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*Cheryl Bada*  
*OCD*

**William F. Carr**  
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2006 JUN 12 PM 4 11

June 12, 2006

**VIA HAND DELIVERY**

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

Re: 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.

Case No. 13368: Application of Devon Energy Production Company, L.P. for an order authorizing the drilling of a well in the potash area, Eddy County, New Mexico.

Case No. 13372: Application of Devon Energy Production Company, L.P. for approval of an unorthodox well location and authorization to drill a well in the potash area, Eddy County, New Mexico.

Dear Chairman Fesmire:

Enclosed is the Memorandum Brief of Bass Enterprises Production Company and Devon Energy Production Company in the above referenced cases. Kenneth Smith, through his attorney, James Bruce, Esq., joins in this brief. Also enclosed are copies of Compensated Density Dual Spaced Neutron Logs for the James Ranch Unit Well Nos. 14 and 15 that were requested by Commissioner Bailey at the June 5th hearing. The top and the base of the Delaware formation are marked on each log.

By copy of this letter, I am providing copies of our Memorandum Brief and these well logs to Commissioner Bailey, Commissioner Olson and to Mr. Charles High, Esq.

Your attention to these applications is appreciated.

Very truly yours,

William F. Carr

**Holland & Hart LLP**

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Aspen Billings Boise Boulder Cheyenne Colorado Springs Denver Denver Tech Center Jackson Hole Salt Lake City Santa Fe Washington, D.C. ☺

Enclosures

cc: Commissioner Jami Bailey  
Commissioner William Olson  
Charles High, Esq.  
Cheryl Bada, Esq.  
James Bruce, Esq.  
J. Wayne Bailey  
Ken Gray

**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. 13367**

**APPLICATION OF DEVON ENERGY PRODUCTION COMPANY, L.P. FOR AN ORDER AUTHORIZING THE DRILLING OF A WELL IN THE POTASH AREA, EDDY COUNTY, NEW MEXICO.**

**CASE NO. 13368**

**APPLICATION OF DEVON ENERGY PRODUCTION COMPANY, L.P. FOR APPROVAL OF AN UNORTHODOX WELL LOCATION AND AUTHORIZATION TO DRILL A WELL IN THE POTASH AREA, EDDY COUNTY, NEW MEXICO.**

**CASE NO. 13372**

**MEMORANDUM BRIEF  
OF BASS ENTERPRISES PRODUCTION COMPANY  
AND DEVON ENERGY PRODUCTION COMPANY.**

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These cases came before the Oil Conservation Commission for hearing on June 6, 2006. At the conclusion of the hearing the parties were given the opportunity to submit briefs on the issues raised by these applications. This memorandum brief is submitted on behalf of Bass Enterprises Production Company ("Bass") and Devon Energy production Company ("Devon"), the applicants in these consolidated cases.

**POTASH RULES:**

Order R-111-P was adopted by the Oil Conservation Commission on February 18, 1988 and promulgated "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 ("the Potash Rules"). This order adopted a "compromise" agreement reached by a Study Committee appointed by the Oil Conservation Division and comprised of representatives of the oil and gas and the potash industries. The Potash Rules provide that:

"The objective of these Rules and Regulations is to prevent waste, protect correlative rights, assure maximum conservation of oil, gas and potash

resources in New Mexico, and permit the economic recovery of oil, gas and potash minerals in the area hereinafter defined.” (Emphasis added)

These rules govern oil and gas operations in the potash area and specifically require a balancing of the interests of these competing industries. They provide as follows:

C. DRILLING IN THE POTASH AREA

(1) All drilling of oil and gas wells in the Potash Area shall be subject to the Rules and Regulations.

(2) 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 unduly with the mining of potash deposits.

(3) No mining operations shall be conducted in the Potash Area that would, in the opinion of the Division or its Duly authorized representative, constitute a hazard to oil or gas production, or that would unreasonably interfere with the orderly development and production from any oil and gas pool. (Emphasis added).

These rules authorize a procedure for the potash lessee’s to establish, with BLM and State Land Office approval, “Life of Mine Reserve” (“LMR”) areas. Specific provisions in the Potash Rules govern the development of oil and gas and potash reserves within the LMR Area. Among other things, these rules provide:

“Any application to drill within 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.” Rule G(3).

