

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

**IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
DIVISION FOR THE PURPOSE OF
CONSIDERING:**

**CASE NO. 14026
ORDER NO. R-12927**

**APPLICATION OF MARBOB ENERGY
CORPORATION FOR AN ORDER
AUTHORIZING THE DRILLING OF A WELL
IN THE POTASH AREA, LEA COUNTY, NEW
MEXICO.**

ORDER OF THE DIVISION

BY THE DIVISION:

This case came on for hearing at 8:15 a.m. on January 24, 2008 and February 21, 2008, at Santa Fe, New Mexico, before Examiner David K. Brooks.

NOW, on this 28th day of March, 2008, the Division Director, having considered the testimony, the record and the recommendations of the Examiner,

FINDS THAT:

- (1) Due notice has been given, and the Division has jurisdiction of the subject matter of this case.
- (2) In this application, Marbob Energy Corporation ("Marbob" or "Applicant") seeks approval of an Application for Permit to Drill (APD) for a gas well at a location that is within the "Potash Area," as defined by Commission Order No. R-111-P, issued in Case No. 9316 on April 21, 1988 (Order No. R-111-P), and located either within, or within the 1/2 mile "buffer zone" surrounding, a potash operator's designated Life-of-Mine Reserves (LMR) area, as defined in Order No. R-111-P.
- (3) Applicant filed the Application for Permit to Drill (APD) its proposed Magnum Pronto State Com. Well No. 2 (the subject well), to be located at a standard gas well location, 1980 feet from the South line and 1980 feet from the West line (Unit K) of Section 32, Township 19 South, Range 32 East, NMPM, in Lea County, New Mexico (the proposed location), with the Hobbs District Office of the Division. Because this

location is within the Potash Area, Applicant notified Intrepid Potash Company (Intrepid), the owner of a potash lease within 1/2 mile of the proposed location.

(4) The Division's Hobbs District Office determined that the proposed well location is within an LMR or buffer zone. Ordering Paragraph G(3) of Order No. R-111-P provides that:

Any application to drill in the LMR area, including buffer zones, may be approved only by mutual agreement of lessor and lessees of both potash and oil and gas interests.

Intrepid did not agree to the drilling of the subject well at the proposed location. Accordingly, the District Office denied the APD.

(5) At the hearing, Applicant appeared through its attorney and presented land and geologic testimony as follows:

(a) Applicant proposes to drill the subject well on a State of New Mexico oil and gas lease comprising all of Section 32, Township 19 South, Range 32 East, to a depth sufficient to test the Morrow formation. Since this area is located in the Lusk-Morrow Gas Pool, spacing for which is governed by special pool rules providing for 640-acre units, the entire section will be dedicated as the spacing unit for this well in the event it is productive in the Morrow.

(b) The minerals underlying the adjacent lands to the south of Section 32, in Sections 4, 5 and 6 of Township 20 South, Range 32 East, are in federal ownership. Applicant operates two wells, the George Federal Com. No. 1 and the George Federal Com. No. 2, that are completed in and producing from the Morrow formation, located on federal leases in Section 5.

(c) The George Federal Com. No. 2 is a prolific Morrow producer, and is likely draining gas reserves from the adjacent Section 32.

(d) Section 32 and Section 5 do not have identical mineral ownership. In addition to the different royalty ownership (state versus federal), there are one or more working interest owners in Section 32 who do not own the same interest in Section 5.

(e) There are inactive potash mine workings to the south of the proposed location, approximately 1 1/2 miles to 2 miles distant. Intrepid is the only potash operator that owns any potash lease within one mile of the proposed location.

(f) In addition to the George Federal Com. No. 1 and No. 2, Applicant also operates the Tres Elo Federal Com No. 1, located to the west of the proposed location, in Section 31, Township 19 South, Range 31 East, which is completed in

and producing from the Morrow, and the Magnum Pronto State Com No. 1, located in the NW/4 of Section 32, which was drilled to the Morrow, but is now producing from the Bone Spring formation.

(g) Cimarex Energy Co. of Colorado operates the Texaco Cities Service State Com No. 1, located in the NE/4 of Section 32, which was drilled as a deep gas well. Division records indicate that this well is completed in, and producing from, the Strawn formation.

(h) Potash miners believe that potash mining operations cannot safely be conducted within 1/2 mile of any active or abandoned deep-gas wellbore.

(i) Virtually all of the area within 1/2 mile of the proposed location, and virtually all of Section 32, is located within 1/2 mile of one or more of the above-identified, existing deep gas wells. All of such area is located within 1/2 mile of one or more existing, active or abandoned oil or gas wellbores.

(j) The proposed location is geologically favorable for a Morrow well, as indicated by its structural position in the Morrow, but more significantly by its proximity to other wells exhibiting favorable Morrow reservoir characteristics. The proposed well will have the potential to produce reserves located in the southeastern and southwestern portions of Section 32 that likely cannot be produced through any existing Morrow well in the vicinity.

