



MODRALL SPERLING

L A W Y E R S

2006 OCT 2 PM 3 42

September 29, 2006

VIA FACSIMILE (505-476-3462)  
And Regular Mail

Larry P. Ausherman  
505.848.1836  
Fax: 505.848.9710  
lpausherman@modrall.com

Ms. Florene Davidson  
Oil Conservation Division  
1220 South St. Francis Drive  
Santa Fe, NM 87505

Re: (1) Request of Intrepid Potash-New Mexico, LLC, for Pre-Hearing Conference and Motion for Continuance,  
(2) Intrepid Potash-New Mexico, LLC's Motion to Quash or for Protective Order from Lynx Petroleum Consultants, Inc.'s August 23, 2006 Subpoena Duces Tecum and Response to September 27, 2006 Motion to Compel; and  
(3) Intrepid Potash-New Mexico, LLC's Motion to Quash or for Protective Order from Lynx Petroleum Consultants, Inc.'s September 27, 2006 Second Subpoena Duces Tecum;  
*In the Matter of the Application of Lynx Petroleum Consultants, Inc. for Permit to Drill in Potash Area, Eddy 'BD' State No. 2 Well, Eddy County, New Mexico; Oil Conservation Division Case No. 13762*

Dear Ms. Davidson:

Enclosed for filing in the above referenced are the original and two copies each of: (1) Request of Intrepid Potash-New Mexico, LLC, for Pre-Hearing Conference and Motion for Continuance; (2) Intrepid Potash-New Mexico, LLC's Motion to Quash or for Protective Order from Lynx Petroleum Consultants, Inc.'s August 23, 2006 Subpoena Duces Tecum and Response to September 27, 2006 Motion to Compel; and (3) Intrepid Potash-New Mexico, LLC's Motion to Quash or for Protective Order from Lynx Petroleum Consultants, Inc.'s September 27, 2006 Second Subpoena Duces Tecum.

Modrall Sperling  
Roehl Harris & Sisk P.A.

Bank of America Centre  
500 Fourth Street NW  
Suite 1000  
Albuquerque,  
New Mexico 87102

PO Box 2168  
Albuquerque,  
New Mexico 87103-2168

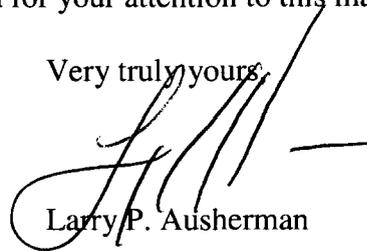
Tel: 505.848.1800  
www.modrall.com

September 29, 2006

Page 2

Please return an endorsed copy of each Motion to me in the enclosed self-addressed, stamped envelope. Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read 'L. P. Ausherman', written over a horizontal line. The signature is stylized and cursive.

Larry P. Ausherman

LPA:pcp

Enclosures

cc:w/enclosure via facsimile:

Charles N. Lakins

William F. Carr

Mary Lynn Bogle

James E. Haas

Steven B. Richardson

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

**IN THE MATTER OF THE APPLICATION OF  
LYNX PETROLEUM CONSULTANTS, INC.  
FOR PERMIT TO DRILL IN POTASH AREA,  
EDDY 'BD' STATE NO. 2 WELL,  
EDDY COUNTY, NEW MEXICO.**

2006 OCT 2 2 PM 3 42  
Case No. 13762

**INTREPID POTASH-NEW MEXICO, LLC'S  
MOTION TO QUASH OR  
FOR PROTECTIVE ORDER FROM  
LYNX PETROLEUM CONSULTANTS, INC.'S  
SEPTEMBER 27, 2006 SECOND SUBPOENA DUCES TECUM**

Intrepid Potash-New Mexico, LLC ("Intrepid") requests that the Oil Conservation Division ("Division") or Oil Conservation Commission ("Commission") quash or provide protection from the September 27, 2006, Second Subpoena Duces Tecum requested by Lynx Petroleum Consultants, Inc. ("Lynx"), as further described below. As grounds for this Motion, Intrepid states the following:

1. Lynx's appeal in this matter presents the relatively simple question of whether the drilling of the proposed well in Section 32, Township 20, South, Range 30 East, N.M.P.M., Eddy County, New Mexico would result in an undue waste of potash, under Commission Order No. R-111-P, Paragraph C(2). Paragraph C(2) of Order No. R-111-P provides: "No wells shall be drilled for oil or gas at a location which, in the opinion of the Division or its duly authorized representative, would result in undue waste of potash deposits or constitute a hazard to or interfere with mining of potash deposits."