**FACTS:**

**Bass:**

Bass is the lessee of the oil and gas rights under the NE/4 NE/4 of 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 and proposes to drill its James Ranch Unit Well No. 93 (Case No. 13367) at a standard location 660 feet from the North and East lines of the section to test from the surface to the Morrow formation, Los Medanos-Morrow Gas Pool. This acreage is within the LMR area of Mosaic Potash Company, Inc. (“Mosaic”) but is on a tract of fee land on which Mosaic owns no interest.

Bass leased the oil and gas rights under this fee acreage from Stacy Mills and his family who together own 53% of the oil and gas and potash mineral rights under this

tract. Mr. Mills appeared at the hearing and testified that he was an owner of mineral interests under the 40-acre fee tract on which Bass proposes to drill and that he and his family prefer to have their oil and gas reserves produced before the potash reserves, if any, are mined. Bass has also leased the remaining oil and gas rights under this acreage. These interests are administered by Wells Fargo Bank. Wells Fargo Bank confirmed that the potash rights under these tracts are unleased and that the bank supports Bass' application to drill the James Ranch Well No. 93 (Bass Exhibits 7 and 8). Therefore, the owners of the potash reserves under the NE/4 NE/4 of Section 7 support the drilling of the oil and gas well proposed by Bass prior to mining the potash reserves under this tract.

Order R-111-P provides that "[b]efore 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). 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., (predecessor to Mosaic) the only 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. 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. (Bass Exhibit No. 3, APD approved September 15, 2004).

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

Mosaic objected to the Bass permit by quoting the provision in R-111-P that provides "[a]ny 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."

### **Devon:**

Devon is the lessee of the oil and gas mineral rights under the SW/4 NW/4 of Section 24, Township 22 South, Range 30 East, NMPM, Eddy County, New Mexico on which it proposes to drill its Apache 24 Fee Well No. 6 (Case No. 13368) at a standard location 1980 feet from the North line and 660 feet from the West line to test the Delaware formation. Devon also proposes to drill its proposed Apache 24 Fee Well No. 7 (Case No. 13372) from this 40-acre tract at a standard location 1460 feet from the North line and 1150 feet from the West line of the section to test the Devonian formation, Southeast Quadada Ridge-Delaware Pool. This acreage is within the LMR area of

Mosaic Potash Company, Inc. ("Mosaic") but is on a tract of fee land on which Mosaic owns no interest.

Devon has leased oil and gas rights under this fee acreage from Kenneth Smith and his family who also own the potash mineral rights under this tract. Mr. Smith appeared at the hearing and testified that he was the owner of mineral interests under the 40-acre fee tract on which Devon proposes to drill and that he and his family prefer to have their oil and gas reserves produced before the potash reserves, if any, under their acreage is mined. Therefore, the owners of the potash reserves under the SWE/4 NW/4 of Section 24 support the drilling of the oil and gas well proposed by Bass prior to mining the potash reserves under this tract, if any.

Devon 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 Apache 24 Fee Well No. 6. On January 23, 2004, by Certified Mail-Return Receipt Requested, Devon notified IMC Potash Carlsbad, Inc., the only 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 January 26, 2004. No objection to the Application for Permit to Drill was received by the Division or Devon within the 20 days provided by Order R-111-P and Devon's Application for Permit to Drill was approved by the Division on February 19, 2004. On April 12, 2004, after the period for filing objections had run and the APD for the Apache 24 Fee Well No. 6 had been approved by the Division, IMC wrote Devon with copies to the Division objecting to the proposed well location and stating that its five year mine plan shows that IMC expects to mine within 1/4 mile of this location in the year 2007. By letter dated September 20, 2004, the Oil Conservation Division rescinded Devon's Application for Permit to Drill.

Devon also 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 Apache 24 Fee Well No. 7A. In September 2004, by Certified Mail-Return Receipt Requested, Devon notified IMC Potash Carlsbad, Inc., the only 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. IMC Potash Carlsbad, Inc. filed written objections to Devon's Application and by letter dated September 20, 2004, the Oil Conservation Division rejected Devon's Application for Permit to Drill.

