

HINKLE, HENSLEY, SHANOR & MARTIN, L.L.P.
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RECEIVED

AUG 30 2006

Mary Lynn Bogle
 Oil Conservation Division
 1220 St. Francis Drive
 Santa Fe, NM 87505
 mbogle@hinklelawfirm.com

August 28, 2006

Mr. Mark E. Fesmire, Director
 Oil Conservation Division
 1220 St. Francis Drive
 Santa Fe, New Mexico 87505

**Re: 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**

Dear Mr. Fesmire:

Enclosed please find an original and four copies of Devon Energy Production Corporation's Motion for Summary Judgment for the above matter. Please file the pleading of record and return a conformed copy to me in the self-addressed, stamped envelope enclosed.

Thank you for your assistance. Should you have any questions, please do not hesitate to contact me.

Very truly yours,

HINKLE, HENSLEY, SHANOR & MARTIN, L.L.P.

Mary Lynn Bogle

MLB/rmt
 Encls.
 xc: counsel of record

RECEIVED

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

Oil Conservation Division
1220 S. St. Francis Drive
Santa Fe, NM 87505

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. 13762

MOTION FOR SUMMARY JUDGMENT

Devon Energy Production Corporation ("Devon") hereby moves the Oil Conservation Division for a judgment dismissing the objection of Intrepid Potash – New Mexico, LLC ("Intrepid") to the Application for Permit to Drill filed by LYNX Petroleum Consultants ("Lynx") for its Eddy "BD" State Well No. 2 at a location 660 feet from the North line and 1980 feet from the East line of Section 32, Township 20 South, Range 30 East, N.M.P.M., Eddy County, New Mexico and approving the APD for the drilling of this well. In support of this motion, Devon states:

1. In this case, Lynx seeks an order approving an Application for Permit to Drill for its proposed Eddy "BD" State Well No. 2 at a standard gas well location 660 feet from the North Lin and 1980 feet from the East lin of Section 32, Township 20 South, Range 30 East, N.M.P.M., Eddy County, New Mexico.

UNDISPUTED FACTS:

2. Lynx filed its Application for Permit to Drill the Eddy "BD" State Well No. 2 and, in accordance with Potash Rule G(2), provided notice of its intention to drill with attached plat to Intrepid who is a "potash operator holding potash leases within a radius of one mile of the proposed location". This notice was mailed on March 24, 2006 and received by Intrepid on March 27, 2006. See letter dated March 24, 2006 attached hereto as **Exhibit A** and copy of U. S. Postal Service Certified Mail - Receipt attached hereto as **Exhibit B**.

3. In April, 2006, the Division contacted the State Land Office and the Bureau of Land Management and was advised by each on April 10, 2006 that the proposed location was not within a Life-of-Mine Reserve Area. See letters attached hereto as **Exhibit C** and **Exhibit D**.

4. By letter dated May 9, 2002, Intrepid wrote Lynx informing that Intrepid was opposed to the proposed well location. A copy of this letter and attached plat was sent to Bryan Arant, the OCD's District 2 Geologist. Copies of this letter and plat are attached hereto as **Exhibit E**.

5. Thereafter, the Division denied the Lynx Application for Permit to Drill based on the objection of Intrepid, Lynx filed its application in this case.

ARGUMENT:

6. Summary Judgment is appropriate where there is no issue as to any material fact and the moving party is entitled to judgment as a matter of law. Rule 1-056 NMRA 1998.

7. The proposed well location is in the Known Potash Leasing Area and is governed by Oil Conservation Commission Order No. R-111-P.

8. This case is an adjudicatory proceeding – not a rulemaking proceeding.

9. The Commission adopted the Potash Rules by Order NO. R-111-P and it is the duty of the Oil Conservation Commission to implement this order and these rules.

10. Order No. R-111-P provides for the designation by potash lessee of the Life-of-Mine Reserve Areas (“LMR’s”) annually by January 31 of each year. See Potash Rules G (a) and (c). Once acreage is included in an LMR, drilling of oil and gas wells is allowed in accordance with the provisions of the R-111-P Potash Rules.

11. Rule G is entitled “DESIGNATION OF DRILLABLE LOCATION FOR WELLS”. It provides in subpart (a) that :

Before drilling operations for oil or gas on any lands within the Potash Area, the well operator shall prepare a map or plat showing the location of the proposed well said map or plat to accompany each copy of the Notice of Intention to Drill. In addition to the number of copies required by the Division, the well operator shall send one copy by registered mail to each potash operator holding potash leases within a radius of one mile of the proposed well...

