

# KEMP SMITH LLP

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CHARLES C. HIGH, JR.  
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September 6, 2005

**Via FEDEX**

Mr. Mark E. Fesmire, P.E.  
Director  
Oil Conservation Division  
New Mexico Department of Energy,  
Minerals and Natural Resources  
1220 South Saint Francis Drive  
Santa Fe, New Mexico 878505

Re: Order No. R-12402; Case No. 13367

Dear Mr. Fesmire:

Enclosed for filing in the above-captioned case is an original and four copies of an Application by Mosaic Potash Carlsbad, Inc. for de novo review by the Oil Conservation Commission of Division Order R-12402.

A copy of the Application for Hearing was served on counsel for Devon Energy Production Company by facsimile and certified mail on September 6, 2005.

Also enclosed is an original and two copies of an Application for Stay of Order R-12402 pending review and decision by the Oil Conservation Commission. A proposed Order is attached to the Application. Again, a copy of the Application for Stay was served on counsel for Devon by facsimile on September 6, 2005.

Your attention to these matters is appreciated.

Yours very truly,

KEMP SMITH LLP

By:   
Charles C. High, Jr.

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2005 SEP 7 AM 9 04

Mr. Mark E. Fesmire, P.E.  
September 6, 2005  
Page 2

Cc: Dan Morehouse

BEFORE THE NEW MEXICO OIL CONSERVATION COMMISSION  
STATE OF NEW MEXICO

IN THE MATTER OF:

APPLICATION OF BASS ENTERPRISES  
PRODUCTION COMPANY FOR AN ORDER  
AUTHORIZING THE DRILLING OF A WELL  
IN THE POTASH AREA, EDDY COUNTY,  
NEW MEXICO

) CASE NO. 13367  
)  
) ORDER NO. R-12402  
)  
)

2005 SEP 7 PM 6:04

**APPLICATION FOR HEARING**

MOSAIC POTASH CARLSBAD, INC. ("Mosaic Potash"), hereby applies for a hearing de novo before the New Mexico State Oil Conservation Commission ("OCC") pursuant to Rule 1220 of the Oil Conservation Division's ("OCD") Rules of Procedure on all issues raised by the application of Bass Enterprises Production Company ("Bass") to drill its James Ranch Union Well No. 93 at a location 660 feet from the North and East lines of Section 7, Township 23 South, Range 31 East, NMPM, Eddy County, New Mexico, which is within the "Designated Potash Area", and in support thereof shows the following:

1. On December 2, 2004, a hearing on Bass's application was held before Examiner Michael E. Stogner. Mosaic Potash appeared at the hearing and presented arguments and evidence opposing the application.
2. Despite its objections, on August 8, 2005, the Director of the New Mexico Oil Conservation Division issued an Order approving the well at the proposed location.
3. The proposed well location is within an area determined by the U. S. Bureau of Land Management to be "potash enclave."
4. The proposed well location is within life-of-mine reserves (LMR) designated by Mosaic Potash pursuant to Division Order R-111-P. Mosaic Potash, therefore, is adversely affected by Order 12402.
5. The proposed well, if allowed, will waste valuable potash deposits and create a safety hazard to underground miners.

WHEREFORE, Mosaic Potash respectfully requests that this matter be set for hearing before the OCC and upon such hearing, an order be entered denying the application for permit to drill in Section 7, and for such other and further relief to which it may be entitled.

Respectfully submitted,

KEMP SMITH LLP  
P.O. Box 2800  
El Paso, Texas 79999-2800  
915.533.4424  
915.546.5360 (FAX)

By: \_\_\_\_\_

CHARLES C. HIGH, JR.  
CLARA B. BURNS

Attorneys for Mosaic Potash Carlsbad, Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Application for Hearing was sent by facsimile (505-983-6043) and mailed by certified mail, return receipt requested on this 2<sup>nd</sup> day of September, 2005, to William F. Carr, Esq., Holland & Hart LLP, P. O. Box 2208, Santa Fe, New Mexico 87504, attorney for Bass Enterprises Production Company.

\_\_\_\_\_  
Charles C. High, Jr.

BEFORE THE OIL CONSERVATION DIVISION

STATE OF NEW MEXICO

IN THE MATTER OF:

APPLICATION OF BASS ENTERPRISES	)	CASE NO. 13367
PRODUCTION COMPANY FOR AN ORDER	)	
AUTHORIZING THE DRILLING OF A WELL	)	ORDER NO. R-12402
IN THE POTASH AREA, EDDY COUNTY,	)	
NEW MEXICO	)	

**APPLICATION FOR ORDER STAYING ORDER OF DIRECTOR**  
**PENDING DE NOVO HEARING BY OIL CONSERVATION**  
**COMMISSION**

2005 SEP 7 PM 9:04

MOSAIC POTASH CARLSBAD, INC. ("Mosaic Potash") applies for an order staying the decision and order issued in this matter by Mark E. Fesmire, Director of the Oil Conservation Division ("Director"), on August 8, 2005, and in support thereof shows the following:

1. On August 8, 2005, following a hearing before a hearing examiner, the Director of the Oil Conservation Division ("OCD") entered an Order in this matter approving the application of Bass Enterprises Production Company ("Bass") to drill its James Ranch Union Well No. 93 at a location 660 feet from the North and East lines of Section 7, Township 23 South, Range 31 East, NMPM, Eddy County, New Mexico.

