

HOLLAND & HART LLP



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October 12, 2004

VIA HAND DELIVERY

Mark E. Fesmire, P. E.
Director
Oil Conservation Division
New Mexico Department of Energy,
Minerals & Natural Resources
1220 South Saint Francis Drive
Santa Fe, New Mexico 87505

2004 OCT 12 AM 9 18

Case 13367

Re: Application of Bass Enterprises Production Co. for an order authorizing the drilling of a well in the Potash Area, Eddy County, New Mexico.

Dear Mr. Fesmire:

Enclosed is the Application of Bass Enterprises Production Co. in the above-referenced case as well as a copy of the proposed legal advertisement. Bass requests that this matter be placed on the docket for the November 4, 2004 Examiner Hearings.

Your attention to this matter is appreciated.

Very truly yours,

William F. Carr
Attorney for Bass Enterprises Production Co.

cc: Gail MacQuesten, Esq.
Oil Conservation Division

Mr. J. Wayne Bailey
Division Landman
Bass Enterprises Production Co.

Enclosures

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

**APPLICATION OF BASS ENTERPRISES PRODUCTION CO. FOR AN ORDER
AUTHORIZING THE DRILLING OF A WELL IN THE POTASH AREA, EDDY
COUNTY, NEW MEXICO.**

CASE NO. API/3367

APPLICATION

BASS ENTERPRISES PRODUCTION CO. ("Bass"), pursuant to the provisions of Oil Conservation Division Order No. R-111-P ("The Rules and Regulations Governing the Exploration and Development of Oil and Gas in Certain Areas Herein Defined, Which Are Known to Contain Potash Reserves"), applies to the New Mexico Oil Conservation Division for an order approving the drilling of the its James Ranch Unit Well No. 93 (API No. 30-015-33619) within the Potash Area at a location 660 feet from the North and East lines (Unit A) of Section 7, Township 23 South, Range 31 East, NMPM, Eddy County, New Mexico, and in support of this application, states:

1. Bass Enterprises Production Co. is the lessee of certain oil and gas rights under Section 7, Township 23 South, Range 31 East, NMPM, Eddy County, New Mexico. Bass has the right to develop the oil and gas reserves underlying this property.
2. Bass proposes to drill its James Ranch Unit Well No. 93 to a total depth of approximately 14,800 feet to test the Delaware and Bone Springs formations on standard 40-acre spacing units comprised of the NE/4 NE/4 of Section 7 and the Wolfcamp, Atoka and Morrow formations on standard 320-acre spacing units in the N/2 of Section 7. The primary objective in the well is the Morrow formation, Los Medanos-Morrow Gas Pool.

3. The NE/4 NE/4 of Section 7, the tract upon which Bass proposes to drill, is fee land that is located within the Potash Area.

4. Order R-111-P provides that "Before commencing drilling operations for oil or gas on any lands within the Potash Area" the operator of the well shall provide to each potash operator holding a potash lease within a radius of one mile of the proposed well a copy of its Notice of Intention to Drill and plat showing the location of the well. Rule G.(2).

5. Bass followed the provisions of Order R-111-P, and prepared an Application for Permit to Drill (Form C- 101) and a Well Location and Acreage Dedication Plat (Form C- 102) showing the location of the James Ranch Unit Well 93. On August 16, 2004, by Express Mail-Return Receipt Requested, Bass notified IMC Potash Carlsbad, Inc., the lessee of potash reserves within one mile of the proposed well location, of its intent to drill this well and sought IMC's waiver of objection to the proposed location. This notice was received by IMC on August 19, 2004.

6. No objection to the application for permit to drill was received by the Division or Bass within the 20-days provided for objections by Order R-111-P and Bass' Application for Permit to Drill was approved by the Division on September 15, 2004. See, APD approved September 15, 2004.

7. On September 17, 2004, after the period for filing objections had run and the APD for the James Ranch Unit Well No. 93 had been approved by the Division, IMC wrote the Division and stated that the Division was "in error approving any APD within an LMR."

8. By letter dated September 18, 2004, the Oil Conservation Division rescinded Bass' Application for Permit to Drill.

9. The Division acted improperly in rescinding its approval of Bass's Application for Permit to Drill the James Ranch Unit Well No. 93 for IMC's letter of September 17, 2004 is in error in the following ways:

A. While Order No. R-111-P states that "Any application to drill in the LMR area, including buffer zones, may be approved only by mutual agreement of the lessor and lessees of both potash and oil and gas interests." Rule G(3):

1. The subject acreage cannot be within a LMR for:

- a. Order No. R-111-P, (A) provides that only potash lessees may designate to the State Land Office and BLM potash deposits considered by the potash lessee to be "life-of-mine-reserves ("LMR"). Rule G(a), and (B) B.
- b. Order No. R-111-P makes no provision for an LMR determination when the proposed well location is on fee lands, nor does Order No. R-111-P authorize a potash lessee to designate an LMR over lands not leased to that potash lessee. Order No. R-9990 . Finding 11, October 18, 1993.
- c. Since there are no potash leases covering the NE/4 NE/4 of Section 7, the fee tract upon which Bass proposes to drill, this acreage cannot be within an LMR, and

2. If this acreage is within an LMR:

- a. The fee owner of the unleased potash underlying the NE/4 NE/4 of Section 7 has consented to Bass drilling its

proposed James Ranch Unit Well No. 93 on its acreage and desires to have its oil and gas minerals developed first and in preference to any potash reserves underlying its fee property. See, Order No. R-9990, Finding 14, October 18, 1993, and

- b. All parties owning potash and oil and gas interests underlying the NE/4 NE/4 of Section 7 have reached agreement on the extraction of their minerals.