12. Rule G(3) provides:

Applications to drill outside the LMR **will be approved** as indicated below, provided there is **no protect** from potash lessee **within 20 days** of his receipt of a copy of the notice:

- (a) A shallow well shall be drilled no closer to the LMR than one-fourth (¼th) mile or 110% of the depth of the ore, whichever is greater.
- (b) **A deep well shall be drilled no closer than one-half (½) mile from the LMR**”. (Emphasis added).

13. The proposed Eddy "BD" State Well No. 2 is a deep well located more than one-half (1/2) mile from the Intrepid LMR.

14. Intrepid received Lynx's Notice of Intention to Drill on March 28, 2006, but did not protest the proposed well within 20 days of receipt of a copy of the notice.

15. Pursuant to Commission Order No. R-111-P, Applications for Permits to Drill deep wells in the Known Potash Leasing Area that are more than one-half (1/2) mile from a LMR and to which no protest by a potash lessee is filed within 20 days after receipt by the potash lessee of the notice of intent to drill required by Order R-111-P will be approved.

16. Pursuant to the provisions of the Commission Order R-111-P, which the Division is required to implement and enforces, the Lynx Application for Permit to drill was required to be approved; and the Division erred in denying the Lynx Application.

WHEREFORE, Devon Energy Production Corporation requests that the Division grant this Motion for Summary Judgment and enter an order dismissing the objection of Intrepid as untimely and directing the Division's District Office to approve Lynx Petroleum Consultant, Inc.'s Application for Permit to Drill the Eddy "BD" State Well No. 2.

Respectfully submitted:

HINKLE, HENSLEY, SHANOR & MARTIN, L.L.P.

By: _____

Gregory J. Nibert

Mary Lynn Bogle

P.O. Box 10

Roswell, New Mexico 88201-0010

(505) 622-6510

Fax: (505) 622-9332

Attorneys for Devon Energy Production Corporation

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of August, 2006, I served a copy of the foregoing *Motion for Summary Judgment* via First Class mail, postage prepaid, to the following counsel of record:

Peter V. Domenici, Jr.
Charles N. Lakins
Domenici Law Firm, P.C.320 Gold Ave. SW, Suite 1000
Albuquerque, NM 87102
(505) 883-6250

Attorneys for Lynx Petroleum Consultants, Inc.

William F. Carr
Ocean Munds-Dry
Holland & Hart
110 North Guadalupe, Suite 1
Santa Fe, New Mexico 87504-2008
(505) 988-4421

Attorneys for BEPCo., L.P.

James E. Haas
Losee, Carson, Haas & Carroll
P.O. Box 1720
Artesia, NM 88211-1720
(505) 746-3505

Attorneys for Yates Petroleum Corporation

Larry P. Ausherman
Walter E. Stern
Modrall Spering Law Firm
P.O. Box 2168
Albuquerque, NM 87103
(505) 848-1800

Attorneys for Intrepid Potash – New Mexico, LLC

HINKLE, HENSLEY, SHANOR & MARTIN, L.L.P.

By: 
Mary Lynn Bogle

This sent
confidential

Lynx Petroleum Consultants, Inc.

P.O. Box 1708
3325 Enterprise Drive
Hobbs, New Mexico 88241

505 392-6950 Fax: 505 392-7886
March 24, 2006

copy of all
sent to
Steve Dwan
3-27
+ copy to
to BR,
OCD
F&G

Mr. Tom McGuire
Intrepid Mining NM, LLC
210 Red Cloud
Carlsbad, NM 88220

Re: Eddy 'BD' State No. 2
660' FNL & 1980' FEL, Section 32, T-20S, R-30E
Eddy County, New Mexico

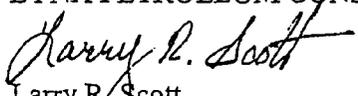
Sir:

Lynx Petroleum has staked and is applying for a permit to drill the above referenced well to test the Morrow formation with total depth projected at 12,620'. Brian Arrant with the New Mexico Oil Conservation Division has required that we obtain a waiver of objection from the owner of any potash leases that may be affected by this well. I spoke with Mr. Joe Mraz with the state land office who indicated that, from his map, our location was outside of your LMR but may be affected by the Order R-111-P buffer zone. He suggested that I contact you directly to see if there would be any objection.

Accordingly, I have enclosed a plat showing the above information and a copy of the C-101 and am requesting that, if you have no objections, please sign and return to us one copy of this letter at your earliest convenience. Thanks in advance for your consideration and do not hesitate to call or write if you have any questions.

Sincerely,

LYNX PETROLEUM CONSULTANTS, INC.


Larry R. Scott

Intrepid Mining NM LLC will have no objection to the drilling of the above referenced well.

