

HOLLAND & HART LLP
ATTORNEYS AT LAW

DENVER • ASPEN
BOULDER • COLORADO SPRINGS
DENVER TECH CENTER
BILLINGS • BOISE
CHEYENNE • JACKSON HOLE
SALT LAKE CITY • SANTA FE
WASHINGTON, D.C.

P.O. BOX 2208
SANTA FE, NEW MEXICO 87504-2208
110 NORTH GUADALUPE, SUITE 1
SANTA FE, NEW MEXICO 87501-6525

TELEPHONE (505) 988-4421
FACSIMILE (505) 983-6043

Michael H. Feldewert

Recognized Specialist in the Area of
Natural Resources - Oil and Gas law -
New Mexico Board of Legal Specialization

mfeldewert@hollandhart.com
46676-0002

August 1, 2003

VIA HAND DELIVERY

Michael E. Stogner
Chief Hearing Officer and Examiner
Oil Conservation Division
New Mexico Energy, Minerals and
Natural Resources Department
1220 South Saint Francis Drive
Santa Fe, New Mexico 87505

RECEIVED

AUG . 1 2003

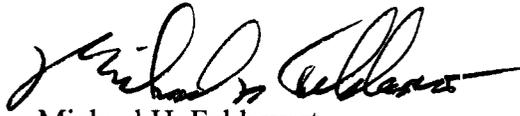
Oil Conservation Division

Re: **Case No. 13107**
Application Of Fasken Oil & Ranch Ltd For An Order
Authorizing The Drilling Of A Well In The Potash Area, Lea
County, New Mexico

Dear Examiner Stogner:

Pursuant to your request at the July 24th hearing in the above referenced matter, enclosed please find Fasken's proposed order for your consideration. I have also enclosed the proposed order on a disk for easy editing.

Sincerely,


Michael H. Feldewert

MHF/jlp

cc: Mr. Jimmy D. Carlile, Fasken Oil & Ranch

Enclosures: As stated

3113132_1.DOC

10-17

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

**IN THE MATTER OF THE APPLICATION OF
FASKEN OIL & RANCH LTD FOR AN ORDER
AUTHORIZING THE DRILLING OF A WELL
IN THE POTASH AREA, LEA COUNTY,
NEW MEXICO**

CASE NO. 13107

RECEIVED

AUG . 1 2003

ORDER OF THE DIVISION

BY THE DIVISION:

Oil Conservation Division

This case came on for hearing on July 24, 2003 at Santa Fe, New Mexico, before Examiner Michael E. Stogner.

NOW, on this ____ day of _____, 2003, the Division Director, having considered the testimony, the record, and the recommendations of the Examiner,

FINDS THAT:

(1) Due public notice has been given, and the Division has jurisdiction of this case and its subject matter.

(2) The Oil and Gas Act, 70-2-12(B)(17) empowers the Division to "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 which may *reasonably be recovered in commercial quantities* or where the operations would interfere *unduly* with the orderly commercial development of the potash deposits." (emphasis added)

(3) Division Order No. R-111, dated November 9, 1951, as amended by Order Nos. R-111-A through R-111-O, established the "Potash Area," being an area located in Lea and Eddy Counties, New Mexico, in which potash mining operations had occurred or were ongoing at the time, or in which core tests indicated the presence of potentially commercial potash reserves.

(4) In response to concerns from the oil and gas industry and the potash industry that operations under these prior orders had become "virtually unworkable," and after hearing recommendations from a work committee comprised of representatives from both industries, the Commission entered Order R-111-P on April 21, 1988.

(5) Commission Order R-111-P rescinded Division Orders R-111 through R-111-O and established "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.”

(6) In establishing these special rules and regulations for the Potash Area, the Commission made the following relevant observations:

“(19) One member of the work committee from the potash industry testified the proposed revision of Order R-111-A failed to prohibit drilling in the commercial ore areas and was therefore contrary to the work committee report and the Oil and Gas Act.

(20) The Commission cannot abdicate its discretion to consider applications to drill as exceptions to its rule and orders but in the interest of preventing waste of potash should deny any application to drill in commercial potash areas as recommended in the work committee report, unless a clear demonstration is made that commercial potash will not be wasted unduly as a result of the drilling of the well.”

