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April 30, 1998

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RECEIVED
APR 30 1998
Oil Conservation Division

Lori Wrotenbery, Director
New Mexico Department of Energy,
Minerals and Natural Resources
2040 South Pacheco Street
Santa Fe, New Mexico 87505

Re: Oil Conservation Division Case No. 11724 (De Novo):
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

Oil Conservation Division Case No. 11954:
Application of Hanley Petroleum, Inc. and Yates Petroleum Corporation 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

Dear Ms. Wrotenbery:

Enclosed for your consideration is the Response to the Application for Rehearing of Hanley Petroleum, Inc. and Yates Petroleum Corporation in the above-captioned case.

Your attention to this request is appreciated.

Very truly yours,

WILLIAM F. CARR
WFC:mlh
Enclosures
cc: Marilyn Hebert, Esq.
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J. Scott Hall, Esq.
James Bruce, Esq.
W. Thomas Kellahin, Esq.

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

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
(DE NOVO)

APPLICATION OF HANLEY PETROLEUM, INC. AND YATES PETROLEUM CORPORATION 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. 11954

RESPONSE TO APPLICATION FOR REHEARING OF HANLEY PETROLEUM, INC. AND YATES PETROLEUM CORPORATION

The Commission has directed that Gillespie-Crow, Inc. ("Gillespie") and EXX Corporation ("EXX") share data upon which the West Lovington Strawn Unit ("WLSU") rests with those they are attempting to force into the Unit. However, Gillespie and EXX refuse to do so. They contend that this information is protected from disclosure by the New

Mexico Uniform Trade Secrets Act and therefore they cannot be required to produce it to a competitor. Gillespie and EXX also contend the Commission's order to disclose this data violates long standing Commission policy. Both arguments are wrong.

Gillespie and EEX's refusal to produce this seismic data raises the following questions:

1. How can the Statutory Unitization Act's requirement of good faith negotiations be met, if those whose interests may be taken are not allowed to review the data that the owners inside the original unit boundary utilized to reach agreement on the unit boundaries and the allocation of production therein?

2. How can the Commission determine if the share of unit production allocated to Yates and Hanley is "fair, reasonable and equitable," if data used to allocate over 95% of this production is not produced or if the allocation is based on a 1995 interpretation of the reservoir, which has now been proven wrong by subsequent drilling.

3. How can the Commission hearing on the Gillespie application meet fundamental due process standards if the data used by the working interest owners in the original unit is not produced to Yates and Hanley for their use in a case where their constitutionally protected mineral interests in the WLSU are at risk?

BACKGROUND:

The following facts support the Commission's Order to produce seismic data:

1. Gillespie and EXX used seismic data to develop the West Lovington Strawn Unit and the allocation of production therefrom. *See*, Exhibit A to this Response (Summary of Testimony concerning the use of seismic data from the original Oil Conservation Division unitization hearing for the West Lovington Strawn Unit, Case No. 11195, June 16, 1995).

2. Gillespie and EXX shared their seismic data with other operators who were then competitors of Gillespie in the area of the proposed unit, including Phillips Petroleum Company, David Petroleum Corporation and Snyder Ranches, Inc..

3. This seismic data was used in the negotiations with these operators/ competitors, to reach agreement on the formation of the unit plan and the unit participation formula.

4. The unit participation formula allocates unit production based on the geological and geophysical interpretation of hydrocarbon pore volume ("HPV") under each tract in the unit.

5. The unit's original horizontal boundaries were not challenged at the Division Examiner hearing although it contains large areas for which there is no well control. [1]

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[1] The geological interpretation used to allocate HPV within the original unit area is suspect in several ways. First, it includes almost all of the acreage in the NW/4 of Sections 33 and 34, Township 15 South, Range 35 East. The HPV in these 160-acre tracts is contoured to closely follow the surface ownership of Gillespie. The contours extend to and make right angle turns in the Section corners. There is no well control to justify these interpretations. *See*, Gillespie/EXX Exhibit 3 from the original unitization hearing, Isopach Map prepared by Crow, Case 10449, June 16, 1995, attached hereto as Exhibit B and the Snyder Exhibit 7 from the original unitization hearing, Hydrocarbon Pore Feet Map, prepared by Platt-Sparks and Associates, Case 10449, June 16, 1995, attached hereto as Exhibit C. If more HPV is allocated to these tracts than appears on the seismic data which Mr. Crow utilized to draw this boundary (Tr. p. 40-42, 59-61, Case 11195), following unit expansion the interests of Yates and Hanley outside the original unit boundary will be diluted. Seismic data is necessary to confirm this boundary.

