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2008 MAY 16 PM 4 07

Michael H. Feldewert

Recognized Specialist in the Area of
Natural Resources - oil and gas law -
New Mexico Board of Legal
Specialization
mfeldewert@hollandhart.com

May 16, 2008

VIA HAND DELIVERY

David K. Brooks, Legal Bureau
New Mexico Oil Conservation Division
1220 South St. Francis Drive
Santa Fe, NM 87505

Re: Case No. 14116: Application of Fasken Oil & Ranch to drill its second well in Section 16, T-20-S, R-32-E.

Dear Mr. Brooks:

Enclosed please find (a) the subpoena issued by the Division and served in this matter, (b) the "Exhibit A" referenced in the subpoena and attached to Intrepid's Amended Prehearing Statement, (c) the Objection to Subpoena Duces Tecum that my office received today, (d) the proposed Confidentiality Order that was hand delivered to Intrepid along with the subpoena on May 6th, and (e) Division Order No. R-12031 entered in September of 2003 authorizing Fasken's initial well in Section 16.

You will note that Intrepid refuses to produce *all* of the documents sought by the subpoena under unsubstantiated claims that the requests are "overbroad," "irrelevant" and seek "proprietary" information. Intrepid claims it is "not satisfied" with the proposed Confidentiality Order, but has not discussed the proposed order with me nor offered any alternative order. Most egregious is Intrepid's claim that if it is required to produce the documents, it will take "approximately one month" because Intrepid is too busy handling other matters.

You will recall that the May 1st hearing was continued after Intrepid claimed its witnesses were too busy and that it needed more time to assemble evidence. *See* Intrepid's Amended Prehearing Statement (last page); Intrepid's Motion for Continuance.

Holland & Hart LLP

Phone [505] 988-4421 Fax [505] 983-6043 www.hollandhart.com

110 North Guadalupe Suite 1 Santa Fe, NM 87501 Mailing Address P.O. Box 2208 Santa Fe, NM 87504-2208

Denver Aspen Boulder Colorado Springs Denver Tech Center Billings Boise Cheyenne Jackson Hole Las Vegas Salt Lake City Santa Fe Washington, D.C. ♻

HOLLAND & HART LLP



Fasken hereby requests that the Division schedule a prehearing conference at your earliest convenience to address Intrepid's objections and its latest attempt to delay a hearing in this matter.

Sincerely,

Michael H. Feldewert

cc. Joseph E. Manges, w/o encl.

via hand delivery

MHF
Enclosure

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

APPLICATION OF FASKEN OIL &
RANCH Ltd., FOR AN ORDER AUTHORIZING
AN ADDITIONAL WELL IN THE "POTASH AREA"
AT AN UNORTHODOX WELL LOCATION,
LEA COUNTY, NEW MEXICO

CASE NO. 14116

SUBPOENA DUCES TECUM

TO: Intrepid Potash – New Mexico, LLC
c/o Joseph E. Manges
Comeau, Maldegen, Templeman & Indall
P.O. Box 669
Santa Fe, NM 87504-0669

Pursuant to N.M.S.A. § 70-2-8 (2008) and Rule 1214 of the New Mexico Oil
Conservation Divisions Rules of Procedure, you are hereby ORDERED to appear at 8:45 a.m.,
May 19, 2008, at the offices of the Oil Conservation Division, 1220 South Saint Francis Drive,
Santa Fe, New Mexico 87504, and to produce the documents and items specified in attached
Exhibit A and to make available to Fasken Oil & Ranch Ltd and its attorneys, Holland & Hart,
LLP, for copying, all of said documents.

This subpoena is issued on application of Fasken Oil & Ranch Ltd, through their
attorneys, Holland & Hart LLP, Post Office Box 2208, Santa Fe, New Mexico 87504.

Dated this 6th day of May, 2008

NEW MEXICO OIL CONSERVATION DIVISION

By: David K. Fesmire
Legal Counsel
Mark E. Fesmire, P.E., Director

EXHIBIT A

**TO SUBPOENA DUCES TECUM
TO INTREPID POTASH -NEW MEXICO, LLC
IN NEW MEXICO OIL CONSERVATION DIVISION
CASE NO. 14116**

PURPOSE: The purpose of this subpoena is to provide information necessary for Fasken Oil & Ranch to respond to the objections filed by Intrepid Potash to Fasken's proposed well and to prepare its evidence and testimony for New Mexico Oil Conservation Division Case No. 14116.