2. On September 6, 2005, Mosaic Potash sent to the OCD by Federal Express for delivery and filing on September 7, 2005, within the time specified in Rule 1220 of the OCD's Rules on Procedure, an Application for Hearing de novo before the New Mexico Oil Conservation Commission ("OCC"). A copy of the Application for Hearing by the OCC was served on counsel for Bass by facsimile and mail. A certification of service was attached to the

Application and filed with the OCD.

3. Section 70-2-13, NMSA 1978, as well as Rule 1220, specifically provides that when a matter is referred to an examiner for hearing, as was done here, and a decision is rendered, as happened here, any party of record "shall have the right" to have the matter heard de novo before the OCC.

4. The de novo hearing provided by Section 70-2-13 and OCD Rule 1220 only has meaning if it occurs at a time before the well being challenged is drilled. Indeed, if a stay is not granted and the proposed well is drilled, Mosaic Potash's right to a de novo hearing is meaningless.

5. A stay in this case is necessary to prevent waste, a basis provided for by OCD Rule 1220B. The proposed well is in an area clearly determined by the Bureau of Land Management to be "potash enclave." The drilling of the well, therefore, if allowed, will clearly result in the waste of valuable potash deposits.

6. A stay is also necessary to prevent gross negative consequences, another ground provided by Rule 1220B. Indeed, if a stay is not granted, the hearing requested by Mosaic Potash before the OCC will be an exercise in futility if, in the meantime, the proposed well is drilled. Such an act would prevent the OCC from granting Mosaic Potash, a party of record adversely affected by the Order, any effective relief.

7. Nor will there be any harm to Bass if a stay is granted. The OCD Rules clearly provide for a hearing as a matter of right before the OCC in matters of this type and Bass is certainly aware of that right. A delay to give Mosaic Potash a right it has by law - and preserve the status quo - so that relief can be given, if warranted, is not the type of delay that can be characterized as harm to Bass.

WHEREFORE, Mosaic Potash respectfully requests that the OCD enter an order staying Order R-12402 until the matter can be heard and decided de novo by the OCC.

Respectfully submitted,

KEMP SMITH LLP  
P.O. Box 2800  
El Paso, Texas 79999-2800  
915.533.4424  
915.546.5360 (FAX)

By:

  
CHARLES C. HIGH, JR.  
CLARA B. BURNS

Attorneys for Mosaic Potash Carlsbad, Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was sent by facsimile (505-983-6043) and mailed by certified mail, return receipt requested on this 22 day of September, 2005, to William F. Carr, Esq., Holland & Hart LLP, P. O. Box 2208, Santa Fe, New Mexico 87504, attorney for Devon Energy Production Company, L.P.

  
\_\_\_\_\_  
Charles C. High, Jr.

BEFORE THE OIL CONSERVATION DIVISION  
STATE OF NEW MEXICO

IN THE MATTER OF:

APPLICATION OF BASS ENTERPRISES	)	CASE NO. 13367
PRODUCTION COMPANY FOR AN ORDER	)	
AUTHORIZING THE DRILLING OF A WELL	)	ORDER NO. R-12402
IN THE POTASH AREA, EDDY COUNTY,	)	
NEW MEXICO	)	

**ORDER GRANTING STAY OF ORDER R-12402**

The Division Director, having considered the Application of Mosaic Potash Carlsbad, Inc for a stay of Division Order No. R-12402,

**FINDS THAT:**

- (1) Mosaic Potash has filed a timely application for de novo review by the Oil Conservation Commission of Division Order R-12402, issued on August 8, 2005.
- (2) OCD Rule 1220 provides that a stay may be granted by the Division if necessary to, among other reasons, prevent waste or prevent gross negative consequences to any affected party.
- (3) Mosaic Potash has demonstrated that unless a stay is granted, it will be deprived of its right to de novo review by the OCC at a time when effective relief can be granted and, for that reason, it will suffer gross negative consequences. This is one of the basis for a stay in Rule 1220B.
- (4) There are no negative consequences to Bass if a stay is entered because a delay so that a matter of this type can be heard de novo by the OCC is contemplated by Division rules.

**IT IS THEREFORE ORDERED THAT:**

- (1) Division Order R-12402 is hereby stayed pending hearing and determination of the Application for Hearing filed by Mosaic Potash with the Oil Conservation Commission.

DONE at Santa Fe, New Mexico, on the \_\_\_\_ Day of September, 2005.

STATE OF NEW MEXICO  
OIL CONSERVATION DIVISION

MARK E. FESMIRE, P.E.  
Director

2005 SEP 7 PM 1:05