Mosaic objected to Devon's applications for permits to drill asserting "there is no point within this tract that is outside the 1/4 mile buffer required by R-111-A and any well within the tract would not constitute a hazard to the mining of federally owned potash reserves currently under lease to IMC."

#### **OIL CONSERVATION DIVISION HEARING:**

In response to the objections of Mosaic, the Division either rescinded previously approved permits or refused to approve the application for permit to drill for each well that is the subject of these consolidated cases.

Bass and Devon filed applications for hearing before the Oil Conservation Division seeking authorization to drill in the Potash Area. These applications came to hearing before a Division examiner on December 2, 2004 and on August 8, 2005, the Division entered orders approving the applications for permits to drill. In approving these applications, the Division found as follows:

(11) According to Order R-111-P, an LMR determination by either the SLO or the BLM is within the exclusive authority of those agencies and such a determination by them is binding on the Division.

(12) However, Order R-111-P makes no provision for an LMR determination when the proposed well is located on fee lands, nor does Order R-111-P authorize a potash lessee to designate an LMR over lands not leased to a potash lessee.

(13) Sub-part G (e) 3 of these rules, provides that: "application to drill in the LMR area, including buffer zones, may be approved only by mutual agreement of lessor and lessee of both potash and oil and gas interests."

Mosaic timely filed its appeal of these orders to the Oil Conservation Commission.

#### **ARGUMENT:**

##### **A. What interests are subject to Order R-111-P.**

The findings of the Oil Conservation Division in the orders approving the applications of Bass and Devon raise a threshold issue that impacts all issues in these cases. That question concerns the interests that are subject to Order R-111-P.

Order R-111-P does not apply to federal lands. This order was not accepted by the BLM and accordingly it does not apply to federal lands. All lands offsetting the subject 40-acre fee tracts are federal lands.

Order R-111-P may not apply to fee lands. Ordering paragraph G(3) of R-111-P provides that drilling applications on state and fee land "will be processed by the Division." However, as observed in the Division orders entered in these cases, there is no process under this rule for approval of an LMR on fee lands. Ordering paragraph G(1)(b) which addresses the approval of LMR's only applies to federal and state land. Mosaic's counsel also shed light on this issue. He announced at the Commission hearing that at the time Order R-111-P was drafted and adopted, fee land was not considered. Accordingly, Order R-111-P does not apply to fee lands as well as federal lands and, therefore, this rule does not apply to the issues of this case. Furthermore, there is nothing in the Oil and Gas Act that would support the denial of the drilling applications of Bass and Devon and they must be approved.

**B. The Applications for Permit to Drill of Bass and Devon comply with the provisions of Order R-111-P.**

If Order R-111-P applies to the fee lands at issue in these cases, there has been an agreement for the development of these lands between the owners of the potash reserves and the owners of oil and gas rights in the tract upon which these wells are proposed to be drilled, and the applications of Bass and Devon comply with this order.

The language of Order R-111-P clearly shows that the rights it confers on oil and gas and on potash operators are based on their individual ownership of these minerals. For example, under the Potash Rules, only owners may designate lands to be included in LMR's and only owners may give waivers for the drilling of wells in an LMR. Those who own mineral interests have constitutionally protected property interests in those interests. Those who do not own the minerals may not control the interests of others.

Mosaic attempts to improperly use R-111-P to deny the owners of the minerals under these fee tracts the right to develop their reserves. Mosaic acts as if Order R-111-P replaces, or somehow overrides, a mineral lease and gives non-owners the right to prevent the production of minerals. The Bass and Devon locations are on tracts where the owners of both the oil and gas rights and the potash rights desire to drill an oil and gas well prior to mining for potash. Pursuant to the Potash Rules, their applications must be approved.

Although the Division has found that Order R-111-P does not authorize a potash lessee to designate an LMR over lands not leased to a potash lessee, Mosaic contends that even if these tracts are not in an LMR, Bass and Devon still cannot drill because they are within the 1/2 mile buffer zone surrounding the LMR contained in the Potash Rules. This argument is in direct conflict with the terms of Rule G(3) of Order R-111-P quoted above which expressly include "buffer zones" in the area where wells can be drilled by agreement of the owners of the minerals under these tracts.