PRODUCE THE FOLLOWING DOCUMENTS and identify the paragraphs to which each document is responsive:

1. All Life of Mine Reserve (LMR) maps for the entire nine section area comprising Exhibit A to Intrepid's Amended Pre-Hearing Statement.
2. Current maps of mine workings and mining surface installations in the entire nine section area comprising Exhibit A to Intrepid's Amended Pre-Hearing Statement.
3. Current maps of potash enclaves in the entire nine section area comprising Exhibit A to Intrepid's Amended Pre-Hearing Statement prepared by any company pursuant to the "Secretarial Order" referenced in paragraph 3 of Intrepid's Amended Pre-Hearing Statement.
4. All documents identifying the "future" mining plans at the idle North Mine referenced in paragraphs 2 and 3 of Intrepid's Amended Pre-Hearing Statement.
5. All documents identifying any mining plans for Sections 9, 8, 17, 20 or 21 of Exhibit A to Intrepid's Amended Pre-Hearing Statement.
6. All documents identifying any mining plans for Section 16 of Exhibit A to Intrepid's Amended Pre-Hearing Statement.
7. All documents identifying how Intrepid intends to mine around the extensive well bores that currently exist in and around Section 16 of Exhibit A to Intrepid's Amended Pre-Hearing Statement.
8. All correspondence between the State of New Mexico and Mississippi Potash, Intrepid or any company concerning any proposal to obtain a potash lease covering Section 16 of Exhibit A to Intrepid's Amended Pre-Hearing Statement.
9. All correspondence between Intrepid and Mosaic Potash relating to or arising out of the "discussions with Mosaic regarding the use of Intrepid's infrastructure already in place at the North Mine to exploit Mosaic's potash leases" referenced in paragraph 4 of Intrepid's Amended Pre-Hearing Statement.

10. All correspondence between Intrepid and Mosaic Potash relating to or arising out of Fasken's application to drill a deep gas well in the NW/4 of Section 16.
11. All documents relating or arising out of the statement in paragraph 4 of Intrepid's Amended Pre-Hearing Statement that "Mosaic has informed Intrepid that it also objects to the location of the proposed Well."
12. Intrepid's "non-competitive federal potash lease application" to add Section 21 described in paragraph 8 of Intrepid's Amended Pre-Hearing Statement.
13. The most recent BLM map of "Distribution of Potash Resources" described in paragraph 8 of Intrepid's Amended Pre-Hearing Statement.
14. All documents to support the statement in paragraph 9 of Intrepid's Amended Pre-Hearing Statement that the "economic value of the potash that would be wasted by the proposed Well far exceeds the economic value of the oil and gas that may be recovered from the Well."
15. Core hole data, face samples, and any analyses and interpretations of face samples or core holes acquired or drilled in the last ten years within the entire nine section area comprising Exhibit A to Intrepid's Amended Pre-Hearing Statement.
16. All monthly lease tonnage reports submitted in the last ten years for mines located within the entire nine section area comprising Exhibit A to Intrepid's Amended Pre-Hearing Statement.
17. Individual Ore Zone maps for all ore zones within the entire nine section area comprising Exhibit A to Intrepid's Amended Pre-Hearing Statement.
18. Economic evaluations of various potash deposits within the entire nine section area comprising Exhibit A to Intrepid's Amended Pre-Hearing Statement.
19. All mine production and inventory reports submitted by Intrepid, Mississippi Potash, or any other company to the BLM or the State of New Mexico in the last five years.
20. All three year mine plans submitted by Intrepid, Mississippi Potash or any company to the State of New Mexico or the BLM pursuant to the Secretarial Order referenced in paragraph 3 of the Intrepid's Amended Pre-Hearing Statement.
21. All quarterly mine inspection reports in the possession of Intrepid Potash or Mississippi Potash as a result of mine inspections conducted by BLM or the State of New Mexico.
22. All quarterly mining advance maps prepared by or in the possession of Intrepid.
23. All documents describing mining and processing methods for sylvite, langbeinite, and/or mixed ore utilized by Intrepid or Mississippi Potash in the Potash Area, including descriptions of the methods currently utilized.

