



POTASH

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May 22, 2008

Mr. Mark E. Fesmirc, P.E.
Director
Oil Conservation Division
New Mexico Energy, Minerals and
Natural Resources Department
1220 S. St. Francis Dr.
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New Mexico Oil Conservation Division
1301 W. Grand Avenue
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Re: Case No. 14131
Nadel and Gussman HEYCO, LLC State Well No. 2
1650' FNL and 1980' FWL
Section 32, T20S-R30E
Eddy County, New Mexico

Ladies and Gentlemen:

Nadel and Gussman HEYCO, LLC ("HEYCO") seeks to overturn the decision of the Division rejecting the location of its proposed HEYCO State Well No. 2 that it proposes to drill vertically to a depth of approximately 12,700 feet at the above-described location (the "Well"). Intrepid objected to the Well by letter dated March 25, 2008. OCD subsequently rejected HEYCO's APD for the Well due to its potential to cause undue waste of potash, and HEYCO then filed the captioned appeal.

HEYCO's proposed Well is located within Intrepid's LMR where drilling is prohibited under the terms of Division Order R-111-P and the industry agreement attached to and made part of such order. Therefore the Division lacks the authority to permit the proposed Well because it is located within Intrepid's LMR and because Intrepid has not consented to the drilling of the Well, as provided by the terms of Order R-111-P.

Additionally, drilling and operation of the Well would result in waste of commercial potash deposits under lease by Intrepid. Intrepid owns New Mexico Potash Mining Lease M-651, which covers all of Section 32 where the proposed Well is located. The Bureau of Land Management's map of mineable potash reflects that Section 32 and the adjoining sections

contain mineable potash. Thus, drilling the Well will impact Intrepid's potash lease in Section 32 and other mineable deposits of potash in adjoining sections identified on BLM's potash map.

Drilling and producing operations associated with the proposed Well would also negatively impact Intrepid's HB Mine, an idled underground potash mine that Intrepid is currently developing for in-situ solution mining operations. The location of the proposed Well is less than a mile to the south from the mine workings of the HB Mine and could unduly interfere with the operations and expansion of the HB Mine.

The commercial potash deposits in Section 32 and in the sections immediately to the east of that section are also accessible from the workings of Intrepid's West Mine, which are currently located about 3 miles away to the east. The West Mine is an active, conventional, underground potash mining operation with employees working underground. Neither BLM or the State of New Mexico has evaluated the significant hazard created by the potential release of combustible gas into mine workings from nearby high pressure, deep gas wells, such as the HEYCO Well. Where BLM has studied similar safety hazards posed by such wells, BLM has found that they create an unacceptable hazard to miners. Unlike the shallower Delaware wells, the proposed Well targets the deeper Morrow formation. The deeper formations in the Potash Area (Morrow, Strawn, Wolfcamp, etc.) characteristically contain much larger volumes of combustible gas that are at high pressures. Underground workers are particularly vulnerable to the potential release of this gas into underground mine workings. The risks posed by testing or producing from these deep formations in close proximity to mine workings in the Potash Area are the subject of a pending safety study by BLM. BLM has already studied similar risks posed by oil and gas and drilling to underground trona mining in Wyoming, and banned further drilling after considerable study. Intrepid repeats its request made in connection with past oil and gas well proceedings before OCD that OCD not approve wells like the HEYCO Well at issue here until BLM has completed its pending safety study.

Order R-111-P mandates a case-by-case determination for determining whether a well can be drilled within the Potash Area after notice and hearing. The Division lacks authority to grant the blanket exemption sought by HEYCO for the future drilling of wells in Section 32 and cannot grant a well within Intrepid's LMR under that order.

Sincerely,



Katie Keller
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