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Lorraine Hollingsworth
lhollingsworth@domenicilaw.com

September 6, 2006

Florene Davidson
Hearing Clerk
EMNRD
Oil Conservation Division
1220 S. St. Francis Drive
Santa Fe, NM 87505


RE: Application for Adjudicatory Hearing on Permit to Drill, Lynx Petroleum, Inc's.
application for a permit to drill the Eddy 'BD' State No. 2 well, located at 660' FNL &
1980' FEL, Section 32, T20S, R30E, Eddy County, New Mexico

Dear Ms. Davidson:

Please find enclosed the original of Lynx's Motion for Summary Judgment, which was fax to you yesterday. This Motion was also already faxed to all counsel of record. I am enclosing the original for filing with the OCD.

Thank you for your courtesies.

Sincerely,
DOMENICI LAW FIRM, P.C.



Charles N. Lakins, Esq.

cc: 1606.02

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

**LYNX PETROLEUM CONSULTANTS INC.'S MOTION FOR SUMMARY JUDGMENT
REGARDING THE OBJECTION OF INTREPID POTASH – NEW MEXICO, LLC**

Lynx Petroleum Consultants Inc. ("Lynx") hereby moves the Oil Conservation Division ("OCD") to grant Summary Judgment on behalf of the Applicant Lynx and dismiss the objection of Intrepid Potash – New Mexico, LLC ("Intrepid") to the Application for Permit to Drill ("APD") filed by Lynx for its Eddy "BD" State Well No. 2 at a location 660 FNL and 1980 FEL, Section 32, Township 20 South, Range 30 East, NMPM, Eddy County, New Mexico, and to approve the APD for Lynx's drilling of this well. In support of this motion, Lynx states as follows:

UNDISPUTED FACTS

1. On March 24, 2006, Lynx electronically filed with OCD its C-101 Application for Permit to Drill the Eddy "BD" State Well No. 2 and, in accordance with Section G(2) of Oil Conservation Commission ("OCC") Order No. R-111-P, provided notice of its intention to drill with attached plat to Intrepid, which is a "potash operator holding potash leases within a radius of one mile of the proposed location." Lynx mailed the notice to Intrepid on March 24, 2006. See attached Exhibit A. The notice was received by Intrepid on March 27, 2006. See attached Exhibit B.
2. In April 2006, the OCD contacted the New Mexico State Land Office ("SLO") and the Bureau of Land Management ("BLM"). Both agencies advised OCD on April 10, 2006 that Lynx's proposed APD location was not within a designated Life-of-Mine Reserve ("LMR") Area. See attached Exhibit C and Exhibit D.
3. By letter dated May 9, 2006, Intrepid wrote to Lynx, informing Lynx that Intrepid was opposed to the proposed well location. Intrepid stated that the reason it was opposed was because drilling at the proposed location "destroys the State of New Mexico's Potash Resource" and "represents the spoilage of approximately 491 acres of mineable ore."

Attached to Intrepid's letter was a plat prepared by Intrepid, which shows the proposed location to be outside of Intrepid's LMR and outside of the required one-half mile buffer. A copy of Intrepid's letter with the attached plat was sent to Bryan Arant, the OCD's District 2 Geologist. See attached Exhibit E.

4. After Intrepid filed its protest with the OCD, the OCD Artesia Field Office informed Lynx that Lynx needed to request a hearing before the OCD to consider its Application for Permit to Drill the Eddy "BD" State Well No. 2, and Lynx filed its request for hearing in this case.
5. Intrepid has acknowledged, both in its map attached to its protest that was sent to OCD and at the Pre-Hearing Conference, that Lynx's APD location for its Eddy "BD" State Well No. 2 is outside both Intrepid's LMR and the one-half mile buffer required by Section G(3)(b) of OCC Order No. R-111-P.