The Snyder Ranches interpretation increased the HPV in five 40-acre tracts along the southern boundary of the unit area. Compare Exhibits B and C. Three of these tracts are owned by Gillespie and two are owned by EXX. This interpretation conflicts with the original interpretation of Mr. Crow. Again, there is no well control to justify this extension of HPV in the southern portion of the unit. As in the NW/4 of Section 33 and 34, if more HPV is allocated to these tracts than appears on the underlying seismic data, following unit expansion the interests of Yates and Hanley will be diluted. Seismic data is necessary to confirm the southern boundary of the unit.

To obtain the participation of Phillips in the original unit, seismic data was provided to Phillips and lengthy negotiations ensued. The result of these negotiations was an increase in the allocation of HPV to Phillips. If more HPV is allocated to this tract than is reflected in the underlying data, there will be a corresponding dilution of the interest of Yates and Hanley in the expanded unit.

6. The Gillespie interpretation of hydrocarbon pore volume in the proposed unit area was challenged by Snyder Ranches ("Snyder") and the Division accepted the Snyder interpretation over Gillespie's. Gillespie and EXX did not challenge the Division's acceptance of the Snyder interpretation and ratified the Division's order.

7. The geological/geophysical interpretation used to define the original reservoir has been proven wrong by the post unitization drilling of wells outside the unit boundary (the State "S" Well in Section 34, Township 15 South, Range 35 East, the Hanley Chandler Well No. 1 in Section 28, Township 15 South, Range 35 East, and the Snyder "EC" Com. Well No. 1 in Section 6, Township 16 South, Range 36 East, NMPM.)

8. Gillespie now seeks to expand the WLSU to include the acreage dedicated to two of these wells.

9. In none of the negotiations for unit expansion has Gillespie or EXX been willing to share seismic data with Yates or Hanley.

10. Gillespie and EXX assert Hanley should risk its own capital and acquire its own seismic (Application for Rehearing, ¶ 28). However, the facts show that Hanley has attempted to acquire its own seismic data on the acreage which offsets its Chandler Well No.1 but Gillespie refused to grant a seismic permit on this acreage thereby preventing Hanley from obtaining this information. Furthermore, the seismic survey Hanley paid to have conducted on its acreage resulted in the acquisition of data on certain acreage in the N/2 of Section 33 but Gillespie has prevented the company which conducted the survey from providing this data to Hanley. *See* Affidavit of Brett K. Bracken attached hereto as Exhibit D.

Without the production of seismic data, there is no way for Yates, Hanley or the Commission to determine if the proposed unit expansion and the allocation of production pursuant to the unit participation formula are fair and protect correlative rights.

11. Hanley and Yates have sought the seismic data of Gillespie and EXX by subpoena and the Chairman of the Commission has ruled that this data must be produced.

12. Enserch and Gillespie refuse to produce this data.

I.

THE NEW MEXICO UNIFORM TRADE PRACTICES ACT DOES NOT PRECLUDE THE PRODUCTION OF SEISMIC DATA

Gillespie and EXX argue that the information which the Commission has ordered them to produce is protected by the New Mexico Uniform Trade Secrets Act, NMSA 1978, Section 57-3A-1 *et. seq.* (1989).[2]

The problem with the Gillespie/EXX analysis is that the New Mexico Uniform Trade Secrets Act does not apply to this situation. That Act is designed to prevent the dissemination of trade secrets acquired by "improper means." The Act provides a definition of "improper means"--"theft, bribery, misrepresentation, breach, or inducement of a breach of a duty to maintain secrecy or espionage through electronic or other means . . . ." NMSA 1978, § 57-3A-2(A). None of those factors is present. Surely Gillespie and EXX do not suggest that the Commission's April 6, 1998 letter is a form of theft, bribery,

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In support of their proposition that the Commission's order to produce seismic data violates the Uniform Trade Secrets Act, Gillespie and Enserch offer the affidavit of Professor Bruce Kramer, who expressly limits his description of his expertise to the field of "oil and gas conservation statutes in New Mexico and other States." *Affidavit of Bruce Kramer*, April 24, 1998, at ¶ 10 (Exhibit 6 to Gillespie/EXX Application for Rehearing).

misrepresentation or espionage.[3] In the absence of such factors, the Uniform Trade Secrets Act simply does not apply.

