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March 20, 1997

PLEASE REPLY TO SANTA FE

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

Mr. David Catanach
New Mexico Oil Conservation Div.
2040 South Pacheco
Santa Fe, New Mexico 87501

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

Dear Mr. Catanach:

Enclosed is a courtesy copy of the Motion to Strike we have filed on behalf of Enserch
Exploration, Inc. in the above referenced matter. We would appreciate this matter being set for
a pre-hearing conference sometime before the May 15th examiner hearing.

Very truly yours,

MILLER, STRATVERT & TORGERSON, P.A.

J. Scott Hall

J. Scott Hall, Esq.

JSH:CMB
Enclosure

cc: James A. Bruce Esq.
Wm. F. Carr, Esq.
W. Thomas Kellahin, Esq.

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 STRIKE

Enserch Exploration, Inc., ("Enserch"), by and through its counsel of record, Miller, Stratvert & Torgerson, P.A., moves pursuant to 70-2-13 N.M. Stat. Ann. (1978) that the Division enter its order striking and otherwise denying the relief requested on behalf of Hanley Petroleum, Inc. and Yates Petroleum, Inc., ("Hanley/Yates") by way of their counsel's April 22, 1997 letter to area interest owners. 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 seeking, generally, Division approval of unit expansion, statutory unitization and qualification for the recovered oil tax rate. Enserch owns approximately 47% of the working interest dedicated to the unit under its presently existing boundaries.

2. The present horizontal boundaries for the West Lovington Strawn Unit were approved by the Division in Order No. R-10449 entered on June 15, 1995. By Order No. R-10499, the Division recognized Gillespie-Crow, Inc. as the designated operator of the Unit under the Unit Agreement and Unit Operating Agreement. Consequently, under the terms of the Order

and the Agreements, only Gillespie-Crow has the standing to seek the amendment or expansion of the Unit.

On April 22, 1997, counsel for Hanley/Yates sent certified mailings to unidentified interest owners in the "West Lovington Strawn Pool Area" indicating Hanley/Yates would invoke the process of the Division to (1) expand the unit to include what it contends is proven production acreage and (2) impose a new production allocation formula. Included with the April 22, 1997 letter was an acreage description for the expansion of the unit into an additional 2,640 acres. The April 22, 1997 letter from counsel is attached hereto as Exhibit "A".

Significantly, counsel for Hanley/Yates failed to send the **de facto** pleading to counsel of record and there is no indication that Hanley/Yates notified the Division of its intentions to utilize the processes of the state in this manner. It is not known whether the failure was by design or neglect.

The Hanley/Yates **de facto** application is improper for a number of reasons, the most of important of which follow:

A. By their inappropriate **de facto** application, Hanley/Yates attempt to circumvent the specifically circumscribed procedures set forth in the Statutory Unitization Act, Sections 70-7-1 N.M. Stat. Ann. (1978), et seq.. The Statutory Unitization Act is a special statutory proceeding and consequently, its provisions must be strictly followed.

B. The **de facto** application exceeds the scope of the hearing beyond that set forth in the Unit Operator's properly filed application. Consequently, because it affects separate acreage and separate geological conditions, the **de facto** application constitutes a new and separate matter, making applicable the requirements of 19 NMAC 15.N.1203.

C. The **de facto** application violates a number of the express provisions of the Unit Agreement for the West Lovington Strawn Unit approved by the Division by Order No. R-10449. Included among those are Unit Agreement Section 4 requiring advance notification and concurrence of at least 75 percent of the working interest owners, along with approval of the BLM and State Land Office.

D. The **de facto** application is an eleventh-hour effort to recover from the failure of Hanley/Yates to timely file its own proper application to institute a proceeding in conformance with 19 NMAC 15.N.1203. Proceeding in this manner is not authorized by either the Division's rules or enabling statutes.

E. The interjection of the new matters raised in the Hanley/Yates **de facto** application prejudices the ability of the Unit Operator, Gillespie-Crow, Inc. and Enserch to adequately prepare for hearing and poses a significant risk of delay. Evidence on the record establishes the on-going damages being incurred by the unit interest owners on a daily basis due to the accrual of gas injection costs attendant with the pressure maintenance project.

F. Section 70-7-9 of the Statutory Unitization Act provides the exclusive procedure for the Unit Operator to apply for an order from the Division amending the plan of unitization. Subsection B of 70-7-9 addresses proposals for new production allocation formulae:

[N]o such amendment shall change the percentage for the allocation of oil and gas as established for any separately owned tract by the original order, except with the consent of all working interest owners and royalty owners in such tract. . .

It is not likely Hanley/Yates have obtained the consent of all the working and royalty interests in the acreage affected by their **de facto** application.

