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September 25, 2006

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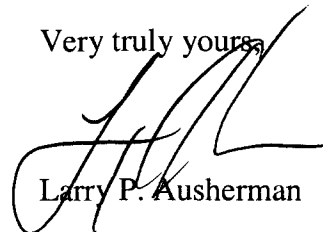
Ms. Florene Davidson
Oil Conservation Division
1220 South St. Francis Drive
Santa Fe, NM 87505

Re: Motion to Strike Notice of Intervetion; In the Matter of the Application of Lynx Petroleum Consultants, Inc. for Permit to Drill in Potash Area, Eddy 'BD' State No. 2 Well, Eddy County, New Mexico; Oil Conservation Division Case No. 13762

Dear Ms. Davidson:

Enclosed for filing in the above referenced are the original and two copies of Intrepid Potash-New Mexico, LLC's Motion to Strike Notice of Intervention. Please return an endorsed copy of the Motion to me in the enclosed self-addressed, stamped envelope. Thank you for your attention to this matter.

Very truly yours,



Larry P. Ausherman

LPA:cpc
Enclosures
cc:w/enclosure

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

IN THE MATTER OF THE APPLICATION OF
LYNX PETROLEUM CONSULTANTS, INC.
FOR PERMIT TO DRILL IN POTASH AREA,
EDDY 'BD' STATE NO. 2 WELL,
EDDY COUNTY, NEW MEXICO.

Case No. 13762

MOTION TO STRIKE NOTICE OF INTERVENTION

Intrepid Potash – New Mexico, LLC (“Intrepid”) hereby moves the Oil Conservation Commission (“OCC”) to strike the August 22, 2006 Notice of Intervention by BEPCo, L.P., Devon Energy Production, L.P., and Yates Petroleum Co. (collectively, the “Intervenors”). As detailed below, striking the Notice of Intervention is proper under NMAC § 19.15.14.1209(C) because: (a) Intervenors lack standing; and (b) Intervenors’ participation does not substantially contribute to the prevention of waste, protection of correlative rights, or the protection of public health or the environment.

As further grounds for its Motion, Intrepid states:

1. Case No. 13762 is an appeal by Lynx Petroleum Consultants, Inc. (“Lynx”) from the denial of Lynx’s application for a permit to drill (“APD”) the Eddy “BD” State No. 2 well, located at 660’ FNL & 1980’ FEL, Section 32, T20S, R30E, Eddy County, New Mexico (“Lynx Well”) in a Known Potash Leasing Area. The location of the Lynx Well is on lands on which Intrepid holds a potash lease from the New Mexico Commissioner of Public Lands.
2. On August 22, 2006, the Intervenors filed their Notice of Intervention (“Notice”) in Case No. 13762.
3. In their Notice, Intervenors argue that intervention is proper because (1) the Oil Conservation Division’s decision “necessarily involves an interpretation and application of Order R-111-P and therefore has a significant impact on the oil and gas industry,” *see* Notice, ¶ 1; and (2) the Intervenors “own oil and gas interests in the Known Potash Leasing Area which will be directly affected by the outcome of this case” and their undisclosed mineral interests are threatened with injury, *see* Notice, ¶ 2. The Intervenors also assert in conclusory terms without factual support that their participation will “contribute substantially to the prevention of waste and the protection of correlative rights.” *See* Notice, ¶ 4.

4. Under Oil Conservation Division regulation, NMAC § 19.15.14.1209(C):

The division examiner or the commission chairman may strike a notice of intervention on a party's motion if the intervenor fails to show that the intervenor has standing, unless the intervenor shows that intervenor's participation will contribute substantially to the prevention of waste, protection of correlative rights or protection of public health or the environment.

Under this regulation, Intervenors clearly bear the burden of proof to show that (1) they have standing, or (2) that their participation as parties will contribute substantially to the prevention of waste and the protection of correlative rights. This burden requires more than the conclusory allegations that Intervenors have presented. *Lujan v. National Wildlife Federation*, 497 U.S. 871, 888 (1990) (refusing to find standing based on the "conclusory allegations of an affidavit").

5. The Intervenors have not met their burden of proof. They have not shown either that they have standing, or that their participation will contribute substantially to the prevention of waste and the protection of correlative rights. Making the general, unsubstantiated statement does not make it so.

