

HOLLAND & HART<sup>LLP</sup>



William F. Carr  
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2004 OCT 12 PM 3 59

October 12, 2004

**VIA HAND DELIVERY**

Mark E. Fesmire, P. E.  
Director  
Oil Conservation Division  
New Mexico Department of Energy,  
Minerals & Natural Resources  
1220 South Saint Francis Drive  
Santa Fe, New Mexico 87505

*Case 13368*

Re: Application of Devon Energy Production Company, L.P.. for approval of an unorthodox well location and authorization to drill a well in the Potash Area, Eddy County, New Mexico.

Dear Mr. Fesmire:

Enclosed is the Application of Devon energy Production Company, L.P. in the above-referenced case as well as a copy of the proposed legal advertisement. Devon requests that this matter be placed on the docket for the November 4, 2004 Examiner Hearings.

Your attention to this matter is appreciated.

Very truly yours,

William F. Carr  
Attorney for Devon Energy Production Company, LP

cc: Gail MacQuesten, Esq.  
Oil Conservation Division

Mr. Ken Gray  
Senior Land Advisor  
Devon Energy Production Company, L.P.

Enclosures

**Holland & Hart** LLP

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

**APPLICATION OF DEVON ENERGY PRODUCTION COMPANY, L.P. FOR AN ORDER AUTHORIZING THE DRILLING OF A WELL IN THE POTASH AREA, EDDY COUNTY, NEW MEXICO.**

2009  
OCT 12  
CASE NO. PM 13368

**APPLICATION**

DEVON ENERGY PRODUCTION COMPANY, L.P. ("Devon"), pursuant to the provisions of Oil Conservation Division Order No. R-111-P ("The Rules and Regulations Governing the Exploration and Development of Oil and Gas in Certain Areas Herein Defined, Which Are Known to Contain Potash Reserves"), applies to the New Mexico Oil Conservation Division for an order approving the drilling of the its Apache 24 Fee Well No. 6 (API No. 30-015-33248) within the Potash Area at a location 1980 feet from the North line and 660 feet from the West line (Unit E) of Section 24, Township 22 South, Range 30 East, NMPM, Eddy County, New Mexico, and in support of this application, states:

1. Devon Energy Production Company is the lessee of certain oil and gas rights under Section 24, Township 22 South, Range 30 East, NMPM, Eddy County, New Mexico. Devon has the right to develop the oil and gas reserves underlying this property.

2. Devon proposes to drill its Apache 24 Fee Well No. 6 to a total depth of approximately 7900 feet to test the Delaware formation, Undesignated Southeast Quahada Ridge-Delaware Pool on a standard 40-acre spacing unit comprised of the SW/4 NW/4 of Section 24.

3. The SW/4 NW/4 of Section 24, the tract upon which Devon proposes to drill, is fee land that is located within the Potash Area.

4. Order R-111-P provides that "Before commencing drilling operations for oil or gas on any lands within the Potash Area" the operator of the well shall provide to each potash operator holding a potash lease within a radius of one mile of the proposed well a copy of its Notice of Intention to Drill and plat showing the location of the well. Rule G.(2).

5. Devon followed the provisions of Order R-111-P, and prepared an Application for Permit to Drill (Form C-101) and a Well Location and Acreage Dedication Plat (Form C-102) showing the location of the Apache 24 Fee Well No. 6. On January 23, 2004, by Certified Mail-Return Receipt Requested, Devon notified IMC Potash Carlsbad, Inc., the lessee of potash reserves within one mile of the proposed well location, of its intent to drill this well and sought IMC's waiver of objection to the proposed location. This notice was received by IMC on January 26, 2004.

6. No objection to the Application for Permit to Drill was received by the Division or Devon within the 20-days provided for objections by Order R-111-P and Devon's Application for Permit to Drill was approved by the Division on February 19, 2004.

7. On April 12, 2004, after the period for filing objections had run and the APD for the Apache 24 Fee Well No. 6 had been approved by the Division, IMC wrote Devon with copies to the Division, objecting to the proposed well location and stating that its five year mine plan shows that IMC expects to mine within 1/4th mile of this location in the year 2007.

8. By letter dated September 20, 2004, the Oil Conservation Division rescinded Devon's Application for Permit to Drill.

9. The Division acted improperly in rescinding its approval of Devon's Application for Permit to Drill the Apache 24 Fee Well No. 6 for the following reasons:

A. While Order No. R-111-P states that "Any application to drill in the LMR area, including buffer zones, may be approved only by mutual agreement of the lessor and lessees of both potash and oil and gas interests." Rule G(3),

1. The subject acreage cannot be within a LMR for:

a. Order No. R-111-P, (A) provides that only potash lessees may designate to the State Land Office and BLM potash deposits considered by the potash lessee to be LMR. Rule G(a),

b. Order No. R-111-P makes no provision for an LMR determination when the proposed well location is on fee lands, nor does Order No. R-111-P authorize a potash lessee to designate an LMR over lands not leased to that potash lessee. See, Order No. R-9990, Finding 11, October 18, 1993, and,

c. since there are no potash leases covering the SW/4 NW/4 of Section 24, the fee tract upon which Devon proposes to drill cannot be within an LMR, and

2. if this acreage was within an LMR,

a. the fee owner of the unleased potash underlying the SW/4 NW/4 of Section 24 has consented to Devon's drilling its

proposed Apache 24 Fee Well No. 6 on its acreage and desires to have its oil and gas minerals developed first and in preference to any potash reserves underlying its fee property. See, Order No. R-9990, Finding 14, October 18, 1993, and

- b. All parties owning potash and oil and gas interests underlying the SW/4 NW/4 of Section 24 have reached agreement on the extraction of their minerals.