G. The **de facto** application of Hanley/Yates does not meet the requisites for applications for unitization set forth in Section 70-7-5 N.M. Stat. Ann. (1978).

H. The **de facto** application also seeks to invoke the process of the state in order to affect the legitimate contractual relations and real property interests of third-parties under the Unit Agreement and Unit Operating Agreement for the West Lovington Strawn Unit.

In their capacity as administrative law judges, the Division's hearing examiners have ample authority under the Oil and Gas Act to properly control the course of their hearings. Section 70-2-13 N.M. Stat. Ann. provides:

[A]n examiner. . . shall have the power to regulate all proceedings before him and to perform all acts and take all measures necessary or proper for the efficient and orderly conduct of such hearing.

This power is similar to that accorded to the Courts in the conduct of case management conferences under Rule 1-016 SCRA (1986) allowing judges to take action on any such matters as may aid in the disposition of the action. (See, e.g., Rule 1-016.C.12). The Division's hearing examiners are similarly authorized to control the course and conduct of their hearings, including striking improperly revised matters.¹

First and foremost among all its duties, the Division has an obligation under law to remain vigilant in the protection of the due process rights of the parties whose significant property interests are affected by the Division's exercise of authority under the Oil and Gas Act and the Statutory Unitization Act. The Division must not allow its processes to be abused by those who have, in a single proceeding, exhibited a chronic disregard for the Division's rules and enabling statutes. Neither the Division nor the proponents of unit expansion should be

¹For additional collaries, see Rules 11, 12.F and 14.A SCRA (1986).

obligated to prepare for a hearing that one party improperly seeks to broaden to include matters beyond the scope of the Unit Operator's properly pleaded, noticed and advertised application. To do otherwise would allow for the conduct of administrative litigation by surprise to the prejudice of the due process and property rights of the affected parties.

Wherefore, Enserch Exploration, Inc. requests that the Division Examiner enter its Order striking the **de facto** application of Hanley Petroleum, Inc. and Yates Petroleum, Inc., and limiting the scope of the hearing to such matters, including the limitation of evidence, as properly set forth in the Unit Operator's properly noticed and advertised Application.

Respectfully submitted,

MILLER, STRATVERT & TORGERSON, P.A.

By



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

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 5 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.

James Bruce, Esq.
P.O. Box 1056
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Attorneys for Gillespie-Crow, Inc.

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Attorneys for Chesapeake Operating, Inc.



J. Scott Hall

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MILLER, STRATVERT, TUNGER
& SCHLENKER, P.A.
SANTA FE, NEW MEXICO
April 22, 1997

CERTIFIED MAIL-
RETURN RECEIPT REQUESTED

***TO INTEREST OWNERS IN THE WEST LOVINGTON STRAWN POOL AREA, LEA
COUNTY, NEW MEXICO***

Gentlemen:

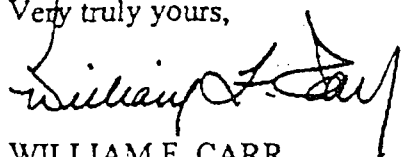
On January 24, 1997, Gillespie-Crow, Inc. filed an application with the New Mexico Oil Conservation Division seeking an order expanding the West Lovington-Strawn Unit under the Statutory Unitization Act to include the S/2 SE/4 of Section 28 and the W/2 SE/4 of Section 34, Township 15 South, Range 35 East, NMPM, Lea County, New Mexico. The application also seeks to qualify the expanded unit for the recovered oil tax rate and certification of a positive production response pursuant to the New Mexico Enhanced Oil Recovery Act.

This application is set for hearing before a Division Examiner on May 15, 1997. At the time of the hearing, Hanley Petroleum, Inc. and Yates Petroleum Corporation will present the results of an oil in place study on this reservoir. Hanley and Yates will ask the Division to exercise its authority under the Statutory Unitization Act to expand this unit to include all acreage that has been proven to be productive in this reservoir. Hanley and Yates will also propose a new formula for the allocation of unit production.

Attached hereto as Exhibit A is a description of the unit boundaries that will be recommended to the Examiner by Hanley and Yates. You are not required to attend this hearing, but as the owner of an interest that may be affected by this recommendation, you may appear and present testimony. Failure to appear at that time and become a party of record may preclude you from challenging this recommendation at a later date.

Parties appearing in cases have been requested by the Division (Memorandum 2-90) to file a Prehearing Statement substantially in the form prescribed by the Division. Prehearing Statements should be filed by 4:00 o'clock p. m. on the Friday before a scheduled hearing.

Very truly yours,



WILLIAM F. CARR
WFC:mlh
ATTORNEY FOR HANLEY PETROLEUM, INC.
AND YATES PETROLEUM CORPORATION
Enc.

