

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

**APPLICATION OF FASKEN OIL & RANCH
LTD. FOR AN ORDER AUTHORIZING AN
ADDITIONAL WELL IN THE "POTASH
AREA" AT AN UNORTHODOX WELL
LOCATION, LEA COUNTY, NEW MEXICO.**

**De Novo
CASE NO. 14116
Order No. R-12955-N**

**ORDER GRANTING FASKENS' MOTION FOR AN ORDER LIMITING
EVIDENCE**

The Oil Conservation Commission (Commission) Chair, having reviewed Fasken Oil & Ranch Ltd.'s (Fasken) Motion for an Order Dismissing De Novo Appeal or Limiting Evidence and Intrepid Potash – New Mexico, LLC's (Intrepid) response finds and orders as follows:

1. Fasken filed its application to drill a second deep gas well on state trust lands in Section 16, Township 20 South, Range 23 East in May 2007.
2. Intrepid opposed Fasken's application.
3. Following a two-day hearing, the Oil Conservation Division (Division) entered Order No. R-12955-B allowing Fasken to drill a second deep gas well in Section 16, Township 20 South, Range 23 East.
4. Intrepid appealed Order No. R-12955-B in April 2009 and the matter was set to be heard by the Commission in June 2009.
5. Intrepid filed a motion for continuance, which was granted by Commission Order No. R-12955-E.
6. In May and June 2009, the Commission issued document subpoenas requesting production within thirty days. Intrepid did not file objections to or otherwise formally respond to either of the subpoenas.
7. In July 2009, the Commission Chair entered Order No. R-12955-F setting the *de novo* hearing for October 21, 2009. Despite entry of this Order and the existence of the confidentiality order previously entered by the Division Intrepid did not produce documents responsive to the subpoenas.

8. On August 11, 2009, the Commission entered Order No. R-12955-G adopting the confidentiality order entered by the Division. Despite this order, Intrepid did not comply with the outstanding subpoenas.

9. Fasken filed a motion to compel discovery on August 25, 2009.

10. After receipt of Fasken's motion to compel, Intrepid filed a series of amended objections and responses to the document subpoenas.

11. In addition to objecting to most of the document requests, Intrepid took the position that the confidentiality order was insufficient to produce certain responsive documents.

12. After reviewing Fasken's motion to compel and Intrepid's objection, the Commission entered Order No. R-12955-I, which directed Intrepid to produce the documents.

13. Intrepid responded to Commission Order No. R-12955-I by filing its Fourth Amended Objections and Responses and stated that it would not produce certain responsive documents despite the confidentiality order.

14. On October 21, 2009, the Commission held a hearing to address any objections to discovery requests not covered by Paragraph 4 of the Commission's Order No. R-12955-I.

15. At the close of the October 21, 2009 hearing, the Commission ordered Intrepid to produce an un-redacted copy of the four documents the Commission found confidential and sealed from the public. These documents are:

a. A report from Agapito Associates, Inc. dated December 2007 and titled Determination of Estimated Proven and Probable Reserves at Intrepid Potash- New Mexico, LLC;

b. Tetra Tech's Fatal Flaw Analysis (North Mine) dated August 1, 2007;

c. Tetra Tech's Work Plan Feasibility Study (North Mine) dated November 6, 2008; and

d. North Mine Feasibility Study/Draft Phase I Report dated August 13, 2009.

16. Intrepid was also ordered to produce all documents responsive to Requests 8-10 of Fasken's second subpoena.

17. On November 23, 2009, the Commission issued Order No. R-12955-K. It directed Intrepid to produce an un-redacted copy of the four reports, all documents responsive to Requests 8-10 of Fasken's second subpoena, and all electronic data used to create Intrepid's maps.

18. Intrepid provided the three Tetra Tech reports (Tetra Tech's Fatal Flaw Analysis (North Mine) dated August 1, 2007; Tetra Tech's Work Plan Feasibility Study (North Mine) dated November 6, 2008; and North Mine Feasibility Study/Draft Phase I Report dated August 13, 2009) to Fasken by January 11, 2010.

19. As of January 25, 2010, Intrepid has failed to provide an un-redacted copy of the Agapito Report, all documents responsive to Requests 8-10 of Fasken's second subpoena, and all electronic data used to create Intrepid's maps.

20. As a result of Intrepid's failure to fully comply with discovery requests and Commission orders, Fasken has been deprived of the opportunity to evaluate documents exclusively within Intrepid's possession that potentially bear on the issues before the Commission.

21. Therefore, because of Intrepid's repeated failure to comply with discovery requests and Commission orders, the Commission grants Fasken's request for an order limiting the evidence Intrepid may introduce at the de novo hearing to be held before the Commission. Intrepid may not offer evidence at the de novo hearing before the Commission on the subjects implicated by Intrepid's non-compliance. These include:

- a. mining plans for Section 16 and the nine section area – which are the subjects of Requests 8-10 of Fasken's second subpoena and paragraph (7) of Commission Order No. R-12955-K;
- b. estimated reserves in Section 16 and the nine section area – which is the subject of the Agapito Report and paragraph (4) of Commission Order No. R-12955-K; and
- c. maps, analysis, and interpretations of the commercially mineable potash in Section 16 and the nine section area – which is the subject of Requests 19 and 20 of Fasken's second subpoena and paragraph (8) of Commission Order No. R-12955-K.

DONE at Santa Fe, New Mexico on the 26th day of January, 2010.



SEAL

**STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION**

A handwritten signature in black ink, appearing to read "Mark E. Fesmire", written over a horizontal line.

MARK E. FESMIRE, P.E., Chair