ARGUMENT

1. Summary Judgment is appropriate where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Rule 1-056 NMRA 1998.
2. "The Oil Conservation Commission is a creature of statute, expressly defined, limited and empowered by the laws creating it." *Continental Oil Co. v. Oil Conservation Comm'n*, 70 N.M. 310, 318, 373 P. 2d 809, 816 (1962).
3. "The [Oil Conservation] division shall have, and is hereby given, jurisdiction and authority over all matters relating to the conservation of oil and gas and the prevention of waste of potash as a result of oil or gas operations in this state." Section 70-2-6(A) NMSA 1998.
4. The [Oil Conservation] commission shall have concurrent jurisdiction and authority with the division to the extent necessary for the commission to perform its duties as required by law. Section 70-2-11(B) NMSA 1978.
5. The [Oil Conservation] division is hereby empowered, and it is its duty, to prevent waste prohibited by this act and to protect correlative rights, as in this act provided. [New Mexico Oil and Gas Act]. To that end, the division is empowered to make and enforce rules, regulations and orders, and to do whatever may be reasonably necessary to carry out the purpose of this act, whether or not indicated or specified in any section hereof. Section 70-2-11(A) NMSA 1978.
6. NMSA 1978, Sections 70-2-1 through 70-2-38 set forth the Oil and Gas Act, which grants the division jurisdiction and authority over all matters relating to the conservation of oil and gas, the prevention of waste of oil and gas and of potash as a result of oil and gas operations, the protection of correlative rights and the disposition of wastes resulting from oil and gas operations, and grants the commission concurrent jurisdiction and authority with the division to the extent necessary for the commission to perform its duties. NMAC 19.15.14.3. See also NMAC 19.15.1.3, 19.15.3.3, 19.15.5.3, and 19.15.15.3.

7. The Oil Conservation division is authorized to make rules, regulations and orders for the purposes and with respect to the subject matter stated in this subsection to:
 - (a) “determine the limits of any area containing commercial potash deposits and from time to time redetermine the limits.” Section 70-2-12(B)(16) NMSA 1978.
 - (b) “regulate and, where necessary, prohibit drilling or producing operations for oil or gas within any area containing commercial deposits of potash where the operations would have the effect unduly to reduce the total quantity of the commercial deposits of potash that may reasonably be recovered in commercial quantities or where the operations would interfere unduly with the orderly commercial development of the potash deposits.” Section 70-2-12(B)(17) NMSA 1978.
8. The OCC validly adopted the Rules governing oil and gas drilling in the Known Potash Leasing Area by Order No. R-111-P and it is the duty of the Oil Conservation Division to implement this Order and enforce the Rules contained therein. See Sections 70-2-12(B)(16) & (17) NMSA 1978 and NMAC 19.15.1.12.
9. OCC Order No. R-111-P was validly promulgated by the Oil Conservation Commission pursuant to its rule-making authority under 19.15.14.1201 NMAC.
10. The Objective of the rules and regulations contained in OCC Order No. R-111-P “is to prevent waste, protect correlative rights, assure maximum conservation of the oil, gas and potash resources of New Mexico and permit the economic recovery of oil, gas and potash minerals in the area hereinafter defined.” OCC Order No. R-111-P, A. Objective.
11. Rule R-111-P “represents a compromise by both industries, the potash operators relinquishing lower grade marginal or uneconomic ore deposits in order to more fully protect their higher grade ore deposits; and the oil/gas operators receiving such lands containing sub-economic ore deposits as prospective drill sites.” OCC Order No. R-111-P, Finding #(9).
12. Although subservient to prevention of waste and perhaps to practicalities of the situation, protection of correlative rights must depend upon the commission's findings as to extent and limitations of right. This the commission is required to do under legislative mandate. *Continental Oil Co. v. Oil Conservation Comm'n*, 70 N.M. 310, 373 P.2d 809 (1962).
13. Under the New Mexico Oil and Gas Act, waste is defined as: “drilling or producing operations for oil or gas within any area containing commercial deposits of potash where such operations would have the effect unduly to reduce the total quantity of such commercial deposits of potash which may reasonably be recovered in commercial quantities or where such operations would interfere unduly with the orderly commercial development of such potash deposits.” Section 70-2-3(F) NMSA 1978.
14. “Unduly” has been defined by the Oil Conservation Commission in the context of oil and gas operations within the Known Potash Leasing Area as “excessively” or “immoderately.” See ¶14, OCC Order No. R-9650-B/R-9651-B.

15. Lynx's proposed well location for the Eddy "BD" State Well No. 2 is in the Known Potash Leasing Area and all potash mining and oil/gas drilling at the proposed location is governed by the rules and regulations set forth in Oil Conservation Commission Order No. R-111-P.
16. Order No. R-111-P requires that potash lessees designate their Life-of-Mine Reserve Areas annually by January 31st of each year, and that lessees may amend their designated LMR by filing a revised designation with the BLM and SLO, and that amendments must be filed by January 31 "next following the date the additional data becomes available." See Potash Rules G(a) and (c).
17. Once acreage is included in an LMR, drilling of oil and gas wells therein is allowed in accordance with the provisions of the R-111-P Potash Rules.
18. Rule G is entitled "DESIGNATION OF DRILLABLE LOCATION FOR WELLS." It provides in subpart (2) that:

Before commencing 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...