The Commission has ordered Gillespie and EXX to produce data so that the Commission might discharge its statutory duties in this statutory unitization case. Gillespie and EXX's refusal to produce that data is premised upon their assertion that the Commission's policy, and the regulations of every other state and federal agency, hold confidential the type of information at issue. That argument is at best misleading.

The starting point for Gillespie and Enserch is the assertion that this Commission's policy has been to refuse to force parties to produce seismic information. As hereinafter discussed, the recent cases in fact reveal a different policy--if the applicant used the data, it must produce it. See Order No. R-10891, Finding 7, September 26, 1997.

Furthermore, the confidentiality rules at issue cannot be abused to circumvent parties' constitutional rights or this Commission's statutory duties. In fact, all that the rules are designed to do is protect from the dissemination of such information **to the public**. The clearest illustration of this point is found in an opinion from the Interior Board of Land Appeals, **Yates Petroleum Corp., et. al.**, 131 IBLA 230 (1994). In **Yates**, as here, the party resisting discovery argued that federal regulations which prohibit the release of "confidential

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[3] In addition, Professor Kramer admits that the Commission does not have a duty to maintain the secrecy of the relevant data. *See* Affidavit of Bruce Kramer at ¶ 10 (Exhibit 6 to Gillespie/EXX Application for Rehearing).

information" to the public similarly prohibited the release of information to the opposing party. The IBLA explicitly rejected that contention: "the guiding regulations differentiate between disclosure of claimed confidential information to the general public and release of such information to the parties in a proceeding before the Department and require that a person requesting disclosure to a party establish that disclosure of the material is prohibited by law." **Yates**, 131 IBLA at 239. (emphasis in original).

In this case, far from proving that the disclosure of the information is prohibited by law, Gillespie and EXX have illustrated that due process ***requires*** that disclosure. In its April 6, 1998 Order, the Commission correctly found that Gillespie and EXX relied upon the seismic data in forming the original unit. *See*, Exhibit A, which identifies more than 80 references to seismic data in the June 16, 1995 statutory unitization hearing. However, to some extent, the question of whether Gillespie or EXX relied upon the seismic information in developing the unit, or whether or not it was accepted by a Division Examiner in 1995, has obscured the real question before the Commission: Is the information sought by Yates and Hanley relevant to the Commission's statutory charge of ensuring that the allocation formula as to the new acreage is fair, reasonable, and equitable?

In answering that question, the Commission, and Hanley and Yates, are entitled to look at all relevant information. Gillespie and EXX argue that they did not rely upon the data in forming the original unit. To that contention there are two responses: either, as the

Commission found, Gillespie and EXX actually did rely upon the information; or the information does not support the original unit boundaries and interpreted reservoir thickness. If the former is the truth, then Gillespie and EXX are now trying to mislead the Commission. If the latter is the truth, then the Commission should carefully analyze the withheld data to determine the extent of the error in the original unit interpretation. The information is relevant to the Commission's statutory inquiry in this case. Therefore, it should be produced, regardless of whether Gillespie and EXX actually relied upon it in drawing and adjusting the original boundary and intervals, and negotiating their interpretation with their original partners. Only by examining that data can the Commission actually determine how unfair, unreasonable, and inequitable the Gillespie/EXX application actually is. Only by examining that data can the Commission protect the constitutionally-protected property rights of Yates and Hanley.