B. Applications to drill outside the LMR will be approved, pursuant to requirements set out therein, provided there is no protest from a potash lessee “within 20 days of his receipt of a copy of the notice.”. Rule G(3). Here The application of Devon must be approved because :

1. as shown herein above, this acreage cannot be in an LMR;
2. there are no active mine workings or mined-out areas for more than one mile from the proposed location;
3. if it had a right to object, IMC failed to do so in a timely manner: and
4. Devon has complied with all requirements of Order No. R-111-P.

10. By rescinding this APD, the Division has denied Devon and its lessors, the owners of the underlying oil and gas rights in this property, the opportunity to produce

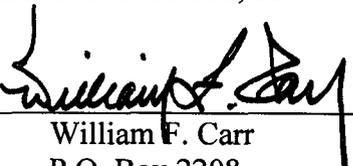
the recoverable oil and gas under their property and unless reversed, will cause the waste of hydrocarbons. Devon therefore requests that this matter be set for hearing before an examiner of the Oil Conservation Division.

11. Approval of this application will protect correlative rights for it will afford Devon and the other owners of the oil and gas rights the opportunity to produce their just and equitable share of the reserves under their property for it will honor the mutual agreement between the owners of both the potash and oil and gas interests for the development of these fee lands. Approval of this application will otherwise be in the best interest of conservation and the prevention of waste.

WHEREFORE, Devon Energy Production Company, L.P. requests that this application be set for hearing before an Examiner of the Oil Conservation Division on November 4, 2004, and that, after notice and hearing, the Division enter its order authorizing Devon to drill its proposed Apache 24 Fee Well No. 6 at the proposed standard well location in Unit E of Section 24, Township 22 South, Range 30 East.

Respectfully submitted,

HOLLAND & HART, LLP

By: 

William F. Carr  
P.O. Box 2208  
Santa Fe, NM 87504-2208  
Telephone : (505) 988-4421

ATTORNEYS FOR DEVON ENERGY  
PRODUCTION COMPANY, L.P.

**PROPOSED LEGAL AD:**

CASE 13368:

**Application of Devon Energy Production Company, L.P. for an order authorizing the drilling of a well in the Potash Area, Eddy County, New Mexico.** Applicant seeks an order approving the drilling of its proposed Apache 24 Fee Well No. 6 within the Potash Area at a location 1980 feet from the North line and 660 feet from the West line (Unit E) of Section 24, Township 22 South, Range 30 East, NMPM, Eddy County, New Mexico. This well will be drilled to an approximate depth of 7,900 to test all formations from the surface to the base of the Delaware formation, Southeast Quadada Ridge-Delaware Pool and will be at a standard location in all formations. Said location is within the Potash Area and located approximately 8 miles east of Carlsbad, New Mexico.



October 14, 2004

**CERTIFIED MAIL -- RETURN RECEIPT REQUESTED**

Mr. Dan Morehead, Superintendent  
Mine Engineering and Construction  
IMC Potash Carlsbad Inc.  
Post Office Box 71  
Carlsbad, New Mexico 88221-0071

New Mexico State Land Office  
Oil, Gas and Minerals Division  
Post Office Box 1148  
Santa Fe, New Mexico 87504-1148  
Attention: Mr. Jeff Albers

Bureau of Land Management  
620 East Green Street  
Carlsbad, New Mexico 88220-6292  
Attention: Craig Cranston

Re: Application of Devon Energy Production Company, L.P. for an order authorizing the drilling of a well in the Potash Area, Eddy County, New Mexico.

Gentlemen:

This letter is to advise you that Devon Energy Production Company, L.P. has filed the enclosed application with the New Mexico Oil Conservation Division seeking an order approving the drilling of its Apache 24 Fee Well No. 6 to be located at orthodox well locations in the SW/4 NW/4 of Section 24, Township 22 South, Range 30 East, NMPM, Eddy County, New Mexico. This acreage is located in the Potash Area as defined by Division Order No. R-111-P.

This application has been set for hearing before a Division Examiner on November 4, 2004. You are not required to attend this hearing, but as an owner of an interest that may be affected by this application, you may appear and present testimony. Failure to appear at that time and become a party of record will preclude you from challenging the matter at a later date.

Parties appearing in cases are required by Division Rule 1208.B to file a Pre-Hearing Statement at the Santa Fe Office of the Oil Conservation Division located at 1220 South Saint Francis Drive, Santa Fe, New Mexico 87505, three days in advance of a scheduled hearing. This statement must include: the names of the parties and their attorneys; a concise statement of the case; the names of all witnesses the party will call to testify at

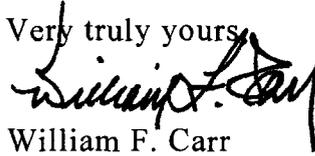
October 14, 2004

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the hearing; the approximate time the party will need to present its case; and identification of any procedural matters that are to be resolved prior to the hearing.

Very truly yours,



William F. Carr

ATTORNEY FOR DEVON ENERGY  
PRODUCTION COMPANY, L.P.

Enclosure