**C. Mosaic has failed to make a clear demonstration that commercial potash will be wasted as a result of drilling the subject wells.**

Order No. R-111-P requires the Oil Conservation Commission balance the interests of the owners of both oil and gas and potash. However, the Commission cannot grant a drilling permit if a clear demonstration is made that commercial potash will be wasted as a result of drilling the well. See, Finding Paragraph 20. Mosaic has failed to make such a showing.

**Devon Wells:**

In its Pre-Hearing Statement filed in this case, Mosaic indicated that it would present calculations showing the value of lost ore as a result of the drilling of these wells.

This information was not presented at the hearing and only general assumptions on the value of lost ore were presented.

At the hearing, without supporting data, Mosaic stated that \$57 million worth of potash would be wasted in Sections 13 and 24 if Devon's wells are drilled. However, Mosaic owns no potash leases in those sections. Testimony of Gray and Morehouse, Devon Exhibit 2. Mosaic could not verify when, **and if ever**, the potash in Sections 13 and 24 would be mined. Accordingly, the evidence that potash will be wasted by the drilling of the Devon wells is far from clear and convincing.

Nothing in the record confirms that the reserves to the west will ever be mined. The dates when Mosaic projects its mining operations in the area offsetting the Devon tract were in such small print that they could not be read. Furthermore, Mr. Morehouse, Mosaic's engineering witness, was unable to testify as to when these reserves in this area, if any, would be mined. Accordingly there is nothing in the record that shows when and if the potash in the sections offsetting section 24 will be mined.

In other testimony, Mosaic has clearly misrepresented its plans and the impact the drilling of these oil and gas wells will have on the mining of potash reserves. In December 2004, Mr. Morehouse testified that in 2007 Mosaic could be mining within 1000 feet of the proposed Devon wells. But in his June 5, 2006 testimony before the Commission he presented plans that show the closest projected mining operations in 2010 are still over two miles to the southwest of the Devon tract. Testimony of Morehouse, Mosaic Exhibit 1. Although where Mosaic may mine is unknown, what is known is that the basis for their objection in 2004 is not now supported by the evidence and that the testimony presented in support of their objection in 2004 is totally false. Mosaic will not be mining within ¼ mile of the Devon wells by 2007. The changes in the mining plans from those announced at the December 2004 Examiner Hearing rise to such a level that the good faith of Mosaic must be questioned. Mosaic has misled the Commission as to the impact on potash of the drilling of the proposed oil and gas wells. (See Exhibit M-5 from the December 2004 hearing and prior testimony presented for Mosaic).

**Bass Well:**

Most of the reserves that Mosaic states will be lost as a result of the drilling of the Bass well also are not owned by Mosaic. Furthermore, other portions of the testimony of Mosaic raise questions about its good faith in dealing with Bass.

Mosaic testified that since the proposed location of the Bass well is in the middle of the measured potash in Sections 6 and 7, this well location would prevent it from mining potash reserves to the east of that location. This statement is false. All the Commission has to do is look at the Division's records to see that in the past potash companies have drilled around well bores in areas with no measured potash to access

reserves on the other side of the well bore. In Division Case No. 12406, the parties reached an agreement that allowed Mississippi Potash to drill through a 1320 foot wide corridor of land through lands covered by oil and gas leases to access potash reserves. A copy of this agreement is attached hereto as Exhibit A. When this agreement is compared to Devon's hearing Exhibit No. 1, it is clear that this corridor ran through acreage that did not contain measured potash. Accordingly, Mosaic could drill through acreage that did not contain measured potash south of the proposed Bass location if it desired.

Mosaic's counsel argued that this case and the questions it raises concerning drilling in the potash area with agreement of the mineral owners, was of great importance to Mosaic. If that is true and the issue so important to Mosaic, one must ask why it refused to meet with Bass as requested by Examiner Stogner to consider an alternate location. Bass could have moved 600 feet or more to the north of the proposed location – making 600 or more feet of ore available to mine under Mosaic's self-imposed mining requirements. Mosaic refused to discuss an alternate location with Bass. Testimony of Morehouse.