Even Courts which hold that a trade secret or other confidential information is subject to some measure of protection still require that the information be produced. The production is simply subject to an appropriate protective order. For example, in ***Garcia v. Peeples***, 734 S.W.2d 343 (Tex. 1987), a personal injury plaintiff sought to discover manufacturing information that the defendant felt consisted of "trade secrets." The Texas Supreme Court ordered that the documents were properly discoverable, relying upon the policy that:

> [M]odern discovery rules were designed to "make a trial less a game of blind man's bluff and more a fair contest with the basic issues and facts disclosed to

> the fullest practicable extent." [***United States v. Proctor & Gamble Co.***], 356 U.S. 677, 682, 78 S.Ct. 983, 986. This court recognized that goal of discovery and pointed out that "the ultimate purpose of discovery is to seek the truth, so that disputes may be decided by what the facts reveal, not by what facts are concealed." ***Jampole*** [***v. Touchy***], 673 S.W.2d [569], at 573 [(Tex. 1984)]. Unfortunately, this goal of the discovery process is often frustrated by the adversarial approach to discovery. The "rules of the game" encourage parties to hinder opponents by forcing them to utilize repetitive and expensive methods to find out the facts . . . The truth about relevant matters is often kept submerged beneath the glossy denials and formal challenges to requests until an opponent unknowingly utters some magic phrase to cause the facts to rise.

Garcia, 734 S.W.2d at 347 (citation omitted). It is remarkable that, in this case, Gillespie and EXX have engaged in precisely the sort of gamesmanship condemned by the ***Garcia*** court. Gillespie and EXX have refused to produce the relevant data for over a year. They have hidden behind their claim that they "didn't utilize the data." They have abused and refused to comply with this Commission's discovery process. And now, in the face of the Commission's April 6, 1998 Order, they seek to perpetuate their attempts to hide the ball through citation of an irrelevant state statute and a non-existent Commission policy against disclosure of the data.

Instead of endorsing the deception of Gillespie and EXX, the Commission should enforce its Order that the data be produced. Any concerns about confidentiality can be easily and appropriately handled through the entry of a protective order. As the ***Garcia*** court noted, instead of prohibiting the discovery, "[o]ut of an abundance of caution, the trial court, after determining which documents are true trade secrets, can require those wishing to share the

discovered material to certify that they will not release it to competitors or others who would exploit it for their own economic gain. Such an order would guard GMS's proprietary information, while promoting efficiency in the trial process." ***Garcia***, 734 S.W.2d at 348.

Indeed, the Courts that have considered the issue have ordered the production of documents originally withheld on the basis of "trade secrets." ***See generally*** James J. Watson, J.D., Annotation, Discovery of Trade Secret in State Court Action, 75 ALR 4th 1009 (1990) ("discovery of a trade secret is allowed upon establishment of the requisite foundation therefor, subject to such conditions as the court, in its discretion, impose for the preservation and protection of the rights of the owner of the secret which is to be disclosed"). All that Hanley and Yates are required to show is that the information is relevant to the issues and necessary to the determination of the case. ***See Watson***, 75 ALR 4th at 1028. As noted above, the only way that the Commission, Hanley and Yates can determine the extent to which the original Unit was incorrectly defined, and the extent to which the allocation formula is incorrect, is to examine the data requested. Having made that showing, it is imperative that the data be disclosed. To do otherwise is to make a mockery of the Commission's duty to ensure that the expanded Unit, and the resulting allocation formula, are fair, reasonable and equitable ***as to the new acreage***.

What makes the refusal of Gillespie and EXX to produce the data on the grounds of confidentiality so incredible is the fact that the information is not sought for any competitive

purpose. Hanley and Yates are not competitors of Gillespie and EXX; rather, the companies are partners, by operation of Division Order No. R-10864. Gillespie and EXX sought to expand the Unit to include Yates and Hanley's property. To do that, they invoked the Statutory Unitization Act and the power of this Commission. Since Order No. R-10864 was entered, and the Commission denied Hanley and Yates' Motion to Stay the unit expansion pending ***de novo*** review by the Commission, the Unit has been expanded, and is purportedly being operated with Hanley and Yates' property included. By operation of statute, Hanley and Yates are now partners of Gillespie and EXX.