B. Applications to drill outside the LMR will be approved, pursuant to requirements set out therein, provided there is no protest from a potash lessee "within 20 days of his receipt of a copy of the notice." Rule G(3).

- 1. There are no active mine workings or mined-out areas for more than one mile from the proposed location.
- 2. If IMC had a right to object, it failed to do so in a timely manner, and
- 3. Bass has complied with all requirements of Order No. R-111-P.

10. By rescinding this APD, the Division has denied Bass and its lessors, the owners of the underlying oil and gas rights in this property, the opportunity to produce the recoverable oil and gas under their property and unless reversed, will cause the waste of hydrocarbons. Bass therefore requests that this matter be set for hearing before an examiner of the Oil Conservation Division.

11. Approval of this application will protect correlative rights for it will afford Bass and the other owners of the oil and gas rights the opportunity to produce their just and equitable share of the reserves under their property for it will honor the mutual agreement between the

owners of both the potash and oil and gas interests for the development of these fee lands. Approval of this application will otherwise be in the best interest of conservation and the prevention of waste.

WHEREFORE, Bass Enterprises Production Co. requests that this application be set for hearing before an Examiner of the Oil Conservation Division on November 4, 2004, and that, after notice and hearing, the Division enter its order authorizing Bass Enterprises Production Co. to drill its proposed James Ranch Unit well No. 93 at the proposed standard well location in Unit A of Section 7, Township 23 South, Range 31 East, NMPM, Eddy County, New Mexico.

Respectfully submitted,

HOLLAND & HART, LLP

By: 

William R. Carr

P.O. Box 2208

Santa Fe, New Mexico 87504-2208

Telephone: (505) 988-4421

ATTORNEYS FOR BASS ENTERPRISES
PRODUCTION CO.

CASE NO. 13367 **Application of Bass Enterprises Production Co. for an order authorizing the drilling of a well in the Potash Area, Eddy County, New Mexico.** Applicant seeks an order approving the drilling of its proposed James Ranch Unit Well No. 93 within the Potash Area at a location 660 feet from the North and East lines (Unit A) of Section 7, Township 23 South, Range 31 East, NMPM, Eddy County, New Mexico. This well will be drilled to an approximate depth of 14,800 to test all formations from the surface to the base of the Morrow formation, Los Medanos-Morrow Gas Pool and will be at a standard location in all formations. Said location is within the Potash Area and approximately 10 miles east of Carlsbad, New Mexico.

3289364_1.DOC



October 14, 2004

CERTIFIED MAIL -- RETURN RECEIPT REQUESTED

Mr. Dan Morehouse
Mine Engineering Superintendent
IMC Potash Carlsbad Inc.
Post Office Box 71
Carlsbad, New Mexico 88221-0071

New Mexico State Land Office
Oil, Gas and Minerals Division
Post Office Box 1148
Santa Fe, New Mexico 87504-1148
Attention: Mr. Jeff Albers

Re: Application of Bass Enterprises Production Co. for an order authorizing the drilling of a well in the Potash Area, Eddy County, New Mexico.

Gentlemen:

This letter is to advise you that Bass Enterprises Production Co. has filed the enclosed application with the New Mexico Oil Conservation Division seeking an order approving the drilling of its James Ranch Unit Well No. 93 to be located at orthodox well locations in the N/2 of Section 7, Township 23 South, Range 31 East, NMPM, Eddy County, New Mexico. This acreage is located in the Potash Area as defined by Division Order No. R-111-P.

This application has been set for hearing before a Division Examiner on November 4, 2004. You are not required to attend this hearing, but as an owner of an interest that may be affected by this application, you may appear and present testimony. Failure to appear at that time and become a party of record will preclude you from challenging the matter at a later date.

Parties appearing in cases are required by Division Rule 1208.B to file a Pre-Hearing Statement at the Santa Fe Office of the Oil Conservation Division located at 1220 South Saint Francis Drive, Santa Fe, New Mexico 87505, three days in advance of a scheduled hearing. This statement must include: the names of the parties and their attorneys; a concise statement of the case; the names of all witnesses the party will call to testify at the hearing; the approximate time the party will need to present its case; and identification of any procedural matters that are to be resolved prior to the hearing.

Very truly yours,

William F. Carr
Attorney for Bass Enterprises
Production Co.

Enclosure

J. Wayne Bailey
Bass Enterprises Production Co.