24. All correspondence and applications for royalty reductions submitted by Intrepid or Mississippi Potash to BLM, Minerals Management Service (MMS) and/or the State of New Mexico from 1996 through the present.
25. All reports and submittals to the State of New Mexico and MMS reflecting sylvite, langbeinite or mixed ore production, as well as the sales volumes and royalty payments therefrom associated with Intrepid or Mississippi Potash mining operations from 1996 to present within 2 miles of Fasken's proposed location.
26. Copies of all exhibits you intend to use at the hearing.

INSTRUCTIONS

This Subpoena Duces Tecum seeks all information available to you or in your possession, custody or control from any source, wherever situated, including but not limited to information from any files, records, computers documents, employees, former employees, consultants, counsel and former counsel. It is directed to each person to whom such information is a matter of personal knowledge.

When used herein, "you" or "your" refers to the persons and entity to whom this Subpoena Duces Tecum is addressed to including all of his or its attorneys, officers, agents, consultants, employees, directors, representatives, officials, departments, divisions, subdivisions, subsidiaries, or predecessors in interest.

The term "document" as used herein means every writing and record of every type and description in the possession, your custody or control, whether prepared by you or otherwise, which is in your possession or control or known by you to exist, including but not limited to all drafts, papers, books, writings, records, letters, photographs, computer disks, tangible things, correspondence, communications, telegrams, cables, telex messages, memoranda, notes, notations, work papers, transcripts, minutes, reports and recordings of telephone or other conversations or of interviews, conferences, or meetings. It also includes diary entries, affidavits, statements, summaries, opinions, reports, studies, analyses, evaluations, contracts, agreements, jottings, agenda, bulletins, notices, announcements, plans, specifications, sketches, instructions charts, manuals, brochures, publications, schedules, price lists, client lists, journals, statistical records, desk calendars, appointment books, lists, tabulations sound recordings, computer printouts, books of accounts, checks, accounting records, vouchers, and invoices reflecting business operations, financial statements, and any notice or drafts relating to the foregoing, without regard to whether marked confidential or proprietary. It also includes duplicate copies if the original is unavailable or if the duplicate is different in any way, including marginal notations, from the original.