**D. Denial of the applications of Bass and Devon will impair correlative rights.**

A stated objective of the Potash Rules is the protection of correlative rights. Correlative rights are defined by the Oil and Gas Act as follows:

Correlative Rights shall mean the opportunity afforded, as far as it is practicable to do so, to the owner of each property in a pool to produce without waste his just and equitable share of the oil or gas , or both, in the pool, being an amount, so far as can be practically determined, and so far as can be practicably obtained without waste, substantially in the proportion that the quantity of recoverable oil or gas, or both, under such property bears to the total recoverable oil or gas, or both, in the pool. (Emphasis added)

Bass, Devon, and the interest owners represented by Stacy Mills, Wells Fargo Bank and Kenneth Smith all own oil and gas and potash rights under the fee tracts at issue in this case. All are asking the Commission to afford them the opportunity to produce their reserves – oil and gas and potash -- as they desire.

**E. Denial of the permits will cause waste of oil and gas as well as impairing the correlative rights of the owners of oil and gas rights under these tracts in violation of the Oil and Gas Act and Order No. R-111-P.**

Mosaic seeks denial of these applications for permits to drill and asserts that the wells can be drilled from alternate locations that will not adversely affect mineral owners on adjacent lands. See Mosaic Pre-Hearing Statement. However, the testimony established that this is not possible.

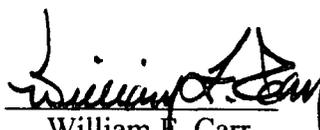
First, all offsetting lands are federal and the BLM has in recent times refused to approve ADP's on federal lands in this area. This is true even when Mosaic has agreed to the proposed well locations. Mosaic Exhibit No. 2, Testimony of Bailey and Gray. Second, drilling from alternate locations would require the drilling of directional and horizontal well bores. These well bores cannot intersect and produce the reserves from each potentially productive formation under each of these 40-acre tracts. For example, the Delaware formation is comprised of multiple potentially productive horizons. It is located immediately below the potash deposits. It is impossible to "snake" a directional well to intersect each of the four primary potential zones with a directional well. Testimony of Blount. Horizontal wells only intersect one productive horizon. Therefore each potentially productive zone requires a separate horizontal well bore making production of all the reserves under this tract with horizontal well bores economically impossible. For example, to produce four zones in the upper Delaware as well as the Wolfcamp and the Bone Spring formations in this area could require six horizontal well bores to access reserves that could be produced with one vertical well. Testimony of Dannels. Accordingly, wells cannot be directionally or horizontally drilled to test and produce all prospective zones under these tracts. If these wells cannot be drilled, reserves will be left in the ground and waste will result.

### **CONCLUSION:**

The rights and obligations of those who develop the oil and gas reserves and the potash deposits in the Potash Area pursuant to Order R-111-P depend on two things: (1) the character of the lands, and (2) the ownership of the mineral interests. This order does not govern federal lands and if Order R-111-P does not apply to fee lands, it does not prevent Bass and Devon from drilling the wells they propose to drill in these cases. If Order R-111-P does apply to fee lands, Bass and Devon have fully complied with the provisions of this order and are entitled to drill.

Order R-111-P confers rights on oil and gas and on potash operators based on their individual ownership rights in these minerals. These mineral interests are constitutionally protected property rights. Mosaic Potash opposes the applications drill but it owns no interest in the lands it does not want developed. Approval of the Bass and Devon Applications for Permits to Drill will permit those who own the mineral interests to develop them without being subject to a veto by those who own no interests in these lands. Approval of these applications will otherwise meet the Commission's statutory duty to prevent waste and protect correlative rights. These applications should be approved.

Respectfully submitted,  
Holland & Hart, LLP

By:   
William F. Carr

ATTORNEYS FOR BASS ENTERPRISES  
PRODUCTION COMPANY and  
DEVON ENERGY PRODUCTION  
COMPANY

By: (approved telephonically)  
James Bruce, Esq.