2. Importantly, Lynx has already admitted that drilling oil and gas wells generally results in "spoilage of potash reserves." *See* Lynx's Pre-Hearing Statement, 4 ("Lynx contends that no additional spoilage of potash reserves will occur due to the extensive previous oil and gas development surrounding the proposed location. . . .").

3. Lynx served its initial subpoena duces tecum on Intrepid on or about August 23, 2006 (the "Initial Subpoena").

4. Lynx's Initial Subpoena was quite broad, but Intrepid sought to cooperate in providing a more limited scope of the information requested in the Initial Subpoena. Intrepid participated in two extended conference calls with Intervenor and Lynx where some agreements were reached both as to the Initial Subpoena served by Lynx and one served by Intrepid. However, Lynx indicated in the conferences that it would seek additional discovery.

5. Letters confirming understanding among Intervenors, Lynx, and Intrepid about Lynx's Initial Subpoena and Intrepid's subpoena were exchanged on Friday, September 22, 2006. On the same day, Lynx sent a letter to Intrepid requesting 12 additional categories of information and indicating that it was seeking a second subpoena, and would file a motion to compel.

6. In the late morning on September 27, 2006, Lynx served Intrepid's counsel, via facsimile transmission, with a Motion to Compel Production of Documents seeking certain "economic evaluations and/or reserve studies" of Intrepid's predecessor.

7. In the mid to late afternoon on September 27, 2006, Lynx served a second subpoena with a list of 14 requests for additional documents from Intrepid (the "Second Subpoena"). The Second Subpoena is attached to this Motion as Appendix A. One of the requests was for certain "economic evaluations and/or reserve studies." See Second Subpoena, Request No. 4.

8. It is not clear to Intrepid why Lynx is serving a Motion to Compel and then hours later serving a subpoena seeking the same category of information.

9. Service of the Second Subpoena and its 14 requests, coupled with the breadth of the Initial Subpoena demonstrates to Intrepid that Lynx, and the entities seeking Intervention in this proceeding, are seeking to escalate what should be a straightforward appeal of the Division's denial of one Lynx's APD into a broad scale inquiry about aspects of Intrepid's operations and records that go well beyond the matter at issue.

10. Intrepid is concerned that the proposed Intervenors are orchestrating much of this discovery and are more interested in getting information from Intrepid about its operations as background for ongoing administrative proceedings in other forums than they are about conducting their oil and gas business and addressing the real and narrow issue presented by Lynx in this appeal.

11. This Motion seeks to quash the Second Subpoena in its entirety as burdensome, untimely, and seeking certain information that is beyond the issue presented in Lynx's appeal. Many of the requests are not limited to any geographic area. See Requests 1, 3, 9, and 12. Other requests are not limited to any particular time period. See Requests 1, 4, 10, and 11. Still others have no relevance to this proceeding.

12. Intrepid requests that the Commission quash the Second Subpoena and limit the scope of discovery that Lynx seeks, and thereby provide clear guidance to the parties concerning the proper scope of this appeal.

13. The Second Subpoena was served less than 30 days from the October 19, 2006 date of the hearing the Commission has scheduled, for one day, in this appeal. Intrepid and its counsel do not have adequate time to prepare for hearing before the Commission on October 19, 2006.

14. The breadth of the Initial Subpoena coupled with these additional areas of document production in the Second Subpoena also suggest the hearing will be time consuming, and last more than the scheduled one day.

