

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

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**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

PRE-HEARING STATEMENT

This pre-hearing statement is submitted by Intrepid Potash – New Mexico, LLC ("Intrepid") as required by the Oil Conservation Division in opposition to Applicant Fasken Oil & Ranch Ltd.'s ("Fasken") application to drill its proposed Laguna State "16" Well No. 2 at an unorthodox well location.

APPEARANCES

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STATEMENT OF THE CASE

1. Fasken seeks to overturn the decision of the Division rejecting the unorthodox location of its proposed Laguna State "16" Well No. 2, 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, on New Mexico Oil and Gas Lease VO-6707. After Intrepid objected to the Well by letter dated May 31, 2007, the district office properly rejected this location because it is within Intrepid's Life of Mine Reserve ("LMR") within the "Potash Area" defined under Division Order R-111-P, and because the safety buffer for the proposed Well is less than one half mile from the open mine workings of Intrepid's North Mine.

2. As Intrepid indicated in its initial objection to the Well, Intrepid now owns the "North Mine" formerly owned by Mississippi Potash, Inc., an idled underground potash mine that Intrepid may choose to reopen in the future and that already has in place mine shafts, leases, permits and much of the transportation and utility infrastructure required for conventional underground potash mining operations. Intrepid's North Mine workings are located less than one half mile north of the proposed Well, as depicted by the blue circle on the map attached as Exhibit A. Two of Intrepid's federal potash leases at the North Mine, leases NMLC-068397 and NMLC-065286, include lands in Sections 9 and 17, Township 20 South, Range 32 East, NMPM, that are less than one half mile from the proposed location of the Well. The half mile safety

buffer for the proposed Well overlaps onto Intrepid's federal leases in Sections 9 and 17, as depicted by the blue circle on the map attached as Exhibit A.

3. All of Sections 9, 16 and 17 are depicted by the United States Bureau of Land Management ("BLM") on its 2005 map of "Distribution of Potash Resources" as "measured potash reserve (potash enclave)," protected under the Order of the Secretary of the Interior titled *Oil, Gas and Potash Leasing and Development Within the Designated Potash Area of Eddy and Lea Counties, New Mexico*, 51 Fed. Reg. 39425 (Oct. 28, 1986), as corrected at 52 Fed. Reg. 32171 (Aug. 27, 1987) (the "Secretarial Order"). All of this protected potash enclave is accessible from the North Mine workings. "Potash enclave" under the Secretarial Order is a higher standard for potash reserves than the commercial potash protected by NMSA Sec. 70-2-3 and Order R-111-P, and therefore Sections 9, 16 and 17 are commercial potash protected under the Order. All of Sections 9, 16 and 17 are within Intrepid's current LMR approved by the New Mexico State Land Office. Therefore, the drilling of the well will result in undue waste of Intrepid's leased commercial potash in Sections 9 and 17 and New Mexico's commercial potash in Section 16. In light of this waste, Fasken will be unable to sustain its burden of proving by clear and convincing evidence that the Well will not result in the undue waste of commercial potash.

4. Mosaic Potash Carlsbad, Inc. ("Mosaic"), which was formerly known as IMC Kalium Carlsbad, Inc., owns a federal potash lease to the east of the proposed Well that includes Sections 15 and 22, Township 20 South, Range 32 East, NMPM. Mosaic owns considerable undeveloped potash lease acreage adjacent to the North Mine, covering approximately 20 sections to the east of the proposed Well location. In addition to Intrepid's additional commercial potash recoverable from its own leases at the North Mine, all of Mosaic's

undeveloped potash leases are accessible from Intrepid's North Mine. Intrepid has had discussions with Mosaic regarding the use of Intrepid's infrastructure already in place at the North Mine to exploit Mosaic's potash leases. The North Mine is in an ideal position to access these resources because of its existing invested infrastructure, which includes two existing mine shafts to access the underground mine workings, permits, and above ground transportation and utility infrastructure. Mosaic has informed Intrepid that it also objects to the location of the proposed Well.

5. The proposed location for the Well violates the one half mile distance from Intrepid's LMR, including the permanent half mile buffer from mine workings and mined out areas, required by sub-section G(3) of Division Order R-111-P, and should be denied on this basis alone. Methane releases from oil and gas wells into potash mine workings can endanger the lives of potash miners and make further mining activities cost prohibitive because of the more expensive safety requirements that the United States Department of Labor, Mine Safety and Health Administration imposes on mines that contain gas. Further, the safety hazard presented by this high pressure, deep gas well less than one half mile from Intrepid's nearby mine workings has not been fully evaluated by the BLM or the State of New Mexico. Where BLM has studied similar safety hazards posed by high pressure gas wells, the BLM has found that such wells create a hazard to miners. Unlike the shallower wells that have been drilled in the area, the proposed Well targets the deeper Morrow formation. The deeper formations in the Potash Area (Morrow, Strawn, Wolfcamp, etc.) characteristically contain much larger volumes of gas that is at high pressures. Due to the nature of underground mining, mine employees are particularly vulnerable to potential hazards created by concurrent development of the two resources and potential release of highly combustible gas into underground mine workings. The

risks posed by testing or producing from these deep formations in close proximity to mine workings in the Potash Area are the subject of a pending safety study by the BLM, which is not yet completed. The BLM has already studied similar risks posed by oil and gas and drilling to underground trona mining in Wyoming, and banned further drilling after considerable study.

