

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

2006 OCT 2 PM 3 42

**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

2006 OCT 2 PM 4 43

**REQUEST OF
INTREPID POTASH-NEW MEXICO, LLC
FOR PRE-HEARING CONFERENCE AND MOTION FOR CONTINUANCE**

Intrepid Potash-New Mexico, LLC ("Intrepid") requests that the Oil Conservation Division ("Division") or Oil Conservation Commission ("Commission") set a pre-hearing conference in this matter. Intrepid also moves for a continuance of the October 19, 2006 hearing. As grounds for this request and motion, Intrepid states the following:

1. The initial pre-hearing conference in this matter was held on August 23, 2006, when this matter was pending before the Division.

2. At that pre-hearing conference, the parties agreed that hearing would occur before the Division on October 17 and 18, 2006, and continuing if necessary on October 19, unless it was earlier decided by summary judgment. A briefing schedule for Lynx's pending Motion for Summary Judgment was also agreed upon. During the pre-hearing conference, Lynx served a subpoena on Intrepid.

3. After the pre-hearing conference, the parties and Intervenors proposed and presented to the Division a Pre-Hearing Order to reflect the matters decided in the pre-hearing conference.

4. Since that pre-hearing conference, there have been several developments that, taken together, prompt Intrepid's request for continuance and additional pre-hearing conference:

a. The Division did not enter the Pre-Hearing Order, and it advised the parties not to submit motions and briefs as previously agreed. See September 8, 2006 e-mail of Richard Ezeanyim, attached as Exhibit 1.

b. The matter was referred by Order of September 12, 2006 from the Division to be heard by the Commission, "due to the importance of the issues." See Finding 3. Without this direct referral to the Commission for hearing, any hearing of the matter *de*

novo by the Commission would likely not have taken place for many months; it would typically follow hearing and decision by the Division. The referral of the matter to the Commission accelerates the usual process by those many months. For example, in the recently decided cases of *In re Application of Devon Energy Company, L.P.*, for an Order Authorizing the Drilling of a Well in the Potash Area, Eddy County, New Mexico, Case No. 13368; *In re Application of Devon Energy Company, L.P.*, for an Unorthodox Well Location and Authorization to Drill a Well in the Potash Area, Eddy County, New Mexico, Case No. 13372; and *In re Application of Bass Energy Productions Co.*, for an Order Authorizing the Drilling of a Well in the Potash Area, Eddy County, New Mexico, Case No. 13367, appeals by Intervenor Devon and Bass were filed in October of 2004, and all three were heard by the Commission approximately 20 months later in June, 2006. Intrepid seeks time until February or March 2007 to more fully prepare for hearing on this level. The importance of the issues noted in the Order of September 12, 2006 merit adequate time to prepare. Lynx would not be prejudiced because, on the schedule Intrepid seeks, a Commission decision would still likely be rendered well before it would have been had this matter been heard by the Division in the first instance as is more typical.

c. The time of hearing of this matter was changed from the agreed upon two days (October 17, 18, and possibly part of October 19) to one day (October 19). Also set for that one day is argument on any pending motions. Intrepid has serious questions concerning whether one day will be sufficient, particularly in light of broad discovery Lynx has sought, and potential participation of intervenors. These indicators suggest that Lynx and the proposed intervenors intend a lengthy evidentiary hearing.

d. According to the initial pre-hearing agreement and the Order of September 12, 2006, the pending summary judgment motion(s) would be considered and decided before the evidentiary hearing. Now, the summary judgment motion(s) and presumably the Motion to Strike Notice of Intervention, would be heard on the day allotted for the hearing. Intrepid intends to respond to the summary judgment filing(s), and opposes summary judgment.

e. Since the initial pre-hearing conference, it has become apparent to Intrepid that the discovery sought by Lynx and Intervenor is extensive and excessive. The parties and intervenors have reviewed the initial subpoenas and discussed the discovery in detail, but not all issues are resolved. Intrepid seeks a hearing to resolve those issues, and when issues have been resolved, significant work remains for Intrepid to produce the appropriate documents under the 21 requests for documents in Lynx's Initial Subpoena.

