

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 BASS ENTERPRISES)	
PRODUCTION COMPANY FOR AN ORDER)	Case No. 13367
AUTHORIZING THE DRILLING OF A WELL)	
IN THE POTASH AREA, EDDY COUNTY,)	
NEW MEXICO)	
)	
APPLICATION OF DEVON ENERGY PRODUCTION)	
COMPANY L.P. FOR AN ORDER AUTHORIZING)	Case No. 13368
THE DRILLING OF A WELL IN THE POTASH)	
AREA, EDDY COUNTY, NEW MEXICO)	
)	
APPLICATION OF DEVON ENERGY PRODUCTION)	
COMPANY, L.P., FOR APPROVAL OF AN)	
UNORTHODOX WELL LOCATION ¹ AND)	Case No. 13372
AUTHORIZATION TO DRILL A WELL IN THE)	
POTASH AREA, EDDY COUNTY, NEW MEXICO)	

**ADDITIONAL COMMENTS OF MOSAIC POTASH CARLSBAD, INC.
IN OPPOSITION TO APPLICATIONS OF BASS ENTERPRISES PRODUCTION
COMPANY AND DEVON ENERGY PRODUCTION COMPANY, L.P.
FOR PERMITS TO DRILL WELLS IN THE POTASH AREA**

MOSAIC POTASH CARLSBAD, INC. (“Mosaic Potash”) submits these additional comments in further opposition to the applications filed by Bass Enterprises Production Company (“Bass”) and Devon Energy Production Company, L.P. (“Devon”) for permits to drill

¹ The portion of the Application seeking an unorthodox well location was dismissed by the Division Hearing Examiner and is not an issue before the OCC. OCC Hearing Transcript, page 21 (hereinafter referred to as “Tr.” followed by the page number).

("APDs") three oil and gas wells in the "Potash Area" designated by the Oil Conservation Commission ("OCC") in Order R-111-P (1988). For the reasons explained below, as well as those stated at the hearing before the OCC, Mosaic Potash submits that the APDs should be denied for the following reasons:

1. The proposed wells will "waste" commercial deposits of potash as that term is defined in Section 70-2-3 NMSA 1987;
2. The proposed wells are for surface locations prohibited by Order R-111-P (April 21, 1988); and
3. There are alternative methods available to Bass and Devon to develop the oil and gas mineral interests on each of the fee interest owner's lands that will allow for the development of their oil and gas interest while at the same time minimizing the amounts of potash that will be wasted, including directional or horizontal drilling or by unitization.

PRELIMINARY STATEMENT

The opposition of Mosaic Potash to the proposed wells in this case, as stated at the hearing, is not to the development of the owner's oil and gas interest but, instead, is to the manner of development proposed by Bass and Devon. The undisputed evidence shows, without question, that the three proposed wells will waste in excess of \$60 million dollars of commercial deposits of potash, most of which is on potassium leases owned by Mosaic Potash. Such waste simply should not be allowed especially where, as here, the proposed locations are at surface locations prohibited by Order R-111-P and alternative methods of development, including unitization, which, by Bass's and Devon's own admissions, have not even been considered, much

less pursued. Until such time as alternative methods of development, including unitization, directional drilling, and horizontal drilling are fully considered and evaluated, there are simply no sustainable reasons under either the New Mexico Oil and Gas Act or Order R-111-P to approve the APDs.

1. The proposed wells will “waste” commercial deposits of potash as that term is defined in Section 70-2-3 NMSA 1987

The OCC is charged with the responsibility, among others, of preventing “waste” of potash from oil and gas operations.² Section 70-2-6, NMSA 1978. In addition to its ordinary meaning, Section 70-2-3(F) of the New Mexico Oil and Gas Act defines “waste” as being:

drilling or producing operations for oil or gas within any area containing commercial deposits of potash where such operations would have the effect unduly to reduce the total quantity of such commercial deposits of potash which may reasonably be recovered in commercial quantities or where such operations would interfere unduly with the orderly commercial development of such potash deposits. [Emphasis supplied].