The Uniform Trade Secrets Act does not apply. The policy to which Gillespie and Enserch refer in support of their quest to perpetuate their deception does not exist. Under any construction of the rules and statutes cited by Gillespie and EXX, the seismic data should be made available to Hanley and Yates: 1) because the confidentiality provisions cited do not apply to deprive parties of information necessary to the presentation of their case; 2) because Hanley and Yates are partners to, and not competitors of, Gillespie and EXX; 3) because the Commission can fashion appropriate limitations on the use of the data; 4) because the Commission cannot discharge its duties of determining whether the expanded unit and the resulting allocation formula are fair, reasonable, and equitable ***as to the new acreage;*** and 5) most importantly, because Yates and Hanley have a constitutional right to review the data.

II.

THE PRODUCTION OF SEISMIC DATA IS CONSISTENT WITH COMMISSION POLICY

The central issue presented by this Application for Rehearing is the production of the seismic data which Gillespie and EXX used to develop the West Lovington Strawn Unit.

Gillespie asserts that it has been the Division's policy not to require the production of seismic data, relying on the affidavit of Professor Kramer. (*See*, Affidavit of Bruce Kramer at ¶ 8 (Exhibit 6 to Gillespie/EXX's Application for Rehearing). Perhaps there are matters concerning Division policy about which Professor Kramer is no expert. In the past, Division policy has consistently required the production of the information upon which an application rests or the application is subject to dismissal. Most recently, in Case 11844, Chesapeake Operating Inc. sought the approval of an unorthodox well location based on its interpretation of 3-D seismic data. At the Examiner Hearing, Chesapeake initially elected not to produce the seismic data it had utilized to select the unorthodox well location. Marathon Oil Company, the offset operator, moved for dismissal of the application unless this data be produced. The Division's ruling on the motion to dismiss is set out in Finding (7) of Order No. R-10891, dated September 26, 1997, which reads:

> "(7) At the time of hearing Marathon objected to the admission of applicant's geologic structure map (Exhibit No. 4) on the basis that the applicant did not present the 3-D seismic data upon which the structure map was based. The Division subsequently determined that the applicant should be required to submit the supporting 3-D seismic data."

When the Examiner ruled that Chesapeake's supporting seismic data would have to be produced or the application would be dismissed, Chesapeake produced seismic data.

This has been Division policy for many years. Any contrary policy would result in cases being decided on what facts are concealed, not what the facts reveal, and would create endless violations of the due process rights of the parties who come before the Division/Commission.

Perhaps the objection of Gillespie and EXX to the Chairman's April 6, 1998 ruling could be corrected with an amended order which simply provides that if this seismic data is not produced, the Gillespie Application for expansion of the West Lovington Strawn Unit will be denied.

III.

STATUTORY UNITIZATION ACT REQUIRES PRODUCTION OF SEISMIC DATA

To expand a statutory unit, all requirements of the Statutory Unitization Act must be met. To comply with these statutory requirements, the operator must make a good faith effort to secure voluntary unitization of the interests in the expanded unit area. NMSA 1978, Sec. 70-7-6 A (5) (1975). Prior to the formation of the West Lovington Strawn Unit in 1995, Gillespie shared relevant seismic data with other operators/competitors in the proposed unit area. However, in the area now covered by the proposed unit expansion, Gillespie has refused to make this data available to those it is attempting to force into the unit.

In ordering the production of seismic data, the Commission Chairman observed that "a good faith effort seems to require that the working interest owners of the area proposed to be combined with the original unit into an expanded unit be offered the same information made available to the owners of the various tracts comprising the original unit." Until Gillespie produces the relevant seismic data, Yates and Hanley are unable to determine if the unit participation formula is fair to them, and their negotiations with Gillespie and EXX cannot meet the requirements of the Statutory Unitization Act.

This statute also imposes on the Commission the duty to find that the participation formula in the unit agreement allocates the produced and saved unitized hydrocarbons to the separately owned tracts in the unit on a "fair, reasonable and equitable basis". NMSA 1978, Sec 70-7-6 A (6) (1975). The Commission simply cannot carry this duty unless the seismic data is produced which was used by Gillespie and EXX to draw the unit boundaries and allocate hydrocarbon pore volume to each tract in the unit .