f. On September 27, 2006, Lynx served a second subpoena, seeking 14 categories of documents. Intrepid is filing a Motion to Quash that overbroad Second Subpoena. The time Intrepid devotes to responding to extensive discovery requests distracts from the time it has to prepare for hearing on October 19, 2006, and prejudices its ability to prepare its case.

g. Lynx has also filed a motion to compel that Intrepid opposes. Together with the service of the second subpoena less than 30 days before the scheduled October 19,

2006 hearing, these matters exacerbate the scheduling and preparation difficulties described above.

h. Intrepid has filed a Motion to Strike the Notice of Intervention. Intrepid requests that this motion be heard and decided in advance of the October 19, 2006, hearing. If intervenors are allowed to participate, the hearing and discovery will be more extensive. Also, if intervenors are allowed to participate, Intrepid would seek discovery from them, and so Intrepid respectfully requests a decision on whether intervenors will participate far enough in advance of hearing that if intervenors stay in the case, Intrepid can seek discovery from them. On information and belief, informed by counsels' discovery conferences, much of the discovery sought from Intrepid has been at the suggestion of intervenors.

i. Intrepid has sought a settlement conference among Lynx, Intrepid and the Division. It would prefer time to seek resolution by settlement before, and not during, its preparation for the Commission hearing. There may be a technical solution that does not foreclose extraction of both the potash and the oil and gas resources, and Intrepid wishes to explore that possibility.

Each of these circumstances supports Intrepid's Motion for Continuance and Request for Pre-Hearing Conference.

5. A Pre-Hearing Conference would help narrow the issues, define how long the hearing will take, and may encourage settlement, all pursuant to Rule 1214. At the conference, Intrepid suggests that:

a. A mutually convenient date for the evidentiary hearing be set in February or March 2007.

b. A schedule for deciding pending discovery disputes and motions well in advance of hearing be determined.

c. The parties describe the witnesses, testimony, and length of testimony they anticipate.

d. Settlement discussions take place, as appropriate.

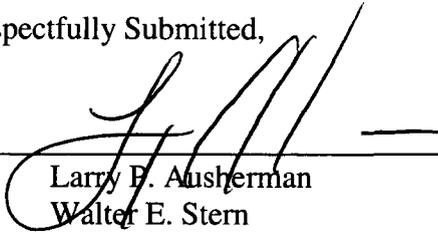
WHEREFORE, for the reasons stated in this Request and Motion, Intrepid respectfully requests:

1. That a Pre-Hearing Conference be set in October, and

2. That the hearing before the Commission now set for October 19, 2006, be continued until February or March 2007.

Respectfully Submitted,

By: _____


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CERTIFICATE OF SERVICE

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

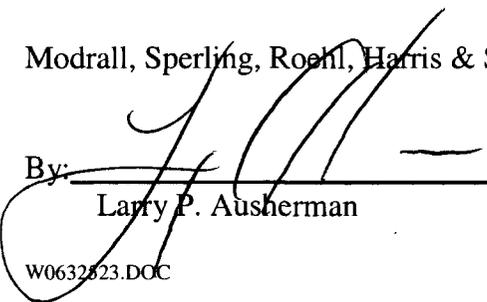
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Sent: Friday, September 08, 2006 3:25 PM
To: Charles Lakins; Brooks, David K., EMNRD
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Subject: RE: Lynx Petroleum - OCD Case 13762

I have talked to the Director Mark Fesmire and he has decided that this case be heard at the commission level instead of the initial division hearing. It appears that whatever happens at the division level, the losing party will appeal to the commission.

Based on what we discussed at the August 23, 2006 pre-hearing conference, this case is tentatively scheduled for October 19 commission docket. If you think that the case may last for 2 or 3 days, the commission may start hearing this case on October 18 (Wednesday), then October 19 (Thursday), and if necessary October 20 (Friday) assuming all the commissioners will be present on Wednesday October 18. I will confirm in due course if the hearing will start on October 18.

In the light of this development, please do not submit your motions and briefs as previously agreed upon, but prepare to present your case to the commission in October. If you have any questions or need further clarifications, please let me know. Thank you.

Richard

EXHIBIT 1