

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

**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 De Novo
Order No. R-12955-R**

ORDER OF THE COMMISSION

This case came for hearing on April 21 through April 23, 2010 at Santa Fe, New Mexico, before the Oil Conservation Commission (Commission), and the Commission having deliberated on July 8, 2010 and September 9, 2010,

NOW, on this 7th day of October, 2010, the Commission, having considered the testimony, the record, and the arguments of the parties, and being otherwise advised,

FINDS THAT:

- (1) Due public notice has been given of the application and the hearing on this matter and the Commission has jurisdiction of this case and its subject matter.
- (2) Section 16, Township 20 South, Range 32 East, NMPM is comprised of state trust lands. Fasken currently holds valid oil and gas leases for Section 16.
- (3) Section 16 is within the Potash Area as defined under the Commission's Order No. R-111-P.
- (4) On September 24, 2003, after notice and hearing, the Oil Conservation Division (Division) entered Order No. R-12031 authorizing the drilling of the Laguna "16" Well No. 1 as a wildcat deep gas well in the SE/4 of Section 16, Township 20 South, Range 32 East, NMPM. Fasken Exhibit 3.
- (5) The E/2 of Section 16 is dedicated to the Laguna No. 1 and this well is currently producing from the Morrow and the Strawn formations. Tr. 44:20 (Kvasnicka Testimony); Tr. 85:7 (Worrall Testimony).
- (6) Fasken seeks authority from the Commission to continue oil and gas development in Section 16 by drilling a second well, its proposed Laguna "16" State Well No. 2, at an unorthodox location in the NW/4 of Section 16 (Unit F). The W/2 of Section 16 is to be dedicated to this second well.

History of the Proceedings

(7) On May 18, 2007, Fasken filed an administrative application with the Division's Hobbs office to drill the Laguna No. 2 at an unorthodox location in the SE/4 NW/4 of Section 16 to a total depth of 13,400 feet to test all formations from the surface to the base of the Morrow formation.

(8) On May 31, 2007, the Hobbs district office denied Fasken's administrative application after receiving an objection from Intrepid Potash-New Mexico, LLC (Intrepid).

(9) On March 31, 2008, Fasken filed an application with the Division for an order authorizing its proposed Laguna No. 2 well. Notice of the application was provided to the New Mexico State Land Office (SLO) as well as Intrepid and Mosaic Potash Company, the only holders of potash leases within one mile of the proposed well location.

(10) Intrepid filed a prehearing statement objecting to Fasken's proposed well due to its proximity to Intrepid's idle North Mine in adjacent Section 9.

(11) In response to Intrepid's prehearing statement, Fasken moved its proposed well location to a point 2135 feet from the North Line and 2455 feet from the West Line, placing the proposed well more than one-half mile from the southern edge of Intrepid's idle North Mine workings. *See* Fasken Ex. 7; Tr. 57:1-16 (Kvasnicka Testimony).

(12) On June 27 and June 30, 2008, a Division examiner conducted a hearing on Fasken's application.

(13) On March 27, 2009, the Division issued an order granting Fasken authority to drill the proposed Laguna No. 2.

(14) On April 24, 2009, Intrepid applied for a hearing de novo before the Commission.

Intrepid's Refusal to Produce Certain Information

(15) During the pendency of Intrepid's de novo appeal, the parties sought discovery through the Commission's subpoena powers.

(16) Intrepid failed or refused to produce certain information, resulting in the issuance of several orders by the Commission instructing Intrepid to produce certain information. *See* Order Nos. R-12955-I, K, L, and N.

(17) Intrepid appealed Commission Orders No. R-12955-K and N to the state district court. On April 2, 2010, the district court entered an order vacating paragraph

A(4) of Commission Order No. R-12955-K and all of Commission Order No. R-12955-N. *See* Order Granting Application for Emergency Writs.

(18) Paragraph A(4) of Commission Order No. R-12955-K required the production of a report from Agapito Associates, Inc. dated December 2007 and entitled *Determination of Estimated Proven and Probable Reserves at Intrepid Potash – New Mexico LLC*.

(19) The district court concluded that the Commission had failed to make “a specific finding as to relevancy of the information contained in the Agapito report” prior to ordering the production of the Agapito Report. *See* Order Granting Application for Emergency Writs at Finding Para. 3.