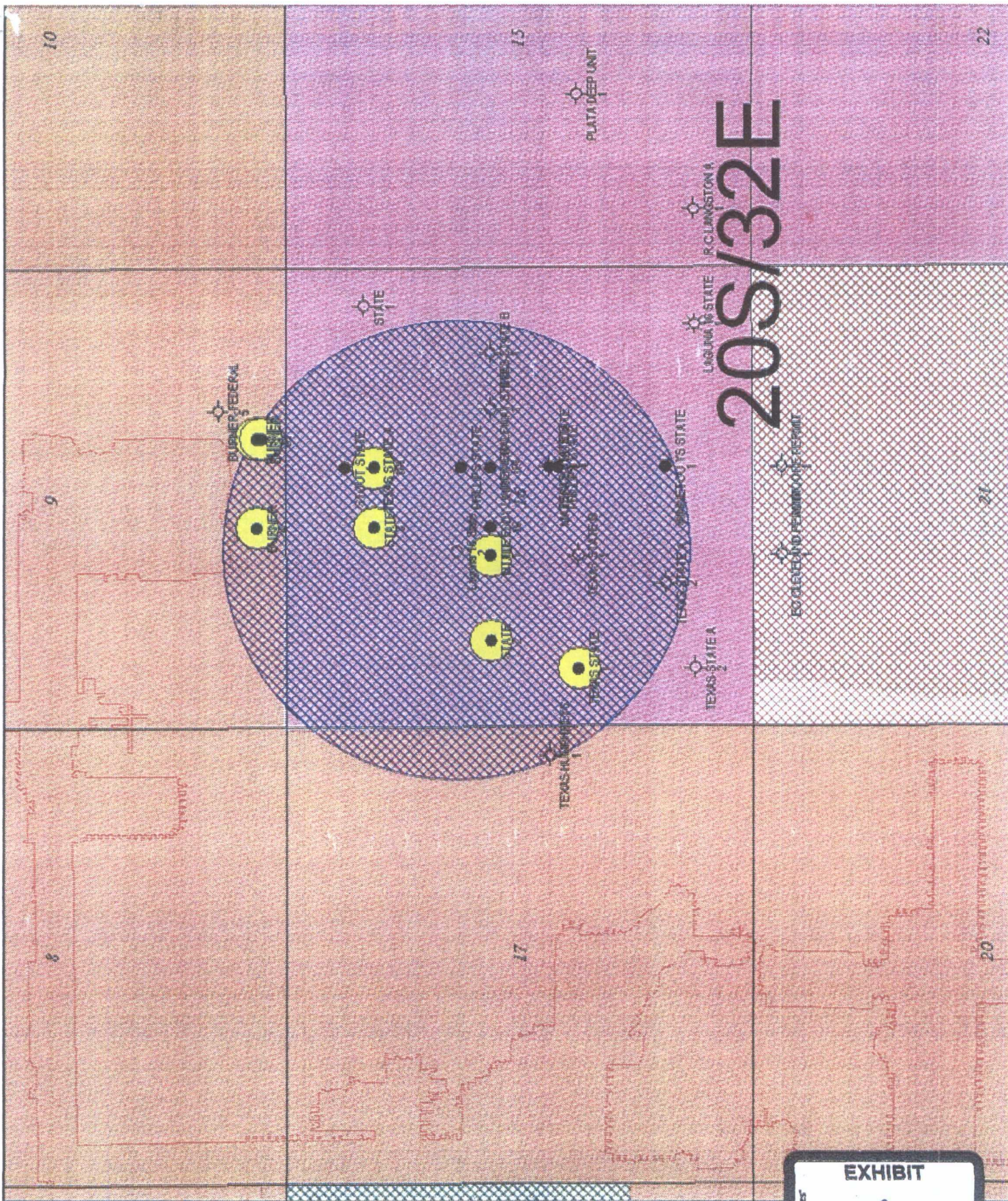


EXHIBIT
A

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

RECEIVED
2008 MAY 16 AM 10 10

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

**APPLICATION OF FASKEN OIL & RANCH LTD. FOR
AN ORDER AUTHORIZING AN ADDITIONAL WELL IN
THE "POTASH AREA" AT AN UNORTHODOX WELL
LOCATION IN LEA COUNTY, NEW MEXICO.**

Case No. 14116

OBJECTION TO SUBPOENA DUCES TECUM

Intrepid Potash – New Mexico, LLC ("Intrepid"), by and through its counsel of record, Comeau, Maldegen, Templeman & Indall, LLP, respectfully objects to the Subpoena Duces Tecum issued by the New Mexico oil Conservation Division and served on May 7, 2008:

1. Applicant Fasken Oil & Ranch Ltd. ("Fasken") seeks permission to drill its proposed Laguna State "16" Well No. 2 at an unorthodox well location, 1930 FNL and 2030 FWL in the SE/4 NW/4 of Section 16, Township 20 South, Range 32 East, NMPM, in Lea County, New Mexico (the "Well"). The proposed Well is a deep gas well to be drilled to the Morrow Formation, to a depth of 13,400 feet. The district office properly rejected this location for the Well because it is within less than one half mile of Intrepid's Life of Mine Reserve ("LMR") within the "Potash Area" defined under Division Order R-111-P, and because of the safety hazard posed by drilling this high pressure, deep gas well less than one half mile from the nearby mine workings of Intrepid's North Mine.

2. Fasken's Subpoena Duces Tecum is overbroad because it requests voluminous data within a two mile radius of the proposed Fasken Well. It also requests information that is maintained by third parties, such as a current potash enclave map which is maintained in the

office of the Bureau of Land Management and other documents that may be in the possession of the BLM or other government agencies.

3. Virtually all of the documents sought by Fasken are sensitive, proprietary and confidential documents. These include, but are not limited to, Intrepid's mine maps, LMR maps, enclave maps, three year mine plans, current and future mining plans, mining methods, potash lease applications, potash economic evaluations, mine and inventory reports, quarterly inspection reports, and business discussions regarding the re-opening of the North Mine. Intrepid objects to disclosure of any of its confidential and proprietary data, including any such information in the possession of third parties or government agencies and protected by law or agreement. This information is protected by disclosure under Order R-111-P, Section G. Fasken has proposed a form of confidentiality order, but Intrepid is not satisfied that the proposed order sufficiently protects its confidential and proprietary information.

