
FAX: (505) 243-4408

LAS CRUCES, N.M.
500 SOUTH MAIN, SUITE 600
POST OFFICE BOX 1209
LAS CRUCES, N.M. 88004-1209
TELEPHONE: (505) 523-2481
FAX: (505) 526-2215

FARMINGTON, N.M.
300 WEST ARRINGTON
POST OFFICE BOX 869
FARMINGTON, N.M. 87499-0869
TELEPHONE: (505) 326-4521
FAX: (505) 325-5474

SANTA FE, N.M.
150 WASHINGTON AVENUE, SUITE 300
POST OFFICE BOX 1986
SANTA FE, N.M. 87501-1986
TELEPHONE: (505) 989-9614
FAX: (505) 989-9857

PLEASE REPLY TO SANTA FE

May 12, 1997

Mr. William J. LeMay, Director
New Mexico Oil Conservation Division
2040 South Pacheco
Santa Fe, New Mexico 87505

Re: Application of Gillespie-Crow, Inc. for Unit Expansion, Lea County, New Mexico; Motion to Strike; Case No. 11724

Dear Mr. LeMay:

Enclosed for filing is Enserch Exploration, Inc.'s Reply Pursuant to Its Motion to Strike and Response to the Hanley/Yates Motion to Dismiss.

Very truly yours,

MILLER, STRATVERT & TORGERSON, P.A.

J. Scott Hall

JSH:CMB
Enclosure

cc: Mr. David Catanach (w/enclosure)
Rand Carroll, Esq. (w/enclosure)

RECEIVED
MAY 12 1997
CONSERVATION DIVISION

BEFORE THE

OIL CONSERVATION DIVISION

NEW MEXICO DEPARTMENT OF ENERGY AND MINERALS

APPLICATION OF GILLESPIE-CROW, INC. FOR UNIT EXPANSION, STATUTORY UNITIZATION, AND QUALIFICATION OF THE EXPANDED UNIT AREA FOR THE RECOVERED OIL TAX RATE AND CERTIFICATION OF A POSITIVE PRODUCTION RESPONSE PURSUANT TO THE "NEW MEXICO ENHANCED OIL RECOVERY ACT," LEA COUNTY, NEW MEXICO.

CASE NO. 11724

ENSERCH EXPLORATION'S REPLY PURSUANT TO ITS MOTION TO STRIKE AND RESPONSE TO THE HANLEY/YATES MOTION TO DISMISS

Enserch Exploration, Inc., through its counsel of record, submits this Reply pursuant to its Motion To Strike and responds to the Hanley/Yates Motion To Dismiss.

I. The Improper Hanley/Yates De Facto Application.

It is significant that nowhere in the Hanley/Yates response to the Motion To Strike[1] is there any explanation for the failure to follow the prescribed procedures under either (1) the WLSU Unit Agreement, (2) the Statutory Unitization Act, (3) the Oil and Gas Act, or (4) the Division's Rules. Instead, the response is nothing more than a rationalization that the untimely **de facto** application should be made a part of this case for the reason that there may be certain undisclosed "relevant" evidence. This singular contention does not justify the inappropriate expansion of the instant case beyond the scope of the properly submitted, noticed and advertised

[1] The Hanley/Yates response incorrectly refers to the Enserch motion as a "Motion To Stay". Neither Enserch nor Gillespie-Crow seek to stay or otherwise delay this proceeding.

application presently before the Division. The eleventh-hour maneuver to do so offends all notions of fairness and due process.

The Hanley/Yates response misses the point of the Motion To Strike: The procedures for initiating the administrative processes of the Division are clearly set forth in the Division's rules and statutes; These rules and statutes have meaning and are to be adhered to, for only by so doing can the Division assure the protection of the due process rights and property rights (including correlative rights) of the applicants and affected parties coming before it. By enacting Section 70-2-13, the Legislature has seen to it that the Division's examiners have the tools to assure fairness and due process in their proceedings; That statute specifically authorizes an examiner "to take all measures necessary or proper for the efficient and orderly conduct of...hearing[s]." Id. Included within that statutory authority is the discretion to strike non-conforming applications and other improperly raised matters that will interject confusion and unnecessarily prolong what is otherwise a relatively simple case.

