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April 3, 1997

PLEASE REPLY TO SANTA FE

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

BY FACSIMILE

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

Dear Mr. LeMay:

Enclosed for filing by facsimile is Enserch Exploration, Inc.'s Motion to Vacate Hearing on Motion to Compel.

Very truly yours,

MILLER, STRATVERT & TORGERSON, P.A.



J. Scott Hall

JSH:CMB
Enclosure

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

**MOTION TO VACATE HEARING
ON MOTION TO COMPEL**

Enserch Exploration, Inc., ("Enserch"), by and through its counsel of record, Miller, Stratvert & Torgerson, P.A., moves that the administrative hearing scheduled for Friday, April 4, 1997 be vacated. In support, Enserch states:

1. This proceeding was initiated on January 4, 1997 pursuant to the Application of Gillespie-Crow, Inc., unit operator for the West Lovington Strawn Unit. The scope of the proceeding is limited to obtaining Division approval of unit expansion, statutory unitization and qualification for recovered oil tax rate. Enserch owns significant working interests dedicated to the Unit and accordingly, is a party affected by the proceeding.

2. By their joint Motion To Compel, Yates Petroleum Corporation and Hanley Petroleum, Inc., seek to compel the production of documents and other materials described in an overbroad and burdensome subpoena which Yates and Hanley earlier procured from the Division on February 19, 1997. As measured against the Gillespie-Crow Application, the scope of the matters sought under the subpoena far exceeds those matters "...pertinent to some question

lawfully before [the] division for determination." See, Section 70-2-8 N.M. Stat. Ann. (1978 Comp.). Additionally, the subpoena and motion are objectionable for, among other reasons, that Yates and Hanley improperly seek the production of proprietary and confidential business materials, as well as communications and documents protected by various attorney-client and work product privileges. Enserch has standing to assert these objections, and others, for the reason that it has vested property rights, proprietary interests and legal privileges potentially affected by the subpoena and Motion to Compel.

3. As reflected on its face, the Motion invokes the administrative process for the express purpose of the issuance of an "Order to Compel". Accordingly, the provisions of Section 70-2-23 N.M. Stat. Ann. (1978 Comp.) are made applicable to the Division's proceedings under the Yates/Hanley Motion to Compel. The Division has issued no formal notice of a hearing on the Motion to Compel that comports with the Division's rules or enabling statutes. The parties to the proceeding were advised on Thursday, April 3, 1997 on an informal, verbal basis that the Motion to Compel would be addressed on Friday, April 4th.

4. Section 70-2-23 provides, in relevant part, as follows:

70-2-23. Hearings on rules, regulations and orders; notice; emergency rules.

Except as provided for herein, before any rule, regulation or order...shall be made under the provisions of this act, a public hearing shall be held at such time, place and manner as may be prescribed by the division. the division shall first give reasonable notice of such hearing (in no case less than ten days, except in an emergency) and at any such hearing any person having an interest in the subject matter of the hearing shall be entitled to be heard.

The section, then, operates as an absolute statutory prohibition to the conduct of a hearing pursuant to the Yates/Hanley motion any time sooner than ten days from the issuance

of reasonable notice. Reasonable notice, according to the Division's own rules and regular practice, is written and published notice. As indicated above, such notice has yet to issue.

5. The eleventh-hour effort of Yates and Hanley to circumvent the express provisions of Section 70-2-23 offends all notions of fairness and violates the due process rights of the affected parties.

WHEREFORE, Enserch Exploration, Inc. respectfully requests that the April 4, 1997 hearing on the Yates/Hanley Motion To Compel be vacated and rescheduled following the issuance and publication of proper notice in accordance with the Division's statutes and regulations.

Respectfully submitted,

MILLER, STRATVERT & TORGERSON, P.A.

By



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Certificate of Mailing

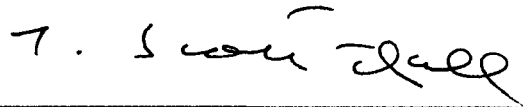
I hereby certify that a true and correct copy of the foregoing was served by facsimile and U.S. Mail to counsel of record on the 3 day of April, 1997, as follows:

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