19. Rule G(3) provides

Applications to drill outside the LMR **will be approved** as indicated below; provided there is **no protest** 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 (1/4th) mile or 110% of the depth of the ore, whichever is greater.
- (b) **A deep well shall be drilled no closer than one-half (1/2) mile from the LMR.**
(Emphasis added.)

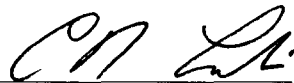
20. There is no issue of fact. Lynx's proposed Eddy "BD" State Well No. 2 location is a deep well located more than one-half (1/2) mile from the Intrepid LMR. Regardless whether Intrepid had, or had not, timely protested, the provisions of OCC Order No. R-111-P explicitly allow drilling of a deep well that is located more than one-half (1/2) mile from an LMR that has been properly filed with the BLM and SLO.
21. Intrepid's LMR was reviewed by the BLM and SLO and both agencies indicated that the proposed Lynx well is outside of the LMR. Intrepid does not dispute that the location is outside of the one-half (1/2) mile buffer. As such, the rules and regulations set forth in OCC Order No. R-111-P specifically and explicitly dictate that Lynx's well location is in an area in which drilling is allowed and Lynx's application must be approved.

22. "The intent of the notification requirement in NMOCC Order No. R-111-P is to determine if a proposed drill site for an oil and gas well is within a designated LMR or its buffer zone. It is not intended to give a potash lessee information concerning where oil and gas drilling will occur so that the potash operator may immediately revise its LMR to preclude the proposed drilling." OCC Order No. R-9650-B/R-9651-B.
23. Intrepid received Lynx's Notice of Intention to drill on March 28, 2006, but did not protest the proposed well within the required 20 days of receipt of the Notice.
24. Pursuant to OCC Order No. R-111-P, Application for Permits to Drill deep wells in the Known Potash Leasing Area that are more than one-half (1/2) mile from an 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.
25. The doctrine of *expressio unius est exclusion alterius* controls the determination of this issue and the interpretation of OCC Order No. R-111-P by the Oil Conservation Division. This doctrine has been interpreted by the New Mexico Supreme Court to mean "Where authority is given to do a particular thing and the mode of doing it is prescribed, it is limited to be done in that mode; all other modes are excluded." See *Bettini v. City of Las Cruces*, 82 N.M. 633, 635, 485 P.2d 967, 969 (1971).
26. Pursuant to the provisions of OCC Order No. R-111-P, which the Division is required to implement and enforce, Lynx's Application for Permit to Drill must be approved.
27. The delay imposed on Lynx by Intrepid's late and factually unsound protest is prejudicial to Lynx. The time deadlines set forth in the OCD's and the OCC's rules, 19.15.14 NMAC, and other NMAC sections affecting other industries, indicate that deadlines and procedural requirements are set forth to provide due process for all parties. The time limits and procedural requirements set forth in the OCD's rules should be fairly enforced. Indeed, if Lynx had not followed the notification requirement of R-111-P or Section 19.15.14.1210, any subsequent order issued by the OCD or OCC could be held as void. See i.e. *Johnson v. State Oil Conservation Comm'n*, 1999-NMSC-021, 127 N.M. 120, 978 P.2d 327. The same standard should apply to Intrepid. As Intrepid did not timely protest, and Intrepid admits that Lynx's APD is outside the requisite one-half mile buffer, the procedural rules require that its late and factually unsound protest not be allowed to hinder Lynx's recognized opportunity to produce under its mineral right. To allow otherwise hinders Lynx and is prejudicial to Lynx.
28. The public policy behind the 20-day protest period set forth in OCC Order N. R-111-P provides a time-critical deadline so all interested parties can make decisions, both from the oil & gas and the potash industries, which can be effected by timeliness provisions in leases, operating agreements, etc. To allow a late protest to be considered, when well-known, established procedural rules have been in place for nearly twenty years, ignores the public policy reasons and objectives set forth in the rules, administrative sections and statutory sections that dictate the operating guidelines that all parties are required to follow.

WHEREFORE, Lynx Petroleum Consultant's Inc., requests that the Oil Conservation Division:

1. Grant its Motion for Summary Judgment.
2. Enter an Order dismissing Intrepid's objection as:
 - A. Factually unsupported as the proposed location is outside of both Intrepid's LMR and the 1/2-mile buffer required under OCC Order No. R-111-P.
 - B. Procedurally deficient as the protest was not timely filed under OCC Order No. R-111-P, and
3. Approve Lynx's Application for Permit to Drill the Eddy "BD" State Well No. 2.