Tom McGuire
Title: _____
Date: _____

cc: w/o enc - NMOCD

EXHIBIT A

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> Complete Items 1, 2, and 3. Also complete Item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) _____ C. Date of Delivery _____</p>
<p>1. Article Addressed to:</p> <p>Tom McBuire Intrepid Mining NM, LLC 210 Red Cloud Carlsbad, NM 88220</p>	<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p> <p>3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>
<p>2. Article Number (Transfer from service label)</p>	<p>7005 1820 0001 6803 4333</p>

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-154

E5E4 E091 T000 1820 0001 6803 4333

U.S. Postal Service TM CERTIFIED MAILTM RECEIPT (Domestic Mail Only; No Insurance Coverage Provided)									
For delivery information visit our website at www.usps.com									
OFFICIAL USE									
Postage	\$.63								
Certified Fee	2.40								
Return Receipt Fee (Endorsement Required)	1.85								
Restricted Delivery Fee (Endorsement Required)									
Total Postage & Fees	\$ 4.88								
<table border="1"> <tr> <td colspan="2">Sent To</td> </tr> <tr> <td colspan="2">Tom McBuire, Intrepid Mining NM, LLC</td> </tr> <tr> <td colspan="2">Street, Apt. No., or PO Box No. 210 Red Cloud</td> </tr> <tr> <td colspan="2">City, State, ZIP+4[®] Carlsbad NM 88220</td> </tr> </table>		Sent To		Tom McBuire, Intrepid Mining NM, LLC		Street, Apt. No., or PO Box No. 210 Red Cloud		City, State, ZIP+4 [®] Carlsbad NM 88220	
Sent To									
Tom McBuire, Intrepid Mining NM, LLC									
Street, Apt. No., or PO Box No. 210 Red Cloud									
City, State, ZIP+4 [®] Carlsbad NM 88220									
PS Form 3800, June 2002 See Reverse for Instructions									



EXHIBIT B



NEW MEXICO ENERGY, MINERALS and NATURAL RESOURCES DEPARTMENT

BILL RICHARDSON
Governor
Joanna Prukop
Cabinet Secretary

Mark E. Fesmire, P.E.
Director
Oil Conservation Division

April 7, 2006
New Mexico State Land Office
310 Old Santa Fe Trail
Santa Fe, NM 87504-1148
Attn: Mr. Joe Mraz or Whom It May Concern

RECEIVED
APR 12 2006
SUNNYSIDE

RE: APPLICATION FOR PERMIT TO DRILL IN POTASH AREA

OPERATOR: Lynx Petroleum Consultants, Inc.
LEASE NAME: Eddy 'BD' State # 2
LOCATION: SEC. 32, TOWNSHIP 20 SOUTH, RANGE 30 EAST,
660' FNL & 1980' FEL
EDDY COUNTY, NM, NMPM

PROPOSED DEPTH: 12620'
Dear Craig or To Whom It May Concern,

The application for permit to drill identified above has been filed with this office of the New Mexico Oil Conservation Division. Pursuit to the provisions of Oil Conservation Division Order R-111-P, please advise this office whether or not this application is within an established Life-of-Mine Reserve area filed with and approved by your office. If not, please advise whether it is within the buffer zone established by this order.
Thank you for your assistance.

Sincerely,

Bryan G. Arrant
PES, District II Artesia NMOCD

In LMR Yes _____ No X
In Buffer Zone Yes _____ No X

10:50 AM
4-7-06
JFM

Comments:

Signature: [Signature] Date: 4/10/06



May 9, 2006

Lynx Petroleum Consultants, Inc.
Attention: Larry R. Scott
P.O. Box 1708
Hobbs, NM 88241

Re: Oil & Gas APD

Dear Mr. Ball:

Intrepid is opposed to the drilling of this well because it destroys the State of New Mexico's Potash Resource as described below:

EDDY "BD" STATE 2 TWP: 20 S - Range: 30 E - Sec. 32 660 FNL/1980 FEL

The drilling of this well represents the spoilage of approximately 491 acres of minable ore (wellbore plus ½ mile radius safety pillar). The **multiple ore bodies** (of both sylvite and langbeinite) that exceed the protectable ore grade and thickness parameters (as defined by the BLM) within this 491 acre area is in excess of 1.5 million product tons. Should Lynx Petroleum Consultants, Inc. elect to drill this location they will do so with full knowledge of the potential permanent loss of 1.5 million product tons of potassium bearing ore which currently have an approximate value of \$243,500,00.

Sincerely,

A handwritten signature in cursive script that reads "Thomas A. McGuire".

Thomas A. McGuire
Senior Mine Engineer

cc: James P. Lewis – Intrepid Potash (Chief Geologist)
Bryan Arrant – OCD District 2 Geologist

EXHIBIT E