6. Intervenors do not allege that they own any interest in Section 32 or in the Lynx Well that is the subject of this proceeding, or that Intervenors' operations on lands outside of Section 32 would be affected in any way by the Lynx Well.

7. In New Mexico, the requirements for standing are injury in fact or imminent injury. *De Vargas Sav. & Loan Ass'n v. Campbell*, 87 N.M. 469, 473, 535 P.2d 1320, 1324 (1975); see also *Lucarelli v. City of S. Portland*, 719 A.2d 534, 535 (Me. 1998) (standing means "demonstrat[ing] a particularized injury" that could be caused by the agency's decision), *Kansas-Nebraska Natural Gas Co. v. State Corp. Com.*, 473 P.2d 27, 32 (Kan. 1970) (standing means having "an immediate and pecuniary interest which would be injuriously affected or aggrieved" by the agency decision).

8. Intervenors do not have standing because Intervenors' have not demonstrated how their vaguely described oil and gas interests in the Known Potash Leasing Area will be injured by the decision in this proceeding that concerns the Lynx Well in Section 32. Only the Lynx Well in Section 32 is at issue in this adjudication. Intervenors' particular interests, rights, and obligations elsewhere in the Known Potash Leasing Area, are not in dispute here.

9. Intervenors should not be allowed to intervene in this dispute between Lynx and Intrepid simply because the decision concerns Order R-111-P, and Intervenors have interests elsewhere that are governed by Order R-111-P. An Intervenor's generalized interest in the law to be applied (in this case, Order R-111-P) does not meet the test for establishing standing; it does not constitute an injury in fact or an imminent injury.

10. If the prospect of the Commission interpreting or applying Order No. R-111-P were sufficient to provide Intervenor with standing, then by that standard, in any OCD adjudication involving a conflict between oil and gas and potash producers, every oil and gas and every potash producer with interests in the Known Potash Leasing Area would have standing. By the same principle, if to establish standing one need only show an interest in the law to be applied, then in any adjudication where the OCD might possibly interpret OCD regulations or the New Mexico Oil and Gas Act, every oil and gas producer in the state could claim standing. For standing, injuries must be "concrete and particularized." *Forest Guardians v. Powell*, 2001 NMCA 28, ¶ 24, 130 N.M. 368, P.3d 803. Further, the "requirement that an injury be particularized means that Plaintiffs must suffer the injury in a personal and individual way." *Id.*

11. Having failed to establish standing, Intervenor has also not shown that their participation as parties will "contribute substantially to the prevention of waste and the protection of correlative rights" under NMAC §19.15.14.1209(C). Intervenor offers no support whatsoever for their conclusory statement that their participation will "contribute substantially to the prevention of waste and the protection of correlative rights." Intervenor has not shown why they can contribute arguments and data about the Lynx Well that the actual parties to the dispute, Lynx and Intrepid, cannot themselves present. Section 32 is not unleased section of state or federal land, where the public interest might support intervention to prevent waste, in the absence of any interested person. Lynx and Intrepid hold the oil and gas and potash leases in this section, and are fully capable of making all arguments against waste of the resources in Section 32. The Intervenor's interest in all cases that apply Order R-111-P does not meet the "substantial contribution" standard. If it does, then all potash companies and all oil and gas producers could intervene in any dispute involving Order R-111-P.

12. To date, rather than "contribute substantially to the prevention of waste and the protection of correlative rights, Intervenor has sought to prevent the Commission from considering the best way to prevent waste and to protect correlative rights. Devon Energy Production Company's August 28, 2006, Motion for Summary Judgment, for example, asks the OCC to resolve this case on the technical grounds that Intrepid's objection was untimely without ever considering Lynx and Intrepid's arguments and data as to the effects on oil and gas and potash of the Lynx Well. (Intrepid is preparing its response to the pending Motions for Summary Judgment.)

13. Even if it is the practice of the OCC to liberally construe its rules and precedent concerning intervention in its proceedings, there must be a limit. Intrepid submits that the OCC should not provide operators with *carte blanche* to intervene without making the appropriate demonstration of facts and law justifying intervention.

WHEREFORE, Intrepid Potash – New Mexico, LLC, hereby moves the Oil Conservation Commission to strike the August 22, 2006, Notice of Intervention by BEPCo, L.P., Devon Energy Production, L.P., and Yates Petroleum Co.

Respectfully Submitted,

By: 

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served upon the following counsel of record via facsimile this 25 day of September 2006:

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