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July 24, 2008

David K. Brooks, Legal Bureau
New Mexico Oil Conservation Division
1220 South St. Francis Drive
Santa Fe, NM 87505

By Facsimile 476-3462

Re: Application of Fasken Oil & Ranch Ltd. for an Order Authorizing
An Additional Well in the "Potash Area" at an Unorthodox Well
Location in Lea County, New Mexico
Oil Conservation Division No. 14116

Dear Mr. Brooks:

This is in response to M. Feldwert's July 21, 2008 e-mail to you regarding the brief scheduling in the Fasken matter. All but one of the issues outstanding in this proceeding require the completion of the transcript, as set forth below. In addition, this proceeding remains open pending Mosaic's participation.

Mosaic Intervention. Mosaic was granted intervention in this proceeding in your telephone conference and post-hearing ruling on the record. The hearing has been left open awaiting Mosaic's decision on if and how it would like to participate. Mosaic should be granted an opportunity to review the transcript to assess these matters and if it may choose to recall any witness for cross examination. As you recognized in allowing intervention, this will require redacting the transcript of Intrepid confidential information prior to Mosaic's review and an amendment to the confidentiality order in this proceeding to address the confidentiality concerns raised by Intrepid and Mosaic's position as competitors.

Confidentiality of Lewis Testimony and Intrepid Exhibits. During the June 30 hearing, you placed under seal all of the testimony of James P. Lewis and Intrepid Exhibits 3, 3a, 6, 9-11, 15-16, 31, 40-41, 43 & 50 and Fasken Exhibits 30, 31, and 33. Intrepid will comply with your ruling to provide a description of the confidential information and documents and grounds therefor. However, we note that Fasken made a blanket objection to the sealing of some of this evidence. If Fasken seeks to challenge the confidentiality designation of this testimony and these exhibits, then the burden is on Fasken to pursue its objection. Fasken must identify the Exhibits to which it objects and



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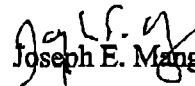
the basis for its objection. Intrepid requests the opportunity to respond to any attempt by Fasken to unseal this testimony and Exhibits.

Confidentiality of Taylor Testimony. Intrepid believes that the record will reflect its request at the outset of the June 30 hearing that you place under seal all of the testimony of Ken Taylor. At the hearing's end, you disagreed that Intrepid had so requested, and ruled that this evidence was not admitted under seal and, if it was, that the seal was waived by the brief presence of a third party during a portion of Mr. Taylor's testimony. Intrepid objected that Mr. Taylor's testimony was sealed and that there was no waiver, and requested the opportunity to consult the record on this point, and brief the issue of the the sealing of this evidence and the waiver issue. Briefing this issue is dependent on the completion of the transcript to confirm Intrepid's initial request and also to discern whether confidential statements were made during the brief time the third party was present.

Final Briefing. Closing arguments and preparation of statements of fact/conclusions of law require the completion of the transcript as well as the transcript of any continuation of the hearing granted to Mosaic. You requested that Intrepid brief the question of whether any setback from a lease line is required. Intrepid is investigating this and will brief this issue as part of its final brief.

Some background is useful here. Fasken submitted its APD for the well at issue in May of 2007. Intrepid objected a month later. By July of 2007 Fasken had received a five-year extension on its oil and gas lease in the subject area, the basis for which was to grant Fasken the opportunity to address Intrepid's objections in this proceeding (16.2.100.59 NMAC). Fasken then waited almost a year before taking up this appeal. At issue here are enormous amounts of impacted potash as well as New Mexico state potash royalties, important directional drilling questions, serious miner safety concerns and real confidentiality issues. This case deserves adequate time to be fully developed. Given this context, there is no reason to rush to a decision here, particularly where Mosaic has thus far been deprived of an opportunity to participate in the matter. Fasken's timing needs have been met by its lease extension. Intrepid has shown its intent to fully develop this case and deserves adequate time to do so. Thank you

Very truly yours,


Joseph E. Manges

JEM/cat

cc: Michael Feldewert, Esq. (by fax)
Jim Cress, Esq. (by fax)
Charles High, Jr., Esq. (by fax)
Joseph Tippet, Esq. (by fax)

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