(20) At the October 21, 2009 hearing on discovery disputes, the Commission reviewed a redacted copy of the Agapito Report and heard arguments of counsel. At the conclusion of that hearing, the Commission applied its expertise to the information and arguments presented, noted the existence of a Confidentiality Order, and ordered the production of an unredacted copy of the Agapito Report under the protections afforded by the Commission’s Confidentiality Order. *See, e.g., Federal Trade Commission v. Foster*, 2007 WL 2219410, *5-*8 (D.N.M. April 26, 2007) (setting forth the standard for production of trade secrets and ordering production of “cost data, customer lists, prices, and volumes sold”).

(21) The Commission further notes that during the April 2010 hearing in this matter, Fasken presented evidence and submitted an offer of proof as to the relevancy of redacted information contained in the 2007 Agapito Report. *See* Tr. 969; Fasken Ex. 46 at p. 38-39 (noting Agapito Associates examined Intrepid’s geologic models for the New Mexico properties in 2007).

Legal Standards

(22) The New Mexico Oil and Gas Act, NMSA 1978, Section 70-2-12(B)(17), obligates the Commission “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”.

(23) To implement NMSA 1978, Section 70-2-12(B)(17) the Commission adopted Order No. R-111-P on April 21, 1988.

(24) Potash lessees are required to file with the SLO and the United States Department of the Interior, Bureau of Land Management (BLM) a designation of the potash deposits considered by the potash lessee to be its life-of-mine reserves (LMR) along with information demonstrating why the potash lessee believes the areas within an

LMR “contain potash ore in sufficient thickness and grade to be mineable using current day mining methods, equipment and technology”. See paragraph (G)(a) of Order No. R-111-P.

(25) Authorized officers of the BLM and the New Mexico State Land Office “shall review” the information submitted by the potash lessee in support of its LMR designation and verify upon request that the data the potash lessee used is consistent with the data available to the BLM and SLO. See paragraph (G)(b) of Order No. R-111-P.

(26) Pursuant to Paragraph (G)(e)(3) of Order No. R-111-P, “active mine workings and mined-out areas” are treated as LMR.

(27) Applications to drill outside the LMR may be approved for deep wells that are no closer than ½ mile to the LMR. See Paragraph (G)(e)(3) of Order No. R-111-P and Paragraph III.B.3 of Exhibit B to Order No. R-111-P.

Evidence Presented on Intrepid’s LMR

(28) Intrepid presented the Commission two cover letters to the SLO regarding its LMR submittal: one dated September 11, 2008, and a second letter dated February 16, 2010. See Intrepid Exhibits 23, 62.

(29) Intrepid also presented to the Commission a letter dated September 15, 2008, from the SLO noting receipt of an LMR map dated January 1, 2008. The SLO’s letter indicates the map was to be “reviewed and verified in accordance with Oil Conservation Division Order Number R-111-P prior to acceptance by the State Land Office”. See Intrepid Ex. 63.

(30) Intrepid’s September 2008 submission to the SLO only included a cover letter and a map. Tr. 738-39 (Lewis Testimony).

(31) Intrepid did not present to the Commission the LMR maps that accompanied either the September 2008 and January 2010 letters to the SLO. Tr. 809-812 (Lewis Testimony).

(32) Fasken presented testimony and evidence that its proposed well location, which is at a point 2135 feet from the North Line and 2455 feet from the West Line, is more than one-half mile from the southern edge of Intrepid’s idle North Mine workings. See Fasken Ex. 7; Tr. 57:1-16 (Kvasnicka Testimony).

(33) The record does not contain substantial evidence that Section 16 is within an LMR or within any buffer zone for an LMR. Verbal testimony from Intrepid’s witnesses that the LMR includes Section 16, Township 20 South, Range 32 East is not substantiated and supported by maps or other documents showing the location of the LMR and is insufficient.

(34) Based on the evidence on the record, the Commission has determined that the proposed well location is more than one-half mile from Intrepid's idle North Mine workings, the only LMR in the record before the Commission.

IT IS THEREFORE ORDERED THAT:

(1) Fasken is hereby granted authority to drill its proposed Laguna 16 State Well No. 2 at a location 2135 feet from the North Line and 2455 feet from the West Line in Unit F of Section 16, Township 20 South, Range 32 East.

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

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

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

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION



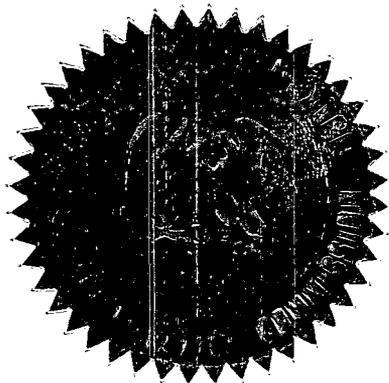
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WILLIAM OLSON, Member



MARK E. FESMIRE, P.E., Chair



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