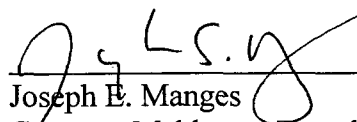
4. Some of the information sought by Fasken is irrelevant to the issues raised by the proposed Well.

5. Intrepid estimates that full compliance with the subpoena would take approximately one month. Due to the press of other business, including deadlines for filings in other APD appeals and the drilling and analysis of certain core holes in the Potash Area, Intrepid will be unable to respond to the subpoena by May 19, 2008.

6. Intrepid has attempted in good faith to settle this matter by contacting Fasken to find an alternative location for the Fasken wells. To date, Intrepid and Fasken have been unable to agree on an alternative location, but discussions continue.

WHEREFORE, Intrepid requests that Fasken's subpoena be quashed or that Intrepid be granted an additional 30 days to respond to the subpoena.

Respectfully submitted,



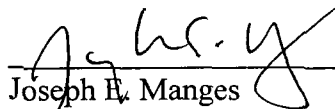
Joseph E. Manges
Cômeau, Maldegen, Templeman & Indall, LLP
P.O. Box 669
Santa Fe, NM 87504-0669
(505) 982-4611
(505) 988-2987

I HEREBY CERTIFY that a true and correct copy
of the foregoing pleading was faxed to:

Michael H. Feldewert
Holland & Hart, LLP
110 North Guadalupe Street, Suite 1
Santa Fe, New Mexico 87501
(505) 988-4421 phone
(505) 983-6043 fax

this 16th day of May, 2008

By:



Joseph E. Manges

**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. 13107
ORDER NO. R-12031**

**APPLICATION OF FASKEN OIL AND RANCH, LTD. 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 July 24, 2003, at Santa Fe, New Mexico, before Examiner Michael E. Stogner.

NOW, on this 24th day of September, 2003, the Division Director, having considered the testimony, the record, and the recommendations of the Examiner,

FINDS THAT:

(1) Due public notice has been given, and the Division has jurisdiction of this case and its subject matter.

(2) The New Mexico Oil and Gas Act, Section 70-2-12 (B) (17) NMSA 1978, empowers the Division *"to regulate and, where necessary, prohibit drilling or producing operations for oil or gas within any area containing commercial deposits of potash where the operations would have the effect unduly to reduce the total quantity of the commercial deposits of potash which may reasonably be recovered in commercial quantities or where the operations would interfere unduly with the orderly commercial development of the potash deposits."*

(3) Division Order No. R-111, dated November 9, 1951, as amended by Order Nos. R-111-A through R-111-O, established the "Potash Area," which *"represents the area in various parts of which potash mining operations are now in progress, or in which core tests indicate commercial potash reserves."* Furthermore, Division Order No. R-111-P established *"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 (Potash Area)."*

(4) Order No. R-111-P provides that for wells on State Lands or on Federal Lands, the Division shall inquire of the New Mexico State Land Office or the U. S. Bureau of Land Management, as the case may be, whether the lands involved are within an area designated a Life of Mine Reserve ("LMR").

(5) Subpart G (e) 3 of these rules generally prohibits oil and gas drilling within an LMR area designated by a potash lessee unless there is an agreement between the lessees of both potash and oil and gas interests.

(6) The applicant, Fasken Oil and Ranch, Ltd. ("Fasken"), as the current lessee of a valid oil and gas lease in the E/2 of Section 16, Township 20 South, Range 32 East, NMPM, Lea County, New Mexico, seeks approval to drill its proposed Laguna "16" State Well No. 1 as a deep Morrow gas test to an approximate depth of 13,400 feet at a standard gas well location in the SE/4 SE/4 (Unit P) of Section 16.

(7) All of Section 16 is within the Potash Area as defined in Division Order No. R-111-P.

(8) On or about May 13, 2003, Fasken filed an "Application for Permit to Drill ("APD")" its above-described Laguna "16" State Well No. 1. On May 22, 2003 the Division's district office in Hobbs denied Fasken's application to drill after IMC Potash Carlsbad, Inc. ("IMC") informed the Division's district office that it considered Fasken's proposed well to be within its LMR.