To justify the attempt to expand this case, Hanley and Yates ask the Division to accept in the blind that its evidence is "relevant". Under a properly submitted and advertised application, it might be; but in the context of **this** application, it is not. The question is not whether the undisclosed Hanley/Yates evidence is "relevant"; Rather, the question is whether it is admissible. The benchmark for admissibility in this case is whether it is relevant to the propriety of the inclusion of the 160 acres and the participation formula proposed by Gillespie-Crow. The undisclosed evidence may not be admitted for its putative relevance to the separate **de facto** application; That is beyond the scope of this case. To the extent such evidence is offered, it is immaterial and wastes the time of the parties and the Division and is consequently

excludable.

It is unfair to ask parties who are in compliance with the Division's rules to respond to what is in substance a different case with unknown evidence. Fairness will only accrue if Hanley/Yates abide by the Division's statutes and rules by way of a properly submitted, noticed and advertised application where they may more appropriately proffer their separate evidence.

II. The Motion To Dismiss.

The Hanley/Yates Motion To Dismiss is deficient for two primary reasons: (1) The motion is untimely and (2), the movants are estopped to deny that inclusion of the 160 acres is appropriate.

The Hanley/Yates disregard for the Division's procedural statutes and rules continues: The motion, just like the **de facto** application, was not submitted in a timely manner to allow its consideration either before or on the May 15, 1997 hearing date. See, Section 70-2-23 N.M. Stat. Ann. (1978).

Additionally, the Hanley/Yates Motion to Dismiss is inconsistent with the position they take under their **de facto** application which, itself, seeks expansion of the unit to include the 160 acres that are the subject of this proceeding, among others. Consequently, the propriety of the expansion to the S/2 SE/4 of Section 28 and the W/2 SE/4 of Section 34 should not be contested in this case. The only substantive dispute, according to the earlier testimony of the Hanley/Yates witnesses, is the quantum of the participation factor to be attributed to these tracts; Nothing more.

The Hanley/Yates motion is further inconsistent with the position taken by them in

connection with their separate Motion To Dismiss in Case No. 11599. In that motion, which was denied on August 22, 1996, Hanley/Yates asserted that the Unit Operator should follow the procedures under the Statutory Unitization Act. Indeed, Hanley/Yates pointed out that in situations such as this "...the previously established unit is treated as a single tract and the tracts to be added to the unit are evaluated on an individual tract basis."[2] Gillespie-Crow has adhered to the very procedures demanded earlier by Hanley/Yates; In view of their earlier position, Hanley/Yates cannot now cite to isolated excerpts from the Statutory Unitization Act as meaningful support for their inconsistent motion to dismiss.

II. Conclusion.

As evidenced by their own pleadings and their **de facto** application, it is apparent that Hanley and Yates do not oppose the Unit Operator's application to include the two 80-acre tracts in the West Lovington Strawn Unit. Such being the case, Gillespie-Crow's properly submitted application should be allowed to proceed through the administrative process without the elements of confusion precipitated by the inappropriate effort to expand the case beyond that noticed and advertised. The restriction of the case and limitation of evidence to the issues properly before the Division is necessary for the "efficient and orderly conduct" of the hearing.

MILLER, STRATVERT & TORGERSON, P.A.

By J. Scott Hall

J. Scott Hall
Attorneys for Enserch
Exploration, Inc.
Post Office Box 1986
Santa Fe, New Mexico 87504-1986
(505) 989-9614

[2] Pg. 7, Motion To Dismiss of Yates Petroleum Corporation, et al.; NMOCD Case No. 11599

Certificate of Mailing

I hereby certify that a true and correct copy of the foregoing was faxed and mailed to counsel of record on the 12 day of May, 1997, as follows:

William F. Carr, Esq.
Campbell, Carr, Berge & Sheridan
P.O. Box 2208
Santa Fe, NM 87504
Attorneys for Yates Petroleum Corp. and Hanley Petroleum Corp.
Fax: 983-6043

James Bruce, Esq.
P.O. Box 1056
Santa Fe, New Mexico 87504-1056
Attorneys for Gillespie-Crow, Inc.
Fax: 982-2151

W. Thomas Kellahin, Esq.
Kellahin & Kellahin
P.O. Box 2265
Santa Fe, New Mexico 87504-2265
Attorneys for Chesapeake Operating, Inc.
Fax: 982-2047

Rand L. Carroll, Esq.
New Mexico Oil Conservation Division
2040 S. Pacheco St.
Santa Fe, NM 87505-5472
Fax: 827-7177

J. Scott Hall