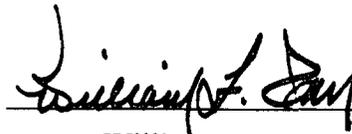
ATTORNEY FOR KENNETH SMITH

**CERTIFICATE OF SERVICE**

I certify that on June 12, 2006 I served a copy of the foregoing Memorandum Brief by Hand Delivery, Facsimile or by Overnight Delivery to:

Cheryl Bada, Esq.  
Oil Conservation Commission  
1220 South Saint Francis Drive  
Santa Fe, New Mexico 87505  
Attorney for the Oil Conservation Commission

Charles C. High, Jr.  
Kemp Smith LLP  
Post Office Box 2800  
El Paso, Texas 79999-2800  
Attorney for Mosaic Potash

  
\_\_\_\_\_  
William F. Carr

## AGREEMENT

This Agreement is entered into effective June 16, 2000 by Mississippi Potash, Inc. ("MPI"), whose address is P.O. Box 101, Carlsbad, New Mexico 88221, Pogo Producing Company ("Pogo"), whose address is P.O. Box 10340, Midland, Texas 79702, and Yates Petroleum Corporation ("Yates"), whose address is 105 South Fourth Street, Artesia, New Mexico 88210.

### **WHEREAS:**

1. MPI is the lessee of State of New Mexico Potash Mining Lease M-4510, dated May 2, 1988, which covers, among other lands, the NE $\frac{1}{4}$ , N $\frac{1}{2}$ SE $\frac{1}{4}$ , and SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 34 and All of Section 35, and State of New Mexico Potash Mining Lease MP-29 covering the W $\frac{1}{2}$  of said Section 34, all in Township 21 South, Range 31 East, N.M.P.M., Eddy County, New Mexico;

2. Pogo is a lessee and the operator of State of New Mexico Oil and Gas Lease V-3604, covering All of Section 35, Township 21 South, Range 31 East, N.M.P.M., Eddy County, New Mexico ("Section 35");

3. Yates is a lessee and the operator of State of New Mexico Oil and Gas Leases V-3850 and V-4100, collectively covering all of Section 34 (except the SW $\frac{1}{4}$ SE $\frac{1}{4}$ ), Township 21 South, Range 31 East, N.M.P.M., Eddy County, New Mexico ("Section 34");

4. Sections 34 and 35 are within the oil-potash area of southeast New Mexico as defined in New Mexico Oil Conservation Division ("OCD") Order No. R-111-P;

5. Pogo has filed with the OCD Applications for Permits to Drill ("APD") sixteen oil wells in Section 35, which MPI has objected to by letters dated in March 1998;

6. Pogo has applied to the OCD in Case No. 12406 for approval of four of the APD's described in paragraph 5 above, and that case is scheduled for hearing at 8:15 a.m. on June 19, 2000 at the OCD's offices in Santa Fe, New Mexico; and

7. MPI, Pogo, and Yates desire to settle their differences with respect to potash operations and oil development in Sections 34 and 35. MPI shall have the right to a corridor for mining, or drifts or tunnels, through Sections 34 and 35, and Pogo and Yates shall be allowed to drill oil wells in Sections 34 and 35.

### **NOW, THEREFORE, IT IS AGREED THAT:**

A. MPI shall have a 1320 foot wide corridor through Sections 34 and 35, as platted on Exhibit A and described by legal subdivisions on Exhibit B;

B. Yates shall be allowed to drill oil wells in Section 34 and Pogo shall be allowed to drill oil wells in Section 35 at locations in their discretion so long as the wellbores are not within the corridor described in paragraph A above, and in Exhibits A and B, and Yates and Pogo agree not to file applications for permit to drill oil wells at locations within the corridor;

C. MPI hereby waives objection to any oil wells located in Sections 34 and 35 on oil and gas leases now owned by Yates or Pogo which comply with paragraph B above. For purposes of this Agreement, "oil well" shall mean a well drilled to a depth no deeper than 200 feet below the base of the Delaware formation. This waiver of objection by MPI shall satisfy any requirements set forth in Order No. R-111-P, and well operators shall not be required to obtain further waivers of objection from MPI with respect to oil wells in Sections 34 and 35, so long as the well locations comply with paragraph B above. In the event that the OCD requires a separate waiver for any specific location that complies with paragraph B above, MPI shall execute any such waiver consistent with the terms of this Agreement;

D. The prohibition of well locations described in paragraphs A and B above does not apply to well pads, surface facilities, gathering lines, pipelines and other facilities and equipment (except the well) that are on or near the surface;

E. Upon execution of this Agreement by all parties, Pogo shall dismiss OCD Case No. 12406;

F. This Agreement is executed by the duly authorized representatives of MPI, Pogo, and Yates, and is binding on their respective successors and assigns.

