

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

Jicarilla Agency

P.O. Box 167

Dulce, New Mexico 87528



IN REPLY REFER TO:
Office of the Superintendent

APR 25 2011

VIA CERTIFIED MAIL

Mr. J. Scott Hall, Esq.
Montgomery & Andrews PA
325 Paseo De Peralta
Santa Fe, NM 87501-1860

Re: CASE 14629: Application of Blue Dolphin Production, LLC for Compulsory Pooling, Rio Arriba County, New Mexico ("Pooling Application")

Dear Mr. Hall:

This letter responds to your letter dated April 8, 2011 regarding the above-referenced matter that you filed with the New Mexico Oil Conservation Division ("NMOCD"). Your letter and the accompanying Pooling Application concern some or all of a 40 acre parcel of land identified as the SW/4 NE/4 of projected Section 27, Township 30 North, Range 1 East in Rio Arriba County, New Mexico. ("Subject Parcel"). Bureau of Indian Affairs ("BIA") records confirm that the west half of the Subject Parcel includes interests that are held in trust by the United States for the Jicarilla Apache Nation ("Nation"), including both the surface and a split mineral estate.

Federal law imposes both substantive and procedural requirements on the use and/or development of Indian trust property, including Indian mineral interests. Applicable statutes and regulations vest the United States with the authority and responsibility to ensure that the best interest of Indian mineral owners -like the Nation- are taken into account in evaluating any and all proposals to develop Indian mineral interests.

The BIA exercises exclusive jurisdiction vis-à-vis states concerning well spacing and communitization of Indian mineral interests and related matters is discussed at 61 Federal Register 35634, 35644 (1996). The Pooling Application raises additional concerns because the surface and the split mineral estate in the west half of the Subject Parcel is also subject to the Nation's jurisdiction. The Nation's OGA has advised us that the Nation shares our concern that the Pooling Application appears to include Indian trust interests in the mineral estate, which are not subject to the NMOCD's jurisdiction. Also, the close proximity of this project to trust lands is nearly certain to trigger requirements for federal and Nation review and approval. In instances similar to this situation the BIA has relied on Communitization Agreements ("CA") as a means of


managing interests held by different parties within a spacing unit. There does not appear to be any reason to abandon that approach in this situation.

A contentious jurisdictional dispute is certain to arise from if a forced pooling effort continues before the NMOCD. In order to avoid further complications, the BIA proposes that you take steps to dismiss or at least postpone the NMOCD hearing scheduled for April 28, 2011.

In closing, the Pooling Application that you sent to the BIA and OGA seek a communization order covering all interests within the 40 acre unit, *i.e.* both the non-trust-half of the Subject Parcel to the east as well as the western half that includes interests that are subject to exclusive federal supervision and control. Nevertheless, any development of Indian trust resources must comply with federal statutes and regulations requiring both explicit tribal consent and BIA approval before the capture and/or development of any Indian mineral assets or interests. These requirements are absolute and unqualified.

Your prompt response is appreciated.

Sincerely,



Superintendent

cc: Mr. Levi Pesata, Jicarilla Apache Nation President
Shenan R. Atcitty, General Counsel
George Tetreault, Petroleum Engineer, BIA Southwest Regional Office