Respectfully Submitted,
DOMENICI LAW FIRM, P.C.



Charles N. Lakins, Esq.
Attorneys for Lynx Petroleum Consultants, Inc.
320 Gold Ave SW, Suite 1000
Albuquerque, NM 87102
Phone: (505) 883-6250
Fax: (505) 884-3424
E-mail: clakins@domenicilaw.com

I hereby certify that on this 5th day of September 2006 I served a true and correct copy of the foregoing via facsimile to the following parties of record:

Larry P. Ausherman
Walter E. Stern
Modrall Sperling Law Firm
PO Box 2168
Albuquerque, NM 87103
Fax: (505) 848-9710
Attorney for Intrepid

William F. Carr
Ocean Munds-Dry
Holland & Hart, LLP.
PO Box 2208
Santa Fe, NM 87501
Fax: (505) 983-6043
Attorney for BEPCo.

Mary Lynn Bogle
Gregory J. Nibert
Hinkle, Hensley, Shanor & Martin, LLP
PO Box 10
Roswell, NM 88202-0010
Fax: (505) 623-9332
Attorney for Devon Energy Production Company, LP

James E. Haas
Losee, Carson & Haas, PA
PO Box 1720
Artesia, NM 88211-1720
Fax: (505) 746-6316
Attorney for Yates Petroleum Corporation

A handwritten signature in black ink, appearing to read 'CN Lakins', is written over a horizontal line.

Charles N. Lakins, Esq.

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

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
Larry R. Scott

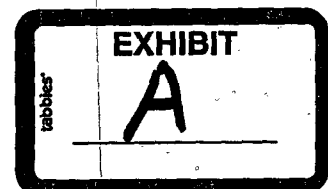
Intrepid Mining NM LLC will have no objection to the drilling of the above referenced well.

Tom McGuire
Title: _____
Date: _____

cc: w/o enc - NMOCD

*This sent
3/27/06*

*copy of all
sent to
Steve Dunn
3-27
+ copy with
to BA,
OCD
P. 481A.*



SENDER: COMPLETE THIS SECTION

- 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.

1. Article Addressed to:

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

2. Article Number

(Transfer from service label)

7005 1820 0001 6803 4333

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-44-154

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *[Signature]* ☐ Agent ☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from Item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☒ Certified Mail ☐ Express Mail
- ☐ Registered ☐ Return Receipt for Merchandise
- ☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

U.S. Postal Service

CERTIFIED MAIL™ RECEIPT

(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

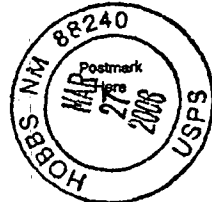
Postage \$.63

Certified Fee 2.40

Return Receipt Fee (Endorsement Required) 1.85

Restricted Delivery Fee (Endorsement Required)

Total Postage & Fees \$ 4.88



Sent To

Tom McGuire, Intrepid Mining, NM, LLC

Street, Apt. No., or PO Box No.

City, State, ZIP+4

210 Red Cloud
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. Fesnlire, 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

JUNARTESIA

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 NMOC

In LMR Yes _____
In Buffer Zone Yes _____

No ☒
No ☒

10:50 AM
4-7-06
JRM

Comments:

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

EXHIBIT**C**

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
Bureau of Land Management
620 East Greene St.
Carlsbad, NM 88220-7292
Attn: Mr. Craig Cranston or To Whom It May Concern

RECEIVED
APR 11 2006
OGD-ARTESIA

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' ENL & 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 <u>X</u>
In Buffer Zone	Yes _____	No <u>X</u>

Comments:

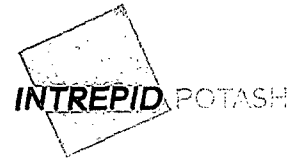
Signature: [Signature]

Date: 4-10-06

Oil Conservation Division * 1220 South St. Francis Drive * Santa Fe, New Mexico 87505
Phone: (505) 476-3440 * Fax (505) 476-3462 * <http://www.ogdnrd.state.nm.us>

EXHIBIT

D



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,

Thomas A. McGuire
Senior Mine Engineer

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

P.O. BOX 101 • 35 MILES EAST HIGHWAY 62-180 • CARLSBAD, NEW MEXICO • 88220
PHONE: 505-234-3814 • FAX: 505-887-0929