Gillespie and EXX appear to believe that they can use the Platt-Sparks hydrocarbon pore volume map which was accepted by the Division in the1995 unitization hearing (Order No. R-10499) instead of current geological and geophysical evidence to allocate production in an expanded unit. *See*, Affidavit of Ralph Nelson, ¶ 5, Exhibit 5 to the Gillespie/EXX's Application for Rehearing. Their reliance on Order No. R-10499 is misplaced. The one thing which has definitely been learned since 1995 is that the interpretation of hydrocarbon

pore volume which is used to allocate production to the owners in the West Lovington Strawn Unit is wrong. Since the time the unit was formed, each new well drilled in this area has further demonstrated that whatever data was used in 1995, Gillespie and EXX failed miserably in their efforts to interpret the HPV in this reservoir.

To expand this unit, Gillespie and EXX must present evidence on the HPV under each tract in the expanded unit based on the relevant technical evidence available today. That evidence includes the seismic data that was used to determine the unit boundaries in the original unit and the allocation of HPV therein. If they have inflated the HPV in the original unit area, the allocation to the Yates and Hanley outside this area will be diluted and their correlative rights will be impaired. If the reservoir extends to the east, beyond Gillespie's proposed boundary for the expanded unit, to lands owned by Gillespie and EXX which benefit from the WLSU pressure maintenance project, this is information which the Commission must have to determine if the unit and its participation formula are fair.

If the mandates of the Statutory Unitization Act are to be met, seismic data must be produced.

IV.

UNLESS SEISMIC DATA IS PRODUCED, THE DUE PROCESS RIGHTS OF YATES AND HANLEY WILL BE VIOLATED

Hanley and Yates own oil and gas interests in the West Lovington-Strawn Pool which Gillespie seeks to include in its West Lovington-Strawn Unit. In New Mexico an interest in

oil and gas is a constitutionally protected property right. These interests are subject to all of the protections afforded by the New Mexico and United States Constitutions. ***Uhden v. New Mexico Oil Conservation Comm'n***., 112 N.M. 528, 530, 817 P.2d 721,723 (1991).

Furthermore, correlative rights are unique property rights. ***Cowling v. Board of Oil, Gas and Mining***, 830 P.2d 220, 225 (Utah). When the Division affects a party's correlative rights, it must ensure that such action complies with its duties to protect that party's constitutionally-protected rights. ***Uhden***, 112 N.M. at 530, 817 P.2d at 723; ***Santa Fe Exploration Co. v. Oil Conservation Comm'n***.,114 N.M. 103, 113,835 P.2d 819, 829.

Federal courts have decided that the New Mexico Oil Conservation Commission proceedings are entitled to recognition as valid proceedings by the federal courts. ***Amoco Production Co. v. Heimann***, 904 F.2d 1405, 1415-17 (10th Cir. 1990). However, that approval is premised upon the presumption that the Commission's proceedings meet due process standards which include the ability of adversely affected parties to present evidence and cross-examine witnesses. The right to confront and cross-examine witnesses applies to administrative proceedings where an interest protected by the Due Process clause is at stake. *See* ***Doe v. United States Civil Service Comm'n***., 483 F. Supp. 539, 579 (S.D.N.Y. 1980) (*citing* ***Morrisey v. Brewer***, 408 U.S. 471, 489 (1972)). Without the opportunity to review the underlying seismic information upon which the production from the Unit will be allocated to the interest owners in the unit, the due process rights of Hanley and Yates to

cross-examine Gillespie will be denied. As it stands, Hanley and Yates face the deprivation of constitutionally protected property rights in an administrative hearing because they are denied the right to review the data used to make the geological interpretation of this reservoir upon which Unit production will be allocated. If this data is not made available to Hanley and Yates their due process rights are violated and the order of the Commission will be invalid as to their interests.

CONCLUSION

This case has become a classic example of what happens when the statutory unitization act is not used to effect the production of hydrocarbons but instead is used by the unit operator to deprive other owners of their mineral interests without due process of law.

The central issue raised by the Application for Rehearing of Gillespie and EXX involves the production of seismic data. If they have accurately honored this information in their interpretation of the reservoir, why are they afraid to produce it?

Respectfully submitted,

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ATTORNEYS FOR HANLEY
PETROLEUM INC. AND
YATES PETROLEUM CORPORATION

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Response to Application for Rehearing of Hanley Petroleum, Inc. and Yates Petroleum Corporation was hand-delivered this 30th day of April, 1998 to the following counsel of record:

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