G. This Agreement is being executed in three multiple counterparts so each party may retain an original executed Agreement. Each counterpart shall be deemed an original for all purposes. The signatures of the authorized representative of each party may appear on separate signature pages and the signature pages may be reassembled to form a complete original counterpart.

Pogo Producing Company

*Jerry A. Cooper*  
Name: Jerry A. Cooper  
Title: Senior Vice President

Mississippi Potash, Inc.

*Timothy A. Dawson*  
Name: Timothy A. Dawson  
Title: Vice President & Treasurer

Yates Petroleum Corporation

*Randy G. Patterson*  
Name: Randy G. Patterson  
Title: Attorney-in-Fact

STATE OF TEXAS

§  
§  
§

COUNTY OF MIDLAND

This instrument was acknowledged before me on this 28 day of June, 2000, by Jerry A. Cooper, Senior Vice President of Pogo Producing Company, a Delaware corporation, on behalf of said corporation.

My Commission Expires:  
5-27-2001



Janey J. Lasley  
NOTARY PUBLIC IN AND FOR THE  
STATE OF TEXAS

STATE OF NEW MEXICO

§  
§  
§

COUNTY OF EDDY

This instrument was acknowledged before me on this 3 day of July, 2000, by Randy G. Patterson, Attorney-in-Fact of Yates Petroleum Corporation, a New Mexico corporation.

My Commission Expires:  
3/1/02

Theresa A. Stinson  
NOTARY PUBLIC IN AND FOR THE  
STATE OF NEW MEXICO

STATE OF MISSISSIPPI

COUNTY OF YAZOO

NOTARY PUBLIC

This instrument was acknowledged before me on this 25th day of July, 2000, by Timothy A. Dawson,  
Vice President & Treasurer of Mississippi Potash, Inc.,  
a Mississippi corporation.

My Commission Expires:

~~My Commission Expires~~  
July 14, 2001

Olive Olivia Healey  
NOTARY PUBLIC IN AND FOR THE  
STATE OF Mississippi

EXHIBIT "A"

