

Patrick J. Crank
Speight, McCue & Crank, P.C.
2515 Warren Avenue, Suite 505
Cheyenne, WY 82001
Phone: (307) 634-2994
Fax: (307) 635-7155

Counsel for Lance Oil and Gas Company, Inc.

**BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
OF THE STATE OF WYOMING**

**IN THE MATTER OF THE APPEAL
OF CLABAUGH RANCH, INC. FROM
WYPDES PERMIT NO. WY0049697**

Docket No. 08-3802

**LANCE OIL AND GAS COMPANY'S MOTION TO RETURN INADVERTENTLY
PRODUCED ATTORNEY-CLIENT PRIVILEGED MATERIAL**

COMES NOW Lance Oil and Gas, Inc. ("Lance") acting by and through its attorney, Speight, McCue & Crank, and respectfully moves the hearing officer in this matter to order Clabaugh Ranch, Inc. ("Clabaugh") to forthwith return attorney-client privileged information which was inadvertently produced during the discovery process in this matter. In support of said Motion, Lance states and alleges as follows:

1. On or about October 15, 2008, Lance produced some 6,866 pages of discovery in response to requests for production served by Clabaugh.
2. At this time, Lance also produced a privilege log disclosing that there were certain documents which were responsive to Clabaugh's request for production that were being withheld pursuant to claims of privilege. A copy of the privilege log is attached hereto as Exhibit 1. The

inadvertently produced e-mail which contained the attorney-client privileged material is actually listed as item 2 on the privilege log.¹

3. That the undersigned was unaware of the inadvertent disclosure of these materials until Clabaugh counsel attempted to use the materials during a deposition on June 17, 2009.
4. The 6,866 pages of discovery produced to Clabaugh inadvertently contained documents which contained attorney-client privileged information. The documents inadvertently produced to Clabaugh bear Bates stamp numbers LANCE-02614 to LANCE-02620.
5. That counsel for Clabaugh, Mr. Tom Toner, has informed the undersigned that he is unwilling to return the inadvertently produced attorney-client privileged information. Counsel has agreed to submit this issue to the hearing officer employed by the EQC with regard to this matter.
6. That Lance asserts that the documents produced to Clabaugh which are Bates stamped LANCE-02614 to LANCE-02620 are attorney-client privileged information and must be returned forthwith to Lance, along with an Order from the hearing officer that such materials may not be used, in any manner, either directly or indirectly, during the course of this matter.
7. That the inadvertently produced attorney-client privileged materials are being forwarded directly to the hearing officer in this matter, Ms. Deborah Baumer, under seal for an in camera review by the hearing officer.

¹ Multiple copies of the attorney-client privileged communications were produced in hard copy by Lance to Lance's counsel. The e-mail referred to in item 2, Bates stamp LANCE-02559 to LANCE-02566, is an identical copy of the attorney-client advice inadvertently produced at LANCE-02614 to LANCE-02620.

WHEREFORE, Lances prays as follows:

1. That the hearing officer order that briefs be filed with her under seal discussing the inadvertent disclosure of these materials as well as any and all issues with regard to waiver of the attorney-client privilege associated with those materials under seal with the hearing officer;
2. That the hearing officer set a hearing to address this matter;
3. That the hearing officer order Clabaugh to forthwith return the inadvertently produced materials to Lance and directing that said materials may not be used in any manner, either directly or indirectly, during the course of this matter; and,
4. That the hearing officer award the parties any and all additional relief to which they are entitled.

DATED this 31st day of July, 2009.

SPEIGHT, McCUE & CRANK, P.C.

By: 

Patrick J. Crank, #5-2305
P.O. Box 1709
Cheyenne, WY 82003
(307) 634-2994
Fax: (307) 635-7155

ATTORNEY FOR LANCE OIL AND GAS
COMPANY, INC.


CERTIFICATE OF SERVICE

This is to certify that on the 31st day of July, 2009, a true and correct copy of the foregoing was served upon counsel as follows:

Director, Department of Environmental Quality	[X]	U.S. Mail
122 West 25 th Street	[]	Federal Express
Herschler Building, Room 174	[]	Fax
Cheyenne, WY 82002	[]	Hand Delivered
	[]	E-Mail

John Burbridge	[X]	U.S. Mail
Wyoming Attorney General's Office	[]	Federal Express
123 Capitol Building	[]	Fax
Cheyenne, WY 82002	[]	Hand Delivered
	[]	E-Mail

Tom C. Toner	[X]	U.S. Mail
Yonkee & Toner, LLP	[]	Federal Express
P.O. Box 6288	[]	Fax
Sheridan, WY 82801	[]	Hand Delivered
	[]	E-Mail



PJC:ch

EXHIBIT 1

Lance Oil and Gas Company, Inc.'s Documents Privilege Log:
Clabaugh Ranch, Inc.'s Request for Production of Documents

No.	Bates	Document Type	General Subject Matter	Date	Author	Recipient	Copied To	Privilege Type*	Basis for Privilege Description
1	LANCE-01182 to 01185	Email string	Legal review of draft WYPDES permit	02/04/2008	Jason Driscoll	Tim Kalus	Mark Ruppert; Dave Stephens; Richard Waters; Matt J. Micheli; John Burbridge; Tom Toner; Dena Egenhoff**	A/C	Attorney Client Communication
2	LANCE-02559 to 02566	Email string	Legal review of permit renewal	08/13/2007	Tim Kalus	Jason Driscoll	Mark Rupert; Richard Waters; Dave Stephens; Matt J. Micheli; Mike Coder	A/C	Attorney Client Communication
3	LANCE-02621 to 02622	Email string	Communication regarding recent correspondence from Clabaugh/Toner	08/13/2007	Tim Kalus	Jason Driscoll	Richard Waters; Dave Stephens; "Mruppert@hollandandhart.com"; Mike Coder	A/C	Attorney Client Communication
4	LANCE-02623	Email string	Communication regarding permit modifications	05/23/2007	Dave Stephens	Jason Driscoll	Mark Rupert; Richard Waters; Dave Stephens; Brooke Bell; "MRuppert@hollandandhart.com"; "mmicheli@hollandandhart.com"	A/C	Attorney Client Communication

* By the designation "A/C", Lance Oil & Gas Company, Inc. asserts that the document is protected by the attorney-client; by the designation "W/P", Lance Oil & Gas Company, Inc asserts that the document is protected by the work product doctrine.

** The portions of the email string that contain attorney client privileged communications are contained within other emails in the email string. The attorney client information contained in the email string has not been waived by disclosure to an outside third party.

No.	Bates	Document Type	General Subject Matter	Date	Author	Recipient	Copied To	Privilege Type*	Basis for Privilege Description
5	LANCE-02625	Email string	Communication concerning responses to Clabaugh/Toner	08/13/2007	Tim Kalus	Jason Driscoll	Richard Waters; Matt J. Micheli; Mark Ruppert; Dave Stephens; Matt Coder	A/C	Attorney Client Communication
6	LANCE-02630 to 02632	Email string	Legal review of draft WYPDES permit	02/01/2008	Tim Kalus	Jason Driscoll	Mark Ruppert; Dave Stephens; Richard Waters; Matt J. Micheli; John Burbridge; Tom Toner; Dena Egenhoff	A/C	Attorney Client Communication
7	LANCE-02661 to 02663	Email string	Legal review of draft WYPDES permit	02/04/2008	Tim Kalus	Jason Driscoll	Mark Ruppert; Dave Stephens; Richard Waters; Matt J. Micheli; John Burbridge; Tom Toner; Dena Egenhoff	A/C	Attorney Client Communication

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