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Hand Delivered

David Catanach  
New Mexico Oil Conservation Division  
2040 South Pacheco Street  
Santa Fe, New Mexico 87505

Re: Skelly Unit Waterflood Expansion Application  
The Wiser Oil Company (Unit Operator)

Dear Mr. Catanach:

We represent The Wiser Oil Company ("Wiser"), and have been asked to respond to the letter of Eric D. Dixon, representing Herschel Caviness, requesting a hearing on the waterflood expansion application. Mr. Caviness' complaint is that Wiser has not agreed to pay him surface damages. For the reasons set forth below, Wiser requests that you dismiss Mr. Caviness' complaint and issue a waterflood expansion order.

The Skelly Unit covers all or parts of Sections 14, 15, 21, 22, 23, 27, and 28, Township 17 South, Range 31 East, in Eddy County. I have examined the records of the Bureau of Land Management ("BLM") in Santa Fe, and all lands in the unit are federally owned (both surface and minerals). Wiser is the lessee under federal oil and gas leases covering the above land. Mr. Caviness' interest is limited to surface grazing permits or leases on the property. The unit has conducted waterflood operations for a number of years, which Wiser is seeking to expand at this time.

Wiser, as mineral lessee, has the right to use as much of the surface as is reasonably necessary in order to conduct its operations, without liability to the surface owner. Only where the lessee's use of the surface is unreasonable or negligent is the lessee liable for surface damages. **Amoco Production Co. v. Carter Farms Co.**, 103 N.M. 117, 703 P.2d 894 (1985). There is no complaint that Wiser's use of the surface is unreasonable. Of course, Wiser has a bond in place with the BLM to cover such things as surface damages. More importantly, it is illegal for a grazing lessee to request and accept surface damages from another federal lessee, and it is illegal for Wiser, as mineral lessee, to pay surface damages to a grazing lessee. **See** BLM Memorandum dated May

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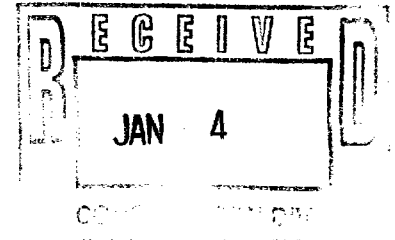
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*Hand*  
*To this extent*  
*to dismiss the*  
*objection?*  
*Yes. But*  
*We should give*  
*Caviness a copy of all this*  
*in a letter.*

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21, 1993 (copy attached as Exhibit A). Finally, the OCD does not have jurisdiction to determine surface damages.<sup>1</sup> Therefore, Wiser requests that the Division issue a waterflood expansion order without hearing.

Very truly yours,

HINKLE, COX, EATON, COFFIELD  
& HENSLEY, L.L.P.



James Bruce

cc: Eric D. Dixon  
Lauri Block  
Michael R. Burch  
Douglas L. Lunsford

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<sup>1</sup>Apparently Mr. Caviness does not challenge the contents of the waterflood expansion application, but rather wants a hearing to force Wiser to pay surface damages.