(9) With regard to potash leasing and potash development in the immediate area, Fasken presented evidence demonstrating that:

(a) there are currently no active potash leases in Section 16 or to the south in adjacent Section 21, Township 20 South, Range 32 East, NMPM, Lea County, New Mexico, which is federal land;

(b) Mississippi Potash, Inc. holds federal potash leases to the north and the west in adjacent Sections 8, 9, 10, 17 and 20, Township 20 South, Range 32 East, NMPM, Lea County, New Mexico;

(c) the closest potash mine is approximately two miles to the northwest of Fasken's proposed well location, is operated by Mississippi Potash, Inc., and is presently inactive;

- (c) IMC holds a federal potash lease to the east in adjacent Sections 15 and 22, Township 20 South, Range 32 East, NMPM, Lea County, New Mexico;
- (d) IMC, or its predecessor, has held a federal potash lease since 1953, but has not undertaken any effort to develop adjacent Sections 15 and 22;
- (e) IMC's nearest potash mine is approximately eight miles to the southwest of Fasken's proposed well location; and
- (f) the New Mexico State Land Office recently denied IMC's request for a potash lease in Section 16 stating: "Section 16 currently has numerous oil and gas well bores, and with the potential of additional drilling, there does not appear to be adequate clearance for economic mining."

(10) With regard to oil and gas development in the immediate area, Fasken presented evidence that demonstrates:

- (a) there are at least eighteen well bores in Section 16, with at least ten in the E/2 and at least three in the SE/4 where Fasken's proposed well is to be located;
- (b) there are at least two wells in the SW/4 of adjacent Section 15, Township 20 South, Range 32 East, NMPM, Lea County, New Mexico, with one of those well bores directly offsetting Fasken's proposed well to the east;
- (c) there are at least two well bores in the N/2 N/2 of adjacent Section 21, Township 20 South, Range 32 East, NMPM, Lea County, New Mexico, to the south of Fasken's proposed well;
- (d) there are at least four well bores in the S/2 S/2 of adjacent Section 9, Township 20 South, Range 32 East, NMPM, Lea County, New Mexico, to the north; and
- (e) Fasken's proposed Laguna "16" State Well No. 1 has the potential of finding oil and gas reserves capable of producing in commercial quantities within several geologic horizons.

(11) Before the hearing in this matter, the Division Examiner received a telephone message via recorded voice mail from IMC's representative stating that since the New Mexico State Land Office denied IMC's request for a potash lease in Section 16, IMC's status to object to Fasken's well had been "seriously eroded." This message was played at the hearing and made a part of the record in this matter.

(12) IMC did not appear at the hearing or present any evidence in this matter.

(13) Fasken presented evidence that it discussed its proposed well with Mississippi Potash and was informed that Mississippi Potash, Inc. has no plans to mine in Section 16 due to the extensive oil and gas development in the area. Mississippi Potash, Inc. did not object to Fasken's proposed well and did not appear at the hearing.

(14) The evidence establishes that it is highly unlikely that commercial potash mining will take place in Section 16.

(15) Approval of Fasken's above-described Laguna "16" State Well No. 1 will afford the applicant the opportunity to produce its just and equitable share of oil and gas within its state oil and gas lease underlying the E/2 of Section 16 and will otherwise prevent waste and protect correlative rights.

IT IS THEREFORE ORDERED THAT:

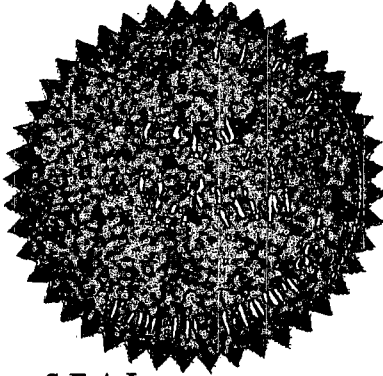
(1) Fasken Oil and Ranch, Ltd. ("Fasken") is hereby granted authority to drill its Laguna "16" State Well No. 1 as originally proposed by its Application for Permit to Drill ("APD") filed with the Division's district office in Hobbs in May, 2003 within the SE/4 SE/4 (Unit P) of Section 16, Township 20 South, Range 32 East, NMPM, Lea County, New Mexico.

(2) Fasken shall comply with all applicable casing and cementing requirements set forth in Division Order No. R-111-P.

(3) Jurisdiction is hereby retained for the entry of such further orders as the Division may deem necessary.

Case No. 13107
Order No. R-12031
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DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.



SEAL

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

Lori Wrotenberg
LORI WROTENBERY
Director