



NEW MEXICO ENERGY, MINERALS and NATURAL RESOURCES DEPARTMENT

BILL RICHARDSON

Governor

Joanna Prukop

Cabinet Secretary

Mark E. Fesmire, P.E.

Director

Oil Conservation Division

January 11, 2007

Richard T. Tully
Tully Law Firm PA
P.O. Box 268
Farmington, NM 87499-0268

Re: Bolack Minerals Co., OGRID 2647

Dear Mr. Tully:

Thank you for speaking with me regarding the practice of the Oil Conservation Division (OCD) regarding confidentiality of filings on wildcat wells.

During our conversation you explained that Bolack Minerals Co. (Bolack) was in the process of drilling a wildcat well on tribal lands. Bolack indicated on its federal filings that the information was "confidential: tight hole," and the Bureau of Land Management had agreed to keep the filings confidential for some time period. Bolack requests a similar promise of confidentiality from the OCD.

The ability of the OCD to enter into confidentiality agreements is limited by the Inspection of Public Records Act. NMSA 1978, Section 14-2-1, *et seq.* Regulatory filings are "public records," and the OCD must provide copies of the filings in response to a written request under the Inspection of Public Records Act. If the OCD fails to produce the records within 15 days, the OCD may be subject to penalties, attorney's fees and costs. The Inspection of Public Records Act provides limited exceptions, including an exception "as otherwise provided by law." I am not aware of a federal law that protects the confidentiality of filings on federal wells. The New Mexico Oil and Gas Act does not provide confidentiality protection for regulatory filings. According to the compliance guide put out by the Office of the Attorney General, merely declaring certain documents to be confidential by regulation or agreement does not exclude them from inspection unless the documents fall within some other exception. The OCD's rules purport to provide limited protection for the Form C-105 (well completion or recompletion report and log), allowing the OCD to keep the form confidential upon written request of the owner of the well for 90 days from the date of completion of the well. See 19.15.13.1105.C NMAC. I believe the rule is based on the argument that the New Mexico courts have fashioned a "rule of reason" protecting otherwise public records when there is a countervailing public policy against disclosure. The rationale would be that, by analogy to the rules of evidence protecting trade secrets, the public interest in encouraging wildcat exploration justifies holding the information confidential, at least for the limited period of time recognized in the rule. By enacting that rule, the OCD is taking the position that it is willing to make that argument in response to an Inspection of Public Records Act request for the Form C-105. I am not aware of whether this rule has survived an Inspection of Public Records Act challenge. The OCD's rules do not currently contain any similar protection for other filings.

The OCD recognizes Bolack's concern regarding the release of information contained in sundry notices filed before the well is completed. The OCD is willing to delay imaging and posting the documents on its website until the well is completed and the 90-day

period provided by 19.15.13.1105.C NMAC is completed. Please make a written request for this treatment directly to Charlie Perrin, Supervisor of OCD District III. If the OCD receives a written request for the documents under the Inspection of Public Records Act, it must release the documents as required under that Act. The OCD will make every effort to notify Bolack if it receives an Inspection of Public Records Act request for the documents, so Bolack may seek an injunction or take other legal steps it deems necessary to assert its argument that the records should not be released.

Please note that Bolack must comply with OCD's rules regarding regulatory filings, including the timely filing of sundry notices.

Sincerely,

Gail MacQuesten,
OCD Attorney

EC: Charlie Perrin, Supervisor, OCD District III
Daniel Sanchez, OCD Enforcement and Compliance Manager