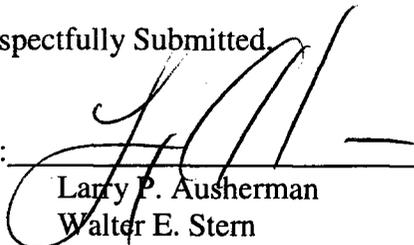
15. Again, the question before the Commission is a simple one: whether the proposed well will result in the undue waste of potash. The Second Subpoena (and in many respects the Initial Subpoena) seek information far afield from the real issues in this appeal, would require burdensome effort for Intrepid to produce the requested records, and would prevent Intrepid from adequately preparing for hearing.

WHEREFORE, Intrepid Potash – New Mexico, LLC, respectfully requests that:

(1) The Division or Commission quash or provide protection from the September 27, 2006 subpoena duces tecum until a pre-hearing conference is held to resolve all outstanding discovery matters; and

(2) The Division or Commission schedule a hearing at its earliest convenience to hear this matter and other pre-hearing matters that are the subject of other Motions Intrepid has filed to date or is filing concurrently with this Motion to Quash.

Respectfully Submitted,

By: 

Larry P. Ausherman  
Walter E. Stern  
Adam H. Greenwood  
Modrall, Sperling, Roehl, Harris, & Sisk, P.A.  
Post Office Box 2168  
Albuquerque, New Mexico 87103-2168  
Telephone: (505) 848-1800  
Facsimile: (505) 848-9710  
Email: lpa@modrall.com

ATTORNEYS FOR INTREPID POTASH-  
NEW MEXICO, LLC

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing pleading was served upon the following counsel of record via facsimile this 29<sup>th</sup> day of September 2006:

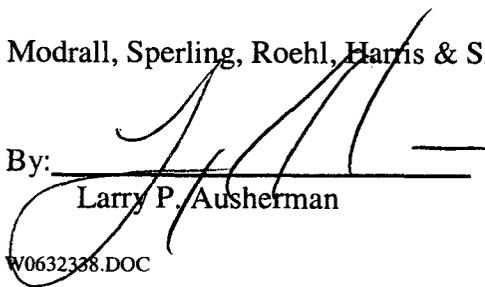
Lynx Petroleum Consultants, Inc.  
c/o Pete V. Domenici, Jr.  
Charles N. Lakins  
Domenici Law Firm, P.C.  
320 Gold Ave. SW, Suite 1000  
Albuquerque, NM 87102  
Telephone: 505-883-6250  
Facsimile: 505-884-3424  
clakins@domenicilaw.com

William F. Carr  
Michael H. Feldewert  
Ocean Munds-Dry  
Counsel for Intervenor BEPCo., L.P.  
Holland & Hart, LLP  
110 N. Guadalupe Street, Suite 1  
Santa Fe, NM 87504-2208  
(505) 988-4421

Mary Lynn Bogle  
Gregory J. Nibert  
Counsel for Intervenor Devon Energy Production, L.P.  
Hinkle, Hensley, Shanor & Martin, LLP  
PO Box 10  
Roswell, NM 88202-0010  
(505) 622-6510

James E. Haas  
Counsel for Intervenor Yates Petroleum Corporation  
Losee, Carson & Haas, P.A.  
P.O. Box 1720  
Artesia, NM 88211-1720  
(505) 746-3505

Modrall, Sperling, Roehl, Harris & Sisk, P.A.

By:   
Larry P. Ausherman

W0632338.DOC

**BEFORE THE NEW MEXICO OIL CONSERVATION DIVISION**

**IN THE MATTER OF THE APPLICATION  
OF LYNX PETROLEUM CONSULTANTS, INC.  
FOR PERMIT TO DRILL IN POTASH AREA,  
EDDY 'BD' STATE NO. 2 WELL,  
EDDY COUNTY, NEW MEXICO**

**Case No. 13762**

**SECOND SUBPOENA DUCES TECUM FOR PRODUCTION OF DOCUMENTS**

**TO: . Intrepid Potash - New Mexico, LLC  
C/O Larry P. Ausherman  
Medrall Spurling Law Firm  
PO Box 2168  
Albuquerque, NM 87103**