6. For reasons of comity, the Division should not permit the destruction of potash that the BLM has ruled is protected potash enclave and when the BLM is presently studying the safety hazard presented by deep gas wells to potash mining operations. The Commission has previously ruled that destruction of measured potash ore (potash enclave) on adjacent federal leases is sufficient grounds to deny an APD in the potash area, even where the potash in the section in which the APD is located is not leased, particularly where the proposed well is less than one half mile from the commercial potash and poses a potential safety hazard. See *Application of Devon Energy*, De Novo Case Nos. 13368 & 13372 (OCC Hearing Order No. R-12403-A, July 19, 2006).

7. Fasken previously drilled the Laguna State "16" Well No. 1 (the "Laguna No. 1 Well"), a 13,200 foot deep Morrow well, at a location in the SE/4 SE/4 of Section 16, Township 20 South, Range 32 East, NMPM, as depicted on Exhibit A. Fasken apparently operates both the lease in the East half of Section 16 on which the Laguna No. 1 Well is drilled and Lease VO-6707 on which it proposes to drill the Well. Fasken should be required to explore unitizing these leases to permit both leases to be held by production from the Laguna No. 1 Well, to avoid further waste of commercial potash. See *Application of Devon Energy*, OCC Hearing Order No. R-12403-A at .

8. On February 28, 2008, Intrepid filed a non-competitive federal potash lease application to add Section 21, T.20S., R.32E to the south of the proposed Well to Intrepid's

adjacent potash leases, as depicted on Exhibit A. In addition to Intrepid's federal leases in Sections 9 and 17 that would be affected by the proposed location, all of Section 21 and Mosaic's adjacent lease in Section 15 are also protected by the BLM under the Secretarial Order as "measured potash reserve (potash enclave as depicted on BLM's 2005 map of "Distribution of Potash Resources,")" and therefore constitute commercial potash protected under Order R-111-P. Section 21 is within Intrepid's LMR and Section 15 is within Mosaic's LMR approved by the New Mexico State Land Office. Any additional well drilled in Section 16 must be drilled directionally from the existing location of the Laguna No. 1 Well in order to avoid any additional waste of potash on Intrepid's lease application in Section 21 and Mosaic's lease in Section 15, other than the potash already wasted by the current half mile buffer around the Laguna No. 1 Well. Numerous horizontal wells have been directionally drilled in the potash area at distances greater than the Directional drilling will minimize additional commercial potash waste as required by Order R-111-P, and consideration of directional drilling has been required in similar situations to avoid waste of commercial potash on adjacent federal lands. See *Application of Devon Energy*, OCC Hearing Order No. R-12403-A.

9. Fasken asserts in its Application that the drilling of the proposed Well is justified by the Division's Order No. R-12031 permitting the drilling of the Laguna No. 1 Well. The facts have changed completely since the issuance of Order R-12031, and merit a different result in this case. To Intrepid's knowledge, all of the oil and gas wells drilled in Section 16, and in adjacent sections 9, 15, 17 and 21, depicted on Exhibit A, have been plugged and abandoned, other than the Laguna No. 1 Well. Assuming proper plugging and abandonment, these old wells will not prevent the recovery of the commercial potash in these sections. Intrepid's predecessor, Mississippi Potash, Inc., filed for bankruptcy in May 2003, just prior to the hearing on the

Laguna No. 1 Well. Mississippi Potash's lack of objection to the Laguna No. 1 Well was the result of its dire economic straits brought on by its failing nitrogen fertilizer business. By contrast, Intrepid purchased these assets out of bankruptcy, is financially strong, and currently holds the North Mine as a development asset that it may choose to reopen in the future, as evidenced by its recent application for adjacent federal leases. The Laguna No. 1 Well was at least two miles from open mine workings, while the proposed Well is less than half a mile from open mine workings. Prices for muriate of potash ("MOP") have more than quadrupled since 2003, from an average of \$121 per ton for Midwestern delivered MOP in 2003 to the current average of \$502 per ton for the first quarter of 2008. 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. In light of the drastically changed circumstances, the Division should not sanction the additional waste of commercial potash by the proposed Well on the basis of its prior Order R-12031.

PROPOSED EVIDENCE

Intrepid proposes to call at least the following witness:

James P. Lewis, Intrepid's Chief Geologist –

Mr. Lewis has expertise in geology and in particular concerning the existence of commercial potash in the area impacted by the proposed Well.

Due to the unavailability of its geological and other staff, Intrepid has not yet identified whether other witnesses will need to testify and has not yet assembled its exhibits and other evidence.

Intrepid requests a continuance as discussed below to assemble its evidence for the hearing.

Intrepid intends to identify mine maps and plans and information regarding potash reserves in the area protected by the proposed location. Some of its exhibits and testimony may contain proprietary and confidential information that will need to be protected by appropriate

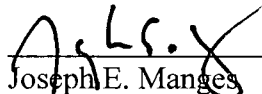
confidentiality agreements and orders. Intrepid anticipates it may require at least one half day to present its evidence.

PROCEDURAL MATTERS

Due to the unavailability of its geological and other staff and pending deadlines in several other federal and Division APD appeals, Intrepid has not been able to assemble all of its evidence for the scheduled hearing date in this matter, which is May 1, 2008. Intrepid requests that the division re-schedule the hearing in this matter for no earlier than June 5, 2008. Intrepid also requests that all proprietary and confidential information to be presented in this case be protected by appropriate confidentiality agreements and orders, as determined at a pre-hearing conference.

Intrepid therefore requests that the Division deny Fasken's application to drill the Well in order to prevent the waste of potash as required under the Oil and Gas Act, NMSA Section 70-2-3..F.

Respectfully submitted,



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I HEREBY CERTIFY that a true and correct copy
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By: Gayle S. [Signature]

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EXHIBIT

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