

Kemp, Smith, Duncan & Hammond, P.C.

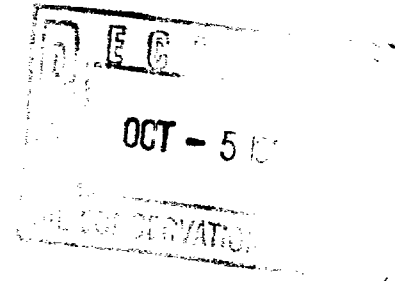
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CHARLES C. HIGH, JR.
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TEXAS BOARD OF LEGAL SPECIALIZATION

OTHER OFFICE:
Austin, TX

October 2, 1998



VIA FACSIMILE and CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

New Mexico Oil Conservation Division
2040 S. Pacheco
Santa Fe, New Mexico 87505

Re: Case No. 12055

Dear Sir/Madam:

Enclosed is the Motion to Quash Subpoena Duces Tecum on behalf of Mississippi Potash, Inc. I would appreciate your filing this in the record of this case.

Yours very truly,

KEMP, SMITH, DUNCAN & HAMMOND, P.C.

By:

Charles C. High Jr.

CCH/ja
Enclosure

cc: James A. Gillespie
John Flynt

BEFORE THE NEW MEXICO OIL CONSERVATION DIVISION

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

**APPLICATION OF HALLWOOD PETROLEUM, INC.
FOR ORDER ALLOWING DRILLING IN POTASH
AREA, LEA COUNTY, NEW MEXICO.**

Case No. 12,055

**MISSISSIPPI POTASH, INC'S MOTION TO QUASH
SUBPOENA DUCES TECUM DATED SEPTEMBER 17, 1998**

MISSISSIPPI POTASH, INC. ("MPI") moves to quash the Subpoena Duces Tecum issued by the New Mexico Oil Conservation Division on September 17, 1998, and directed to MPI, and in support thereof would respectfully show as follows:

1. On September 10, 1998, Hallwood Petroleum, Inc. ("Hallwood") applied to the New Mexico Oil Conservation Division (the "Division") for an order allowing drilling in the Potash Area, Lea County, New Mexico.

2. Under the terms of Hallwood's Application, Hallwood seeks approval to drill a well, designated as the "Bass # 6 Well," to be located at a standard oil well location 1980 feet from the South line and 660 feet from the West line (lot 3) of Section 30, Township 20 South, Range 33 East. Additionally, Hallwood seeks approval to drill a second well, designated as the "Bass # 5 Well," to be located at a standard oil well location 660 feet from the South line and 2080 feet from the West line of Section 30, Township 20 South, Range 33 East.

3. Hallwood's proposed Bass # 6 Well and Bass #5 Well are both located in Section 30 of Township 20 South, Range 33 East.

4. On September 17, 1998, MPI received a subpoena issued by the Division commanding MPI to appear at 8:15 a.m. on September 29, 1998, at the offices of the Division and produce

specified documents and information. This date was extended by agreement of counsel until October 2, 1998, at which time MPI was to produce documents or file a motion to quash the subpoena.

5. The subpoena seeks extensive information and documents from MPI for the years 1995 to the present, and, in some instances from 1992 to the present. The stated purpose of the subpoena is to "obtain information with bearing on the Applicant's request in the referenced case."

The subpoena identifies the following categories of documents to be produced:

- a. All LMR maps;
- b. All corehole files (regardless of when drilled);
- c. All mine plans;
- d. Maps showing annual mine progress from 1992 to the present;
- e. The current mine survey map;
- f. All reserve maps, including polygon maps;
- g. All royalty reduction files;
- h. All potash lease files;
- i. All documents showing MPI's cutoff grades from 1992 to the present; and
- j. All documents reflecting the effects of carnallite and/or other contaminants and/or insoluble on MPI's milling process and recoverable grades.

6. The subpoena directs MPI to produce the foregoing categories of documents with respect to the following 24 sections of land:

- a. T-20-S, R-33-E, Sections 16-21, 28-33;
- b. T-20-S, R-32-E, Sections 13, 14, 23-26, 35 & 36
- c. T-21-S, R-31-E, Section 1; and
- d. T-21-S, R-32-E, Sections 4-6.

7. MPI objects to the subpoena for the following reasons:

- a. It seeks documents which are not relevant to any issue raised by Hallwood's Application and therefore exceeds the scope of documents that can be subpoenaed pursuant to N.M. STAT. ANN. 70-2-8 (Michie 1995). MPI has on file with the New Mexico State Land Office ("SLO") an LMR map that shows the location of its LMR in the area of the well sites sought by Hallwood. The extent to which the proposed wells are within or outside of MPI's LMR, and

therefore whether they should be allowed or disallowed, can and should be ascertained from the SLO in accordance with Order R-111-P.

- b. The information sought is confidential under Order R-111-P. Section G(a) specifically states that information concerning an LMR designation is confidential and protected by Section 19-1-2.1 NMSA 1978.
- c. The subpoena is overbroad in that it seeks the production of potash core hole and related data on lands not under lease by Hallwood for oil and gas. There is no basis referenced in the subpoena and none known to MPI, that authorizes Hallwood, as an oil and gas operator, to obtain confidential mining data on lands not under lease by it. Even on Federal lands, the availability of such data under the 1986 Secretarial Order, 51 *Fed. Reg.* at 39426, is restricted and available only to the oil and gas lessee on the same lands.
- d. The subpoena is overbroad in that it seeks the release of documents covering lands owned by the Federal Government and administered by the U. S. Bureau of Land Management. The availability of the data identified in the subpoena on Federal lands is governed by the 1986 Secretarial Order, 51 *Fed. Reg.* at 39426, and is not available to Hallwood.
- e. The subpoena is overbroad and unduly burdensome in that it seeks confidential mining data covering some 24 sections of land, some two miles away from the proposed wells, notwithstanding the fact that the wells sought by Hallwood are both located in the same section. No factual basis is stated as to how such extensive data is relevant to any issue involved in processing Hallwood's Application.

- f. The subpoena is overbroad in that it seeks documents that are irrelevant and unnecessary to any decision by the Division on whether Hallwood's Application should or should not be approved under Order R-111-P. The processing of applications for permits to drill in the area covered by R-111-P, which includes the wells at issue, is clearly stated in Order R-111-P and does not depend upon the information being sought by Hallwood.
- g. The subpoena is overbroad in that it seeks documents covering a period of over five years prior to the date the Hallwood's Application was filed. Such information is not relevant to the issue of whether an Application in 1998 should be granted or denied.
- h. The subpoena is overbroad in that it seeks documents that contain proprietary trade secrets not known to the general public. This includes information concerning mine plans, LMR boundaries, corehole data, reserves, cutoff grades, and the ability to process ore with contaminants. The release of this data to the public, as sought by the subpoena, will adversely impact MPI's competitive position.

For all the foregoing reasons, MPI requests that the Division quash the Subpoena Duces Tecum issued on September 17, 1998 and directed to MPI or, in the alternative, set this motion for oral argument and/or hearing and briefing.

Respectfully submitted,

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By: 

CHARLES C. HIGH, JR.

State Bar No. 09605000

STEVEN J. BLANCO

New Mexico Bar No. 9191

ATTORNEYS FOR MISSISSIPPI POTASH,
INC.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by facsimile and certified mail on James A. Gillespie, attorney for Hallwood Petroleum, Inc., 400 Penn Plaza, Suite 900, Roswell, New Mexico 88202, this 2nd day of October, 1998.


Charles C. High, Jr.