(7) Under paragraph G of Order R-111-P, oil and gas drilling is generally prohibited within a life of mine reserves (“LMR”) area designated by a potash lessee unless there is an agreement between the lessees of both potash and oil and gas interests.

(8) The applicant, Fasken Oil & Ranch, Ltd (“Fasken”), seeks approval to drill its proposed Laguna “16” State Well No. 1 at a standard gas well location in the SE/4 SE/4 (Unit P) of Section 16, Township 20 South, Range 32 East, NMPM, Lea County, New Mexico.

(9) Fasken holds a valid oil and gas lease to Section 16 from the New Mexico State Land Office and seeks approval to drill this well to a total depth of 13,200 feet to test the Morrow sands and the Bone Spring sandstones under this state acreage.

(10) Fasken’s proposed well location is within the Potash Area as defined under Commission’s Order R-111-P.

(11) The Division’s district office denied Fasken’s application to drill after IMC Potash Carlsbad, Inc. (“IMC”) informed the district office that it considered Fasken’s proposed well to be within its LMR.

(12) With regard to potash leasing and potash development in this area, Fasken presented evidence that demonstrates:

(a) There are currently no active potash leases in Section 16, and there are no potash leases to the south in adjacent Section 21, which is federal land;

(b) Mississippi Potash Inc. holds federal potash leases to the north and the west in adjacent Sections 8, 9, 10, 17 and 20;

(c) The closest potash mine is approximately two miles to the northwest of Fasken's proposed well location, is operated by Mississippi Potash Inc., and is presently inactive;

(c) IMC holds a federal potash lease to the east in adjacent Sections 15 and 22;

(d) IMC, or its predecessor, has held its federal potash lease since 1953, but has not undertaken any effort to develop adjacent Sections 15 and 22;

(e) IMC's nearest potash mine is approximately eight miles to the southwest of Fasken's proposed well location.

(13) With regard to oil and gas development in the area, Fasken presented evidence that demonstrates:

(a) There are at least eighteen well bores in Section 16, with at least ten in the E/2 (which is to be dedicated to Fasken's proposed well) and at least three in the SE/4 where Fasken's proposed well is to be located;

(b) There are at least two wells in the SW/4 of adjacent Section 15, with one of those well bores directly offsetting Fasken's proposed well to the east;

(c) There are at least two well bores in the N/2 N/2 of adjacent Section 21 to the south of Fasken's proposed well; and

(d) There are at least four well bores in the S/2 S/2 of adjacent Section 9 to the north.

(14) The New Mexico State Land Office recently denied IMC's request for a potash lease in Section 16 stating: "Section 16 currently has numerous oil and gas well bores, and with the potential of additional drilling, there does not appear to be adequate clearance for economic mining."

(15) Fasken presented evidence the New Mexico State Land Office supports its proposed well.

(16) Shortly before the hearing in this matter, the Division Examiner received a telephone message from IMC's representative stating that since the New Mexico State Land Office denied IMC's request for a potash lease in Section 16, IMC's status to object to Fasken's well had been "seriously eroded."

(17) IMC did not appear at the hearing or present any evidence in this matter.

(18) Mississippi Potash did not object to Fasken's proposed well and did not appear at the hearing.

(19) Fasken presented evidence that it discussed its proposed well with Mississippi Potash and was informed that Mississippi Potash has no plans to mine in Section 16 due to the extensive oil and gas development in the area.

(20) The evidence establishes that it is highly unlikely that commercial potash mining will take place in Section 16.

(21) Fasken has demonstrated that its proposed well will not unduly reduce the total quantity of the commercial deposits of potash that may reasonably be recovered in commercial quantities and that its proposed well will not interfere unduly with the orderly commercial development of the potash deposits.

(22) Fasken presented geologic evidence demonstrating that it has a good chance of producing commercial oil or gas reserves from its proposed well.

IT IS THEREFORE ORDERED THAT:

(1) Fasken is hereby granted authority to drill its proposed well at a standard location in the SE/4 of Section 16.

(2) Fasken shall comply with all applicable casing and cementing requirements set forth in Commission Order R-111-P.

(3) Jurisdiction is retained for the entry of such further orders as the Division may deem necessary.

DONE at Santa Fe, New Mexico on the day and year hereinabove designated.

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

LORI WROTENBERY
Director

SEAL