(6) Intrepid sent a letter to the Division indicating that it was negotiating with Applicant concerning Applicant's request for consent to drill the subject well. However, neither Intrepid, nor any other party, appeared at the hearing, or otherwise brought to the Division's attention any reason why this Application should not be granted.

(7) After the first hearing in this case, Applicant filed an amended application seeking an order that would allow the district office to approve APDs for additional wells in Section 32, Township 19 South, Range 32 East, NMPM, without approval of potash lessees. Applicant notified Intrepid of the filing of this amended application and informed Intrepid that the amended application would be considered at the second hearing, on February 21, 2008. However, Intrepid neither appeared at the second hearing, or otherwise indicated opposition to the granting of the amended application.

The Division concludes that:

(8) The record does not clearly show whether the subject location is within Intrepid's LMR, or merely within the one-half mile buffer zone. However, this confusion is not significant, since the same provisions of Order No. R-111-P govern the granting of APDs within the LMR and within the buffer zone.

(9) Although Ordering Paragraph G(3) of Order No. R-111-P provides that an APD for a well within the LMR or buffer zone can be approved only with the agreement of the affected potash lessees, Finding Paragraph (20) of the same order states:

The Commission cannot abdicate its discretion to consider applications to drill as exceptions to its rules and orders but in the interest of preventing waste of potash should deny any application to drill in commercial potash areas . . . unless a clear demonstration is made that commercial potash will not be wasted unduly as a result of the drilling of the well.

(10) In this case, Applicant has made a clear demonstration that potash will not be wasted as a result of the granting of its APD for the subject well, since the area that will be rendered unsafe for potash mining by the drilling of the subject well at the proposed location is already condemned for potash mining due to its proximity to other active or abandoned deep gas wells.

(11) The drilling of Applicant's proposed well will not cause waste of potash, and is necessary to prevent waste of natural gas that likely cannot be produced if the well is not drilled, and to protect the correlative rights of the owners of minerals in Section 32. Accordingly, Applicant's APD for the proposed well, if otherwise approvable, should be approved notwithstanding the absence of express consent from Intrepid.

(12) Because all of Section 32 and the immediately surrounding area are already condemned for potash mining by existing, active or abandoned gas wells, the drilling of additional wells for oil or gas in Section 32 will not cause undue waste of potash. Accordingly, Applicant's request, by its amended application, for an order directing the Hobbs District office of the Division to approve otherwise approvable APDs for additional wells in Section 32 without requiring express approval from any potash lessee should also be granted.

IT IS THEREFORE ORDERED THAT:

(1) The Hobbs District office of the Division shall review Marbob Energy Corporation's Application for Permit to Drill its Magnum Pronto State Com. Well No. 2, to be located at a standard gas well location, 1980 feet from the South line and 1980 feet from the West line (Unit K) of Section 32, Township 19 South, Range 32 East, NMPM, in Lea County, New Mexico. If the District Office finds the APD to be otherwise approvable, including compliance with all provisions of Order No. R-111-P except for the provision of Ordering Paragraph G(3) requiring the agreement of potash lessees, the district office shall approve the same.

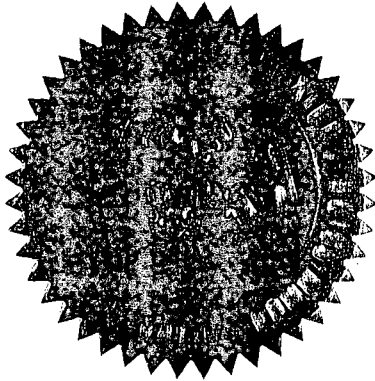
(2) If Applicant, or any other oil and gas operator, files an APD to drill a new well within Section 32, Township 19 South, Range 32 East, NMPM, in Lea County, New Mexico, other than the well described in Ordering Paragraph (1) hereof, the Hobbs District Office of the Division shall, if it finds such application to be approvable, including compliance with all requirements of Ordering Paragraph No. R-111-P except

for the requirement for agreement of potash lessees thereto, shall approve the same, but not before the expiration of twenty days after the oil and gas operator has delivered written notice of the filing of such APD to potentially affected potash lessees in compliance with Ordering Paragraph G(2) of Order No. R-111-P.

(3) All provisions of Order No. R-111-P save and except the provision of Ordering Paragraph G(3) thereof requiring the agreement of potash lessees to the approval of an APD shall continue in full force and affect, and shall apply to the well described in Ordering Paragraph (1) of this order, and likewise to any well approved pursuant to Ordering Paragraph (2) of this Order.

(4) Jurisdiction of this case is retained for the entry of such further orders as the Division may deem necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.



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STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

A handwritten signature in dark ink, appearing to read 'Mark E. Fesmire', written in a cursive style.

MARK E. FESMIRE, P.E.
Director