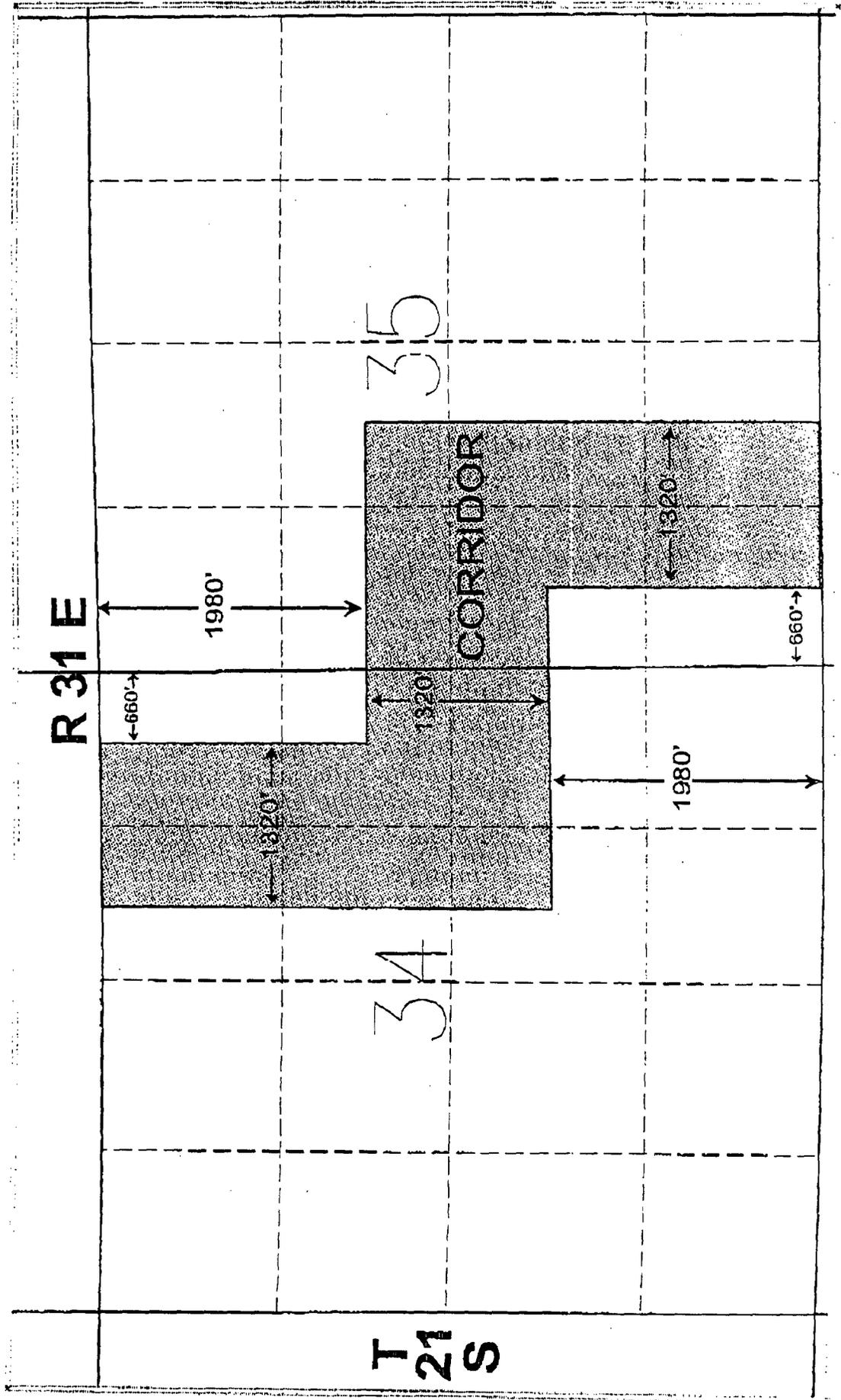


EXHIBIT B

Legal Description of Corridor

The following described lands located in Eddy County, New Mexico:

Township 21 South, Range 31 East, N.M.P.M.

Section 34:  $W\frac{1}{2}NE\frac{1}{4}NE\frac{1}{4}$   
 $E\frac{1}{2}NW\frac{1}{4}NE\frac{1}{4}$   
 $W\frac{1}{2}SE\frac{1}{4}NE\frac{1}{4}$   
 $E\frac{1}{2}SW\frac{1}{4}NE\frac{1}{4}$   
 $SE\frac{1}{4}SE\frac{1}{4}NE\frac{1}{4}$   
 $NE\frac{1}{4}NW\frac{1}{4}SE\frac{1}{4}$   
 $N\frac{1}{2}NE\frac{1}{4}SE\frac{1}{4}$

Section 35:  $S\frac{1}{2}SW\frac{1}{4}NW\frac{1}{4}$   
 $SW\frac{1}{4}SE\frac{1}{4}NW\frac{1}{4}$   
 $N\frac{1}{2}NW\frac{1}{4}SW\frac{1}{4}$   
 $SE\frac{1}{4}NW\frac{1}{4}SW\frac{1}{4}$   
 $W\frac{1}{2}NE\frac{1}{4}SW\frac{1}{4}$   
 $E\frac{1}{2}SW\frac{1}{4}SW\frac{1}{4}$   
 $W\frac{1}{2}SE\frac{1}{4}SW\frac{1}{4}$

For all depths from the surface down to the base of the Salado formation which is located at a subsurface depth of 2461 feet in the CNLD log (compensated neutron litho density log) of the Mary "AIV" State Well No. 5, located 660 feet FNL and 330 feet FEL of Section 36, T21S, R31E, N.M.P.M.