On the record in these consolidated cases, it is clear beyond question that the three proposed wells will result in the “waste” of potash as that term is used in the New Mexico Oil and Gas Act. First, it is undisputed that all three of the proposed wells are located in areas of “commercial” deposits of potash. Indeed, all of Sections 24 and 7, including the two 40 acre

² Section 70-2-6A NMSA 1978 provides that: “The division shall have, and is hereby given, jurisdiction and authority over all matters relating to the conservation of oil and gas and the prevention of waste of potash as a result of oil or gas operations in this state. It shall have jurisdiction, authority and control of and over all persons, matters or things necessary or proper to enforce effectively the provisions of this act or any other law of this state relating to the conservation of oil or gas and the prevention of waste of potash as a result of oil or gas operations.”

tracts sought to be developed, are inside much larger areas of contiguous potash deposits determined to be "potash enclave"³ by the Bureau of Land Management ("BLM"). Mosaic Potash Exh. 3; Bass Exh. 1. Mosaic Potash has likewise concluded that the areas of the three proposed wells contain commercial deposits of potash of sufficient grade and thickness to be recoverable as demonstrated by the fact that it has included all three areas within its "life-of-mine" reserves ("LMR").⁴ Tr. 187, 211; Mosaic Potash Exhs. 2 and 3.

Given the strength and uncontradicted nature of this evidence, it is no surprise that neither Bass nor Devon dispute the fact that the three proposed wells are located in areas of commercial deposits of potash.

Nor can there be any dispute over the fact that the three proposed wells, if allowed, would significantly reduce the total amount of potash that would otherwise be recovered. As explained by Dan Morehouse, who was accepted by the OCC as an expert mining engineer, the wells proposed in Section 24 would result in the loss of \$56 million dollars in potash, which is the equivalent of 300 man-years of labor, and the well in Section 7 would waste an additional \$11 million dollars. Tr. 193, 200. Moreover, as explained by Morehouse, the \$56 million dollars in potash that would be wasted if Apache 7A is allowed in Section 24 includes only the potash ore

³ "Potash enclave," as used by the BLM and as shown in "blue" on Mosaic Potash Exhibit 1, is defined as "those areas (enclaves) where potash ore is known to exist in sufficient thickness and quality to be mineable under existing technology and economics." See Order of the Secretary of the Interior, 51 Fed. Reg. 3942 (October 28, 1986)(hereinafter cited as "1986 Secretarial Order").

⁴ "Life-of-mine" reserves are defined in Order R-111-P as "those potash deposits within the Potash Area reasonably believed by the potash lessee to contain potash ore in sufficient thickness and grade to be mineable using current day mining methods, equipment and technology." Order R-111-P(G).

in the 10th ore zone and does not include additional potash known to exist in the 8th ore zone in the same area which would also be wasted. Tr. 227. Similarly, the \$11 million dollars in potash ore that would be wasted if the proposed James Ranch #93 well is allowed in Section 7 includes only the potash ore within a one-half mile radius circle of the well (excluding the potash wasted by previously drilled wells)(Tr. 214-215) and does not include the additional known deposits of mineable potash ore south and east of the WIPP site that would become inaccessible and, therefore, wasted, due to the strategic location of the proposed well in the center of the only path to these ores. Tr. 198.

No real effort was made at the hearing to challenge the tremendous amounts of potash that would be wasted by the proposed wells; nor could there have been. As explained by Morehouse, he calculated the potash that would be wasted by the proposed wells by using a one-half mile radius circle around each of the deep gas wells in Sections 24 and 7, excluding the ore wasted by previously drilled wells near Section 7. Tr. 193-194, 199-200, 215. No consideration was given to the proposed Delaware well in Section 24 because the potash it would waste is overlapped by the larger amount of potash that would be wasted by the deep gas wells. Tr. 192. The one-half mile radius circle used by Morehouse in his calculations is the standard spacing distance between deep gas wells and mining operations recognized and used by both the BLM and the OCC. See, e.g., Order R-111-P, Sections G(a) and (b) and 1986 Secretarial Order, III.E.4.⁵ The necessity for adequate spacing between oil and gas operations and underground

⁵ The 1986 Secretarial Order provides as follows in Section III.E.4: "Applications for permits to drill vertical test wells for oil and gas at locations that are in the Potash Area but outside the State of New Mexico's "Oil-Potash Area" and which do not directly offset an enclave (within one-quarter mile if an oil test well or one-

mining, of course, is due to the extreme hazard and risk that a deep gas well in close proximity to underground mining might allow methane to escape and migrate into underground workings. Tr. 203-205. The consequence of such an event is catastrophic. As explained by Morehouse, if such an event occurred, Mosaic Potash's mine could be reclassified by the U. S. Mine Safety and Health Administration ("MSHA") and required, among other things, to replace all underground equipment with "explosion proof" equipment. Tr. 177-179. The cost of this could exceed \$200 million dollars and, of course, is an amount few, if any, companies could withstand and remain in business. Tr. 217. This risk, and its consequences, is well known and recognized by the OCC as demonstrated by its finding No. 13 in Order R-111-P that:

Release of methane into potash mine workings would endanger the lives of miners and would render further mining activities uneconomic because of the additional, and more expensive safety requirements which would be imposed by the Mine Safety and Health Administration (MSHA) of the U. S. Department of Labor.

After determining the one-half mile radius circle around the two deep gas wells, Morehouse then determined the grades and heights of ore in the circles by reference to actual core hole data. Tr. 226. He then determined the expected recoveries and extractions and came up with a gross value of potash wasted within the one-half mile circle. Tr. 194. These calculations, which resulted in \$56 million dollars of wasted potash from the proposed wells in Section 24 and \$11 million for the proposed well in Section 7, for a total of \$67 million dollars, are not only supported by credible and accepted mine engineering methodologies and data, but stand uncontradicted.

half mile if a gas test well) shall be routinely processed by the authorized officer. [Emphasis supplied].

The fact that these potash deposits, if not wasted, will be recovered and mined is likewise clear from the record evidence. Not only are they included in Mosaic Potash's LMR on file with the State Land Office and BLM, but are in Sections already included in Mosaic Potash's mine plans. See Mosaic Potash Exh. 1; Tr. 182-184. As explained by Dan Morehouse, Mosaic Potash is already mining in Section 22 and according to its mine plan, will be mining in Section 24 by 2008.⁶ Tr. 185.⁷ At the present time, it is mining approximately two miles from the location of the proposed wells in Section 24. Tr. 210. Section 7, or a portion of it, is likewise already included in Mosaic Potash's mine plan. Mosaic Potash Exh. 1. Thus, while it is impossible to predict with any certainty when the areas of the proposed wells will be mined, it is clear from the evidence that they will, in fact, be mined if not wasted.

The foregoing shows, without more, that the proposed wells will "waste" potash as that term is used in Section 70-2-3 of the New Mexico Oil and Gas Act. The undue nature of this waste is shown not only by the millions of dollars of otherwise recoverable commercial deposits of potash that will be wasted if the wells are allowed, but by the fact that both Bass and Devon admit that they have not even considered, much less pursued, alternative methods of development that would reduce the amount of potash that would be wasted. Indeed, when asked

⁶ Mosaic Potash owns the potash lease for Section 23 and has an application pending with the BLM for a lease on Section 24 which would include all of Section 24 with the exception of the 40 acre fee lands involved in this proceeding. Tr. 211-212.

⁷ The projected date of mining each of the blocks shown on Mosaic Potash Exh. 1 is shown in the small black box in the block. It is not legible on the printed copy introduced as an exhibit but is visible on the pdf copy filed with the OCC by enlarging the pdf version.

on cross-examination, Wayne Bailey, Landman for Bass, admitted that he had not filed an APD with the BLM or anyone else for an alternative location to develop the oil and gas on the 40 acre parcel in Section 7. Tr. 57-58. Further, he admitted that he had not sought to develop the 40 acres by any means other than a vertical well through the potash deposits and, more specifically, had not filed an APD with the BLM for a directional well from a surface location at the existing James Ranch Well 14. Tr. 58. The failure to at least explore this alternative, given the success of James Ranch Wells Nos. 14 and 15, both of which were directionally drilled to bottom hole locations under Section 7 in the 1980's, coupled with the well known advances in directional drilling technology since that time, shows a complete disregard for the owners of other mineral interest owners, like Mosaic Potash and the BLM, who will be impacted by the proposed oil and gas drilling. Such conduct, under any standard, is "undue waste" and should not be condoned.

Nor is such waste justified by Bass's claim that it can only develop the proposed well in Section 7 with a vertical hole because it wants to "test all the potentially productive formations under the 40-acre tract." Tr. 69. On the contrary, the record is completely devoid of any evidence, documentary or otherwise, showing the potential for all oil or gas production in any formation in or underlying Section 7, with the sole exception of the fact that there are two directionally drilled wells producing from the Morrow formation underlying Section 7. No evidence at all was presented to show the presence or potential presence of oil in the Delaware formation. Without such evidence, one is left to speculate on what geological data, if any, Bass is relying upon for its claim that it wants to "test all the potentially productive formations under the 40-acre tract." In the absence of such geological evidence, and based upon the record in this case, there is simply no evidence upon which to conclude that there are any "potentially

productive formations” underlying Section 7 other than the Morrow. This is especially true given the testimony of Bass witness William Dannels, qualified as an expert drilling engineer, that while the Delaware formation has four basic zones, the Brushy Canyon, middle Brushy Canyon, lower Brushy Canyon, and “several zones in each of these,” neither the Brushy Canyon nor Cherry Canyon are productive in Section 7. Tr. 101-102. This testimony, coupled with the complete lack of record evidence on the oil potential of the Delaware formation in Section 7, falls far short of justifying the waste of any potash, much less \$11 million dollars worth of potash, particularly where, as here, the proposed well in Section 7 will, in addition, block access to still millions of dollars in additional potash ore to the south and east of WIPP.

Finally, the definition of “waste” in Section 70-2-3 of the New Mexico Oil and Gas Act also includes, in addition to the foregoing, oil and gas operations “where such operations would interfere unduly with the orderly commercial development of such potash deposits.” The interference with the orderly development of potash from the proposed wells in this case is clear from the evidence.

First, with respect to Section 24, all of which is owned by the BLM with the exception of the 40-acre tract at issue here, the BLM has struck a balance between the orderly development of potash and oil and gas in Section 24 by creating a “drilling island” along the eastern edge of Section 24 adjacent to WIPP. From surface locations within this “drilling island,” the BLM has allowed multiple wells to be drilled to bottom hole locations underlying Section 24. All of these wells, as the record shows, were drilled by Devon. This orderly development by the BLM, in which Devon has participated, would be interfered with, if not destroyed, if the OCC were to disregard the BLM’s development plan and allow wells in Section 24 at any location other than

from the already established “drilling island.” Clearly, there is no evidence in the record in this case to warrant interference with such a well defined and established development plan in Section 24.

Further, Mosaic Potash is currently mining in Section 22, some two miles from the proposed well locations, owns the potash lease in Section 23, and has applied to the BLM for a lease for Section 24, all of which is owned by the BLM with the exception of the 40-acre tract at issue here. Section 23 and the western portion of Section 24, the area of the proposed wells, are already included in Mosaic Potash’s mine plan and are planned to be mined in the next few years. The proposed wells, if allowed, would clearly interfere with this planned mine development and, in addition, interfere with the orderly development of potash in all of Section 24 because of the increased safety hazard that would be created by the proposed wells.

