

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

**IN THE MATTER OF THE HEARING CALLED
BY THE OIL CONSERVATION COMMISSION
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, LEA COUNTY, NEW MEXICO.**

**CASE NO. 14116
ORDER NO. R-12955-K**

**ORDER ADDRESSING INTREPID'S APPLICATION TO DETERMINE
CONFIDENTIALITY OF CERTAIN DOCUMENTS
AND ADDRESSING DISCOVERY ISSUES**

THIS MATTER came before the Oil Conservation Commission for hearing at 9:00 a. m. on October 21, 2009 at Santa Fe, New Mexico. The Commission having reviewed Intrepid Potash-New Mexico LLC's Application to Determine the Confidentiality of Certain Documents for the Purpose of the *De Novo* Hearing and Discovery, having heard arguments on said Application, and having addressed and heard arguments concerning certain discovery disputes between the parties, and being otherwise advised, finds and orders as follows:

A. Intrepid's Application To Determine Confidentiality

(1) Intrepid requested a determination from the Commission that the following documents contain confidential business information that should be protected under seal by the Commission from public disclosure should a party offer them into evidence at the *de novo* hearing in this matter:

(a) A report from Agapito Associates, Inc. dated December 2007 and titled *Determination of Estimated Proven and Probable Reserves at Intrepid Potash – New Mexico, LLC* – This document contains an estimate of Intrepid's proven and probable reserves in the Potash Area of New Mexico;

(b) Tetra Tech's Fatal Flaw Analysis (North Mine) dated August 1, 2007 – This document provides preliminary findings related to the feasibility of reopening the North Mine and recommends specific studies and actions to be taken;

(c) Tetra Tech's Work Plan Feasibility Study (North Mine) dated

November 6, 2008 – This document presents a work plan for completing a feasibility study for the reopening of the North Mine;

(d) North Mine Feasibility Study/Draft Phase I Report dated August 13, 2009 – This document contains the findings from the first phase of the feasibility study for reopening the North Mine.

(2) The Commission finds that the four documents referenced in Paragraph 1 of this Order are confidential pursuant to the Trade Secrets Act at N.M.S.A. 1978, § 57-3A-1 et seq.

(3) The Commission and the parties will maintain the confidentiality of these documents in accordance with Order No. R-12955-G and the Commission will place these documents under seal if said documents are submitted to the Commission and accepted into evidence.

(4) Intrepid shall provide Fasken one complete and un-redacted copy of these documents, including all exhibits.

B. Discovery Issues

(5) Request 3 of Fasken's Third Subpoena seeks the production of the contoured regional map for the Tenth Ore Zone referenced by Mr. James Lewis at the Oil Conservation Division hearing. *See e.g. 6/30/08 TR. at 109, 138.* Intrepid shall produce to Fasken the contoured regional map for the Tenth Ore Zone cropped down to the nine-section area that includes Section 16, Township 20 South, Range 32 East. Counsel for Intrepid stated a belief that Fasken's Exhibit 30 introduced at the Division hearing may be the original regional map. Intrepid shall confirm to Fasken in writing whether or not the regional map referred to by Mr. Lewis in his testimony is Fasken Exhibit 30.

(6) Requests 4 through 7 of Fasken's Second Subpoena seeks the production of files, reports, emails, correspondence and other documents generated as a result of any studies and analysis on the idle North Mine. Intrepid objected to these requests as overbroad, vague and burdensome. With respect to these Requests the Commission determines that:

(a) Request 4 is overbroad and over burdensome and is stricken.

(b) Requests 5 through 7 are limited to documents generated or obtained since June 1, 2008.

(c) Intrepid shall file affidavits supporting its objections to Requests 5 through 7 by 5:00 p.m. on November 3, 2009. Fasken has until 5:00 p.m. November 10th to respond to Intrepid's submission and Intrepid will then have until November 17th to

reply. The Commission will thereafter make a determination on Intrepid's objections to these requests.

(7) Requests 8 through 10 of Fasken's Second Subpoena seek the production of documents generated since June 1, 2008 that discuss, concern or relate to mining of the nine-section area that includes Section 16. Intrepid shall produce to Fasken all documents responsive to these requests.

(8) Requests 19 and 20 of Fasken's Second Subpoena seek the production of all core hole data, face samples, reports and analysis on the nine-section area. Intrepid shall confirm in writing that it has produced to Fasken all core hole, channel sample and electronic log data in its original documentary from (as accessed by Intrepid) and used by Intrepid to create the ore reserve maps for the nine section area relevant to this proceeding. Intrepid shall produce to Fasken all electronic data (including the metadata) in its entirety, utilized to create the maps that have been produced. This electronic data shall be produced in a discernable format so that the data utilized and the maps can be duplicated for hearing. These electronic data files shall be treated as confidential trade secrets.

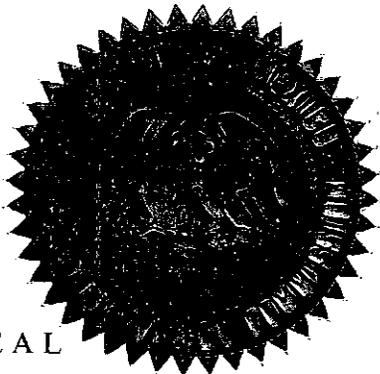
(9) In response to Requests 20 and 21 of Intrepid's Third Subpoena, Fasken produced a redacted letter dated June 19, 2009. Fasken shall produce an un-redacted form of this letter to Intrepid. The letter will be marked and treated as confidential.

(10) The parties shall produce all documents referenced in this Order by 5:00 p.m. November 3, 2009.

C. Hearing Date.

(11) As soon as practical, the Commission will issue a notice setting a date for the *de novo* hearing in this matter for three days during the last two weeks of February 2010 or in early March 2010. The denial of Intrepid's request for a stay of the *de novo* hearing is reaffirmed.

DONE at Santa Fe, New Mexico, on the 23rd day of November, 2009.



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STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

A handwritten signature in black ink, appearing to read "Mark E. Fesmire".

MARK E. FESMIRE, P.E.
CHAIR