**YOU ARE HEREBY COMMANDED TO APPEAR as follows:**

**PLACE: New Mexico Oil Conservation Division  
1220 South St. Francis Drive  
Santa Fe, New Mexico 87505**

**DATE: Friday October 6, 2006**

**TIME: 10:00 a.m.**

**To permit inspection of the following described documents or objects:**

**INSTRUCTIONS**

**This Subpoena Duces Tecum seeks all information available to you or in your possession, custody or control from any source, wherever situated, including but not limited to information from any files, records, computers documents, employees, former employees, consultants, counsel and former counsel. It is directed to each person to whom such information is a matter of personal knowledge.**

**The definitions contained in Lynx's First Subpoena apply as if set forth herein in full.**

**Please produce the following documents:**

- 1. All leases, deeds or other documents that demonstrate Intrepid's mineral leasehold interest.**

2. All documents relied upon by Intrepid that formed the basis of Intrepid's purchase of its mineral leasehold interest in the Known Potash Leasing Area at issue in the 18 section area identified in prior discussions.
3. Provide documents that state the amount of the purchase price that Intrepid paid for the mineral leasehold interest, and/or the valuation of mineral interest by either buyer or sell in the purchase documents.
4. All economic evaluations and/or reserve studies of all potash deposits within the 18-section area prepared by Intrepid's predecessors in interest and/or their consultants.
5. The entry location of the mine Intrepid intends to utilize to mine the potash reserve located in Section 32, T20S, R30E, Eddy County, New Mexico.
6. All documents that establish, discuss or designate the time period when Intrepid intends to enter the mine Intrepid intends to utilize to mine the potash reserve located in Section 32, T20S, R30E, Eddy County, New Mexico, and/or the time period Intrepid plans to construct a new mine entrance to mine the potash reserve located in the same Section 32.
7. All documents that state the mining method that Intrepid intends to utilize to mine the potash reserves located within the 18-Section area.
8. All documents that state the processing method that Intrepid intends to utilize to process the potash reserves located within the 18-Section area.
9. Copies of all documents in Intrepid's possession or control pertaining to the bankruptcy of Intrepid's predecessor in interest.
10. All information for any time period, including any summaries or maps, Intrepid's possession or control pertaining to the known thickness and grades of K2O as sylvite and K2O as langbeinite, or an equivalent combination of the two, in the "Eddy Mine."
11. All information, including any summaries or maps, which indicates the known thickness and grades of K2O as sylvite and K2O as langbeinite, or an equivalent combination of the two, for potash reserves in the 18-Section area.
12. Documents that establish, discuss or state the commercial cut-off threshold determined by Intrepid for each of the following ores:
  - a. Sylvite
  - b. Langbeinite
  - c. Mixed ores
13. Provide all reports, technical evaluations, and/or any other type of document that have been prepared by Intrepid, or any individual hired or contracted by Intrepid, which discusses the use of Gamma-Ray logs to evaluate potash.

14. Provide all reports, technical evaluations, and/or any other type of document that have which provide an industry-accepted "peer review" of any document responsive to Request number 13 above.

THIS SUBPOENA issued by or at request of:

Charles N. Lakins, Esq.  
Attorney for Applicant Lynx Petroleum Consultants, Inc.

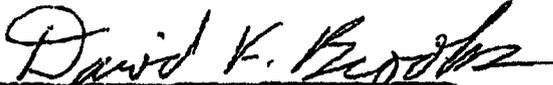
320 Gold Ave SW, Suite 1000, Albuquerque, N.M. 87102  
Address

(505) 883-6250  
Telephone

**CERTIFICATE OF SERVICE BY ATTORNEY**

I certify that I caused a copy of this subpoena to be served on the following persons entities by (hand - delivery) (mail) (facsimile) on this \_\_\_\_\_ day of September 2006:

**Intrepid Potash - New Mexico, LLC  
C/O Larry P. Ansharman  
Modrall Sperling Law Firm  
PO Box 2168  
500 Fourth Street NW, Suite 1000  
Albuquerque, NM 87103**

  
Attorney for Oil Conservation Division

\_\_\_\_\_  
Signature

9/27/06

\_\_\_\_\_  
Date