The same is true with respect to Section 7. Again, the BLM owns all of Section 7 except for the 40-acre tract at issue in this case and, like in Section 24, has not allowed vertical drilling in Section 7 but, instead, has allowed the development of oil and gas interest by directionally drilled wells at surface locations outside Section 7 with bottom hole locations underlying Section 7. This orderly development plan for both oil and gas and potash lessees would be interfered with if the proposed well is allowed in Section 7.

The true extent of the interference from the proposed well in Section 7 is not limited, however, to Section 7. As explained by Dan Morehouse, the location of the proposed well in Section 7, located as it is in the center of a narrow band of potash enclave leading to the south and east of WIPP, would interfere with the development of extensive potash deposits south and east of WIPP by blocking access to the area. Tr. 198. Preserving and maintaining this access

route, as explained by Morehouse, has been the subject of discussions with the BLM since the early 1990's. Tr. 198-199. Allowing the well would render this effort meaningless.

In sum, the only conclusions supported by the record evidence is that the proposed wells in both Sections 24 and 7 will unduly "waste" potash as that term is defined in Section 70-2-3 of the New Mexico Oil and Gas Act, or, alternatively, the proposed wells will interfere with the orderly development of potash deposits. For either or both reasons, the proposed wells should be denied.

2. The proposed wells are for surface locations prohibited by Order R-111-P (April 21, 1988)

Order R-111-P governs the distance oil and gas wells can be drilled to an LMR. For safety reasons, it also recognizes that deep gas wells provide a significantly greater hazard to underground mining than shallow oil wells and, for that reason, Order R-111-P provides different spacing requirements depending upon whether a proposed well is a "shallow" or "deep" well. A "shallow well" is defined as a well to formations above the base of the Delaware Mountain Group or above a depth of 5,000, whichever is lesser (sic). A "deep" well is defined as all formations below the base of the Delaware Mountain Group or below a depth of 5,000 feet, whichever is lesser (sic). Order R-111-P, Section D(1)(a) and (b). All of the proposed wells at issue in this case are for depths below 5,000 feet and, therefore, are "deep" wells within the meaning of Order R-111-P.

Section G of Order R-111-P sets forth the spacing requirements between proposed oil and gas wells and LMRs and provides as follows with respect "deep" wells: "A deep well shall be drilled no closer than one-half mile from the LMR." Consistent with these provisions of Order

R-111-P, it is clear beyond question that the proposed locations of all three wells at issue in this case are at locations prohibited by Order R-111-P.

The current LMR of Mosaic Potash, on file with the State Land Office and the BLM, is partially shown on Mosaic Potash's Exhibit No. 1 and includes, among other areas, all of Section 23, which, of course, joins Section 24 to the west. At a minimum, therefore, the LMR of Mosaic Potash extends up to the western edge of Section 24 and is immediately adjacent to the western edge of the 40-acre tract at issue in Section 24. Because Apache Well No. 6 is proposed to be located 660 feet from the west line of Section 24, it is located 660 feet from Mosaic Potash's LMR. Tr. 61, 138-139. This is less than the one-half mile required by Order R-111-P.

Similarly, Apache Well No. 7A is proposed to be located 1150 feet from the west line of Section 24. Devon Exh. 5. This, too, is less than one-half mile from the LMR of Mosaic Potash.

Thus, neither of the proposed wells in Section 24 comply with Order R-111-P and, for that reason alone, should be denied.⁸

The same is true for the proposed James Ranch Well No. 93 in Section 7. Mosaic Potash owns the potash lease for all of Section 7 and 8 with the exception of the 40-acre tract at issue in

⁸ Devon appeared to have argued at the hearing that Mosaic Potash did not object to its proposed Apache Well No. 6 within 20 days and therefore waived its right to object to the well. Tr. 117-120. This is incorrect. Order R-111-P states: "Any application to drill in the LMR area, including buffer zones, may be approved only by mutual agreement of lessor and lessees of both potash and oil and gas interests." Order R-111-P, Section G. Even if the proposed well is not in Mosaic Potash's LMR, it is clearly within the buffer zone of the LMR given the fact that it is proposed at a location only 660 feet from the LMR. It cannot, therefore, be drilled without the consent of Mosaic Potash. The 20 day time limit to object is also addressed in Section G of R-111-P but it only applies to APDs for locations outside both LMRs and their buffer zones. That is not the case here.

