

# JA ASSOCIATES

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Case 14629: Application of Blue Dolphin production, LLC for compulsory pooling, Rio Arriba County, NM

Special appearance by the Jicarilla Apache Nation to Consent Jurisdiction

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**STATE OF NEW MEXICO  
DEPARTMENT OF ENERGY MINERALS AND NATURAL RESOURCES  
OIL AND GAS CONSERVATION DIVISION**

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IN THE MATTER OF THE APPLICATION  
OF BLUE DOLPHIN PRODUCTION, LLC  
FOR COMPULSORY POOLING,  
RIO ARriba COUNTY, NEW MEXICO

CASE NO: 14629

**SPECIAL APPEARANCE BY THE JICARILLA APACHE NATION TO CONTEST  
JURISDICTION**

The Jicarilla Apache Nation ("Nation") by its undersigned attorney respectively notes that the Pooling Application in the above-referenced matter concerns certain mineral and surface interests that are held in trust by the United States for the Nation. As discussed further herein, federal statutes and regulations provide a comprehensive framework for the development of Indian mineral interests. The Pooling Applicant threatens to evade this framework and thereby avoid compliance with federal statutes and regulations -not to mention the requirement of tribal consent- through a forced pooling order. The Nation files this Special Appearance to ensure that the Oil and Gas Conservation Division ("OCD") takes appropriate steps to avoid taking a jurisdictionally impermissible action that undermines either or both of the following: A) the requirement for tribal consent and federal approval of oil and gas development of Indian trust assets; or B) exclusive federal jurisdiction over communitization of Indian oil and gas trust assets and interests.

In support of the Nation's Special Appearance to Contest Jurisdiction the Nation notes the following:

1. The Pooling Application indicates that the applicant for the pooling order, Blue Dolphin LLC, ("Applicant") holds certain "working interests" in a parcel of land identified as the E/2 SW/4 NE/4 of projected Section 27, Township 30 North, Range 1 East in Rio Arriba County, New Mexico.

2. The western half of the SW/4 NE/4 of projected Section 27 includes certain interests that are held in trust by the United States for the Nation, including the surface estate and at least 25% of the mineral estate. See 53 Federal Register 37355 37356 (September 26, 1988).

3. A previous application filed by this applicant granted the Applicant a non-standard spacing unit but took pains to carefully exclude Jicarilla Apache Reservation lands:

The proposed non-standard unit is necessary because the western portion of SW/4 [NE/4] is owned by the Jicarilla Apache Tribe, which has declined to lease this acreage. The only lands within the quarter-quarter section that will not be included in the proposed non-standard unit are those within the Jicarilla Apache Reservation.

Order at ¶3(d) (Emphasis supplied).

4. In this proceeding the Pooling Applicant seeks to compulsory pooling order that lacks the limitations contained in the OCD's prior Spacing Order with regard to the Jicarilla Apache Reservation. Moreover, the Pooling Applicant seeks Pooling Order that will employ language that is broad and expansive, potentially sweeping in the same Jicarilla Reservation lands and interest that the OCