

## ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

## OIL CONSERVATION DIVISION



GARREY CARRUTHERS  
GOVERNOR

Mr. Charles C. High, Jr.  
c/o Kemp, Smith, Duncan & Hammond  
P.O. Drawer 2800  
El Paso, TX 79901-1441

January 3, 1989

BEFORE THE  
OIL CONSERVATION COMMISSION  
Santa Fe, New Mexico  
Case No. 10446/10447 Exhibit No. A  
Submitted by O.C.D.  
Hearing Date Sep. 9, 10, 11

POST OFFICE BOX 2088  
STATE LAND OFFICE BUILDING  
SANTA FE, NEW MEXICO 87504  
(505) 827-5800

RE: Order No. R-111-P

Dear Charlie:

Order No. R-111-P was entered April 21, 1988 and represented, as far as is practical, the consensus of the potash-oil work committee and a majority of oil and potash operators.

Paragraph G(a) states "Within ninety (90) days following effective date of this Order and annually thereafter by January 31 if revised, each potash lessee, without regard to whether the lease covers State or Federal lands, shall file with the District Manager, BLM, and the State Land Office (SLO), a designation of the potash deposits considered by the potash lessee to be its life-of-mine reserves ("LMR")."

The OCD has received complaints from oil operators that the information concerning drillable or prohibited locations under the order is not available at BLM or SLO offices. We have contacted both agencies and have been informed no "LMR" maps have been filed.

Upon calling your office to inquire about the non-compliance on the part of the potash industry, Mr. Lyon was informed there had been no change in the BLM rules to accommodate the procedure established by the order. Mr. Woodard's letter of May 17, 1988 advised that a panel of BLM officials at all levels had reviewed the order and found no conflict with either the rules or the secretary's order.

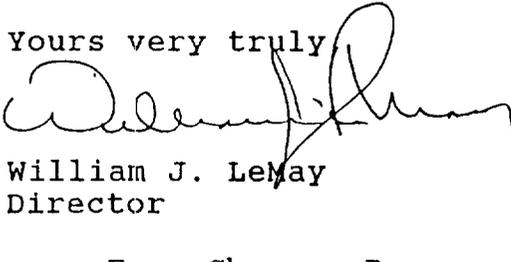
You will also note that Order No. R-111-P contains no exemption based on BLM changing either its rules or the secretary's order. Based on the information available to this office the failure of potash companies to file LMR maps is both a serious, willful non-compliance with the order and a breach of faith with the Oil-Potash Study Committee.

It is requested that you, in your capacity of counsel for the potash operators, immediately recommend their full, if not timely, compliance with the order, immediately. If there is just cause for the non-compliance it is requested that you submit, at the earliest possible convenience, the specific reasons therefore.

Mr. Charles C. High, Jr.  
January 3, 1989  
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Your prompt action to rectify this matter will be greatly appreciated.

Yours very truly,



William J. Lemay  
Director

cc: Fran Cherry, Bureau of Land Management, Roswell  
Bill Humphries, State Land Office  
Erling Brostuen, Mining and Minerals Division

KEMP, SMITH, DUNCAN & HAMMOND

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

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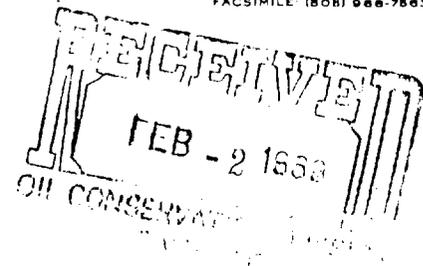
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OF COUNSEL: WILLIAM DUNCAN

\*MEMBERS TEXAS BAR  
†MEMBERS NEW MEXICO BAR  
\*\*MEMBERS TEXAS AND NEW MEXICO BARS

January 30, 1989



Mr. William J. LeMay  
Director  
Oil Conservation Division  
State of New Mexico  
Energy, Minerals and  
Natural Resources Department  
Post Office Box 2088  
State Land Office Building  
Santa Fe, New Mexico 87504

Re: Order No. R-111-P and Oil/Potash Agreement

Dear Bill:

I have received your letter of January 3, 1989 regarding the filing of Life of Mine Reserve Maps and forwarded it to the Potash Operators.

It was my understanding, as I told Vic, that the maps did not have to be filed unless and until the Bureau of Land Management agreed to adopt the agreement between the Oil and Potash Industries. Our joint request for them to do so is now pending before Mr. Fran Cherry but we have not received a response.

I realize that the Oil Conservation Commission did not incorporate specific language regarding the further action needed by the BLM but that requirement was clearly understood by all parties. Nevertheless, I am in the process of discussing this

Mr. William J. LeMay  
January 30, 1989  
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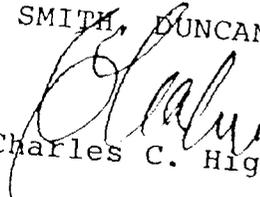
issue with the Potash Operators and will respond to you in the  
near future on the issues raised by your letter.

Best regards.

Sincerely,

KEMP, SMITH, DUNCAN & HAMMOND

By:

  
Charles C. High, Jr.

CCH:sg

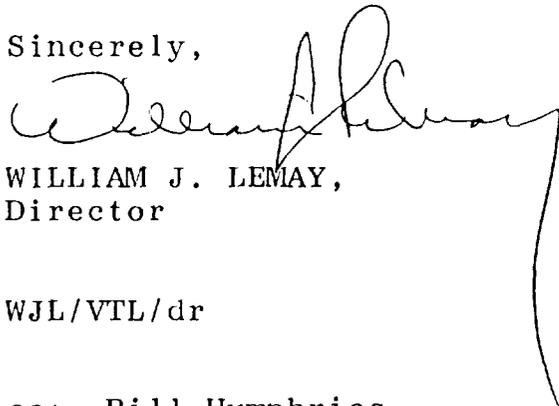
cc: Walter E. Thayer

Since we are not a custodian of those filings, we were astounded to learn that they had not been made. We have had numerous telephone calls from oil and gas operators asking when the filings will be made. Because the Potash operators have not made the filings as required, the OCD is placed in the embarrassing position of not being able to approve APD's for particular locations.

In your telephone call with Vic you mentioned that we are on the verge of achieving peace and understanding between the two industries and we all worked very hard to get there. We know that both industries have made sacrifices to reach a meeting of the minds. I hope that the Potash companies don't damage that peace by failing to file their LMR's, and that the delay is caused by misunderstanding.

The order was signed April 21, 1988 and, under its terms, the LMR filings were due 90 days after that date (July 20). I am requesting that the Potash companies file their LMR's within 30 days. Their failure to do so may cause me to believe it is intentional, and I would then have to consider taking some action to enforce compliance. I sincerely hope that will not be necessary.

Sincerely,



WILLIAM J. LEMAY,  
Director

WJL/VTL/dr

cc: Bill Humphries  
Erling Brostuen  
Fran Cherry



STATE OF NEW MEXICO

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION

*file*

GARREY CARRUTHERS  
GOVERNOR

February 20, 1989

POST OFFICE BOX 2099  
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SANTA FE, NEW MEXICO 87504  
15051827-5800

Mr. Charles C. High, Jr.  
c/o Kemp, Smith, Duncan & Hammond  
P. O. Drawer 2800  
El Paso, Texas 79999-2800

Re: Order No. R-111-P

Dear Charlie:

Your letter dated January 30, 1989 indicates an apparent misunderstanding about a very important point in the inter-industry agreement which was incorporated as an exhibit to Order R-111-P. Apparently you and the potash representatives are reading the agreement but not the order.

As you know the agreement states on Page 4, Section II A:

" ...Within ninety (90) days following adoption of this Agreement by the OCC and the BLM and annually thereafter by January 31 if revised, each potash lessee, without regard to whether the lease covers State or Federal lands, shall file with the District Manager, BLM, a designation of the potash deposits considered by the potash lessee to be its life-of-mine reserves ("LMR")..."

The order states as I quoted in my January 3, 1989 letter. I was present at the meeting where the agreement was signed. I heard Vic state that neither the state nor the BLM could sign the agreement or be bound by it because it would waive our discretion provided in the Oil and Gas Act. Fran Cherry also agreed that he could not waive his discretion.

We attached the agreement to the order for the purposes, and only for the purposes, described in Finding No. 7 on Page 2. The order went as far toward adopting the terms of the agreement as the Commission deemed within its authority. The order stands alone and the Agreement does not place any limitations on the applicability or effect of the Order. The Order requires that LMR's be filed with the State Land Office. As lessor and custodian of the state lands, the Land Commissioner should be provided that information which is necessary for him to fulfill his responsibilities.