this case. Tr. 181-182. It's LMR in this area, as shown by Mosaic Potash's Exh. 1, includes all of Section 7 and a portion of Section 8. Assuming, as the OCC has previously held, that the 40-acre tract cannot be included in the LMR, Mosaic Potash's LMR in Sections 7 and 8 still butts up against the west, south, and east lines of the 40-acre tract. Because the proposed well is to be located at a point 660 feet from the north and east lines of the 40-acre tract, it will be at a location closer to Mosaic's LMR than the one-half mile required by Order R-111-P. It, therefore, does not comply with R-111-P and should likewise be denied.

The fact that a fee owner of a 40-acre tract surrounded by an area of commercial deposits of potash cannot possibly meet the spacing requirements of Order R-111-P does not warrant a different result.⁹ It simply means that the fee owner must find an alternative method, other than drilling a vertical well, to develop his or her oil and gas interests. This situation is no different than an owner of a small tract of land containing less than 40 acres who wants to drill a well but cannot possibly meet the 40-acre drilling unit required by OCC rules. In such a situation, as here, there are other means of development, like unitization and directional drilling, that will allow the oil and gas interests to be developed. Simply stated, the right to develop does not always include the right to drill. And as demonstrated below, there are alternative methods of development available to each of the fee owners in this case.

3. **There are alternative methods available to Bass and Devon to develop the oil and gas mineral interests on each of the fee interest owner's lands that will allow for the development of their oil and gas interest while at the same time minimizing the amounts of potash that will be wasted, including directional**

⁹ The Snyder Ranch case is distinguishable from the instant case because here, unlike in Snyder Ranch, there are nearby surface locations from which the 40-acre tracts can be developed with directional or horizontal wells.

or horizontal drilling or by unitization

The record evidence in this case clearly demonstrates that the proposed wells at issue can be developed in an alternative manner which will minimize the amount of potash that will be wasted. Indeed, the various alternatives available will not only reduce the amount of potash that will be wasted, but are consistent with the historical development of oil and gas in both Sections 24 and 7.

In Section 24, for example, there are already nine oil and gas wells.¹⁰ Mosaic Potash Exh. 2. All of these wells were drilled from a "drilling island" located adjacent to the west edge of WIPP. Three of these wells were horizontally or directionally drilled to bottom hole locations in the Delaware formation at offset distances in excess of three-fourths of a mile with one being almost one mile. Tr. 133-134, 142, 152-155. In fact, one of these wells was horizontally drilled to a distance closer to the west line of Section 24 than either of the two wells being proposed in this case. Tr. 152-154. These wells, even with their large offsets, are economical. Tr. 134-135, 155. When confronted with this evidence at the hearing, Devon witness Kenneth Gray admitted that Devon could develop the Delaware underlying the 40-acre tract at issue from a surface location on the "drilling island" adjacent to WIPP. Tr. 136. The same is true for Apache Well No. 7A. Tr. 137. Clearly, in the face of this irrefutable evidence, it strains credulity to say that Devon cannot develop the 40-acre unit at issue by a method other than a vertical well.

Recognizing this, and to obviously reduce the impact of Devon witness Gray's admission

¹⁰ James Blount, an expert drilling engineer for Devon, testified that there were even more than the nine shown. Tr. 151. Interestingly, Devon's exhibit on Section 24 only shows five wells. Devon Exh. 2.

that the 40-acre tract could be developed from the west edge of WIPP, James Blount, another Devon witness, claimed that a horizontal well cannot be drilled to develop the 40-acre tract at issue because the other wells have multiple pay intervals open every 600 feet in the wellbore and are producing from four proration units. Tr. 155-156. Stated otherwise, he said that Devon already has a horizontal well that "accesses any Delaware that's east of this 40-acre tract." Tr. 156. This, of course, raises the issue of why this 40-acre tract was not unitized with the ones now being developed? When asked this question, Blount could only say "I don't know the answer to that." Tr. 156.

If, as Blount apparently contends, the Delaware underlying the 40-acre tract at issue in Section 24 cannot be developed with a directional or horizontal well from the west edge of WIPP, this is a condition clearly created by Devon and it, not Mosaic Potash or anyone else, should bear the burden of such poor and outrageous developmental planning, or lack of planning. This is particularly so since from Blount's own testimony, many of the Delaware wells in Section 24 were drilled during the time these APDs were pending *de novo* before the OCC and its lease on the 40-acre tract gave it the right to unitize the tract. Tr. 157-159; Devon Exh. 3.

Notwithstanding Blount's denial, Mosaic Potash submits that the record evidence in this case shows that the 40-acre tract at issue can be developed from a surface location at the west edge of WIPP by a directional or horizontal well. Even if the Delaware formation cannot be developed from that location, the possibility of unitization still exists and its proposed Apache Well No. 7A, a deep gas well, can be drilled from a surface location on the drilling island next to WIPP. These alternative methods of development clearly exists and would reduce the amount of potash that would be wasted from the development of the oil and gas interests on the 40-acre

tract.

Similarly, with respect to Section 7, Bass's proposed James Ranch Well No. 93 can be directionally or horizontally drilled from a surface location on or near the pad of James Ranch Well No. 14. The only real objection to this alternative was a contention that a directional well could not test every formation like a vertical well. Tr. 69 (testimony of Wayne Bailey). This claim, however, falls far short of justifying the waste of millions of dollars in potash. First, the oil and gas interests in the 40-acre tract at issue, unlike the one in Section 24, are already being developed because they are included in the 320-acre proration unit from James Ranch Well No. 14. If an "infill" well is desired in this same proration unit, it, too, should be directionally drilled like James Ranch Well No. 14. Second, to accept such an argument as justification for a vertical as opposed to directional or horizontal well, would be tantamount to rejecting all directional and horizontal drilling. Even Devon admitted this. Tr. 97. To state such a proposition is to reject it.

Further, as far as development of the Delaware formation in Section 7 is concerned, and as discussed earlier, the record is completely devoid of any geological evidence whatsoever showing that the Delaware or any formation other than the Morrow is or might be present underlying this 40-acre tract. In fact, the testimony that touched briefly on this issue suggests that the Delaware is not known to be present in the area of the proposed well in Section 7. Tr. 101-102.

In sum, based upon the evidence in the record, it is clear that there are alternative methods to develop the oil and gas interests on both 40-acre tracts in Sections 24 and 7, most of which have not been considered or pursued by either Bass or Devon. Because of these alternative methods, or at least until they have been fully considered and evidence presented

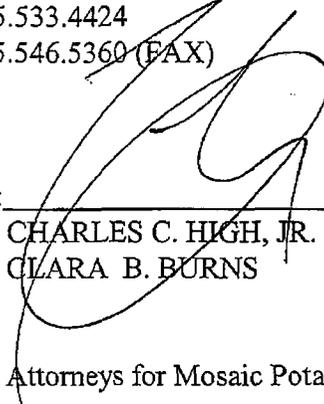
indicating that they are not feasible, there is simply no evidence upon which to approve the APDs at issue.

CONCLUSION

For the foregoing reasons, Mosaic Potash submits that the APDs must be denied.

Respectfully submitted,

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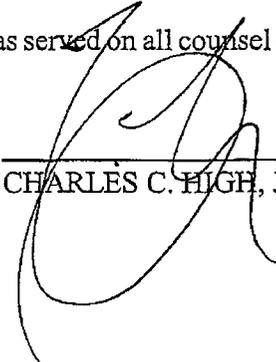
By: 

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on all counsel of record this 17th day of June, 2006.



CHARLES C. HIGH, JR.