

STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
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.**

**De Novo
CASE NO. 14116
Order No. R-12955-I**

**ORDER ADDRESSING BRIEF IN OPPOSITION TO STAY OF COMMISSION
HEARING**

The Oil Conservation Commission (Commission) Chair, having reviewed Fasken Oil & Ranch Ltd.'s (Fasken) Brief in Opposition to a Stay of the Commission Hearing; received Sandia Laboratories' final report, "Evaluating the Use of Oil and Gas Well Logs for Potash Reserve Identification in Southeastern New Mexico"; and further reviewed the parties' various motions to compel compliance with discovery and responses to subpoenas, finds and orders as follows:

1. The de novo hearing on Fasken's application for an additional well shall not be stayed pending the New Mexico Court of Appeal's decision in the Bass/Devon appeal. The Commission's taking of sufficient evidence in this matter will not be negated by the New Mexico appellate courts' determination of whether there was sufficient evidence in the Bass/Devon cases. Therefore, Intrepid Potash-New Mexico, LLC's (Intrepid) request for a stay of the de novo hearing pending the appellate court's decision in the Bass/Devon appeal is denied and the Commission will not hear evidence on Intrepid's request for a stay of the de novo hearing at the October 21, 2009 Commission hearing. Given that the Commission denies Intrepid's request for a stay of the de novo hearing, the parties will not need to present evidence on a stay's potential impact on Fasken's correlative rights.

2. The de novo hearing shall not be stayed pending additional Bureau of Land Management studies related to potash mining and oil and gas development. While Intrepid has made reference to a federal safety study concerning potash mining, it has failed to clearly show that studies other than Sandia Laboratories' report, "Evaluating the Use of Oil and Gas Well Logs for Potash Reserve Identification in Southeastern New Mexico", are ongoing. It also has failed to show that such studies are relevant to this matter or when or if such studies are likely to be released.

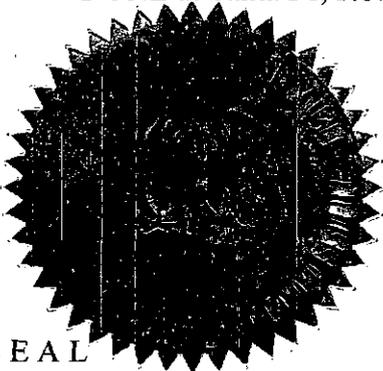
3. Fasken has requested that the hearing on the merits proceed at the October 21, 2009 Commission meeting. A hearing on the merits will not proceed at the October 21, 2009 hearing because of ongoing discovery issues. The Commission will determine a new date for a hearing on the merits at the October 21, 2009 Commission hearing.

4. Despite the confidentiality order, Order No.R-12955-G, Intrepid has stated that it will not provide certain documents that it asserts are confidential to Fasken (see Intrepid's Third Amended Objections and Responses to Second Subpoena Duces Tecum, General Objection 4) unless Fasken stipulates that those documents are confidential. Given the confidentiality order there is no need for Fasken to stipulate to the documents' confidentiality for purposes of discovery. The confidentiality order prevents Fasken from disclosing documents marked confidential. Therefore, upon receipt of this order, Intrepid shall produce the documents requested.

If Intrepid does not wish to offer documents it asserts are confidential into evidence without a determination by the Commission prior to the hearing on the merits, it shall file a motion requesting that the Commission determine whether the documents are confidential. Intrepid shall file such motion on or before October 19, 2009 and shall identify the documents and state which specific federal or state law protects the document as confidential. The parties shall be prepared to address whether the documents are confidential and any objections to confidentiality at the October 21, 2009 Commission hearing. Whether or not Intrepid files such motion, Intrepid is ordered to comply with the subpoena and shall upon receipt of this order deliver such documents to Fasken's counsel.

5. The parties shall comply with all outstanding discovery requests on or before October 19, 2009 and be prepared to address any objections to discovery requests not addressed by Paragraph 4 above at the October 21, 2009 Commission hearing.

DONE at Santa Fe, New Mexico on the 13th day of October, 2009.



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STATE OF NEW MEXICO
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A handwritten signature in black ink, appearing to read "Mark E. Fesmire". The signature is fluid and cursive.

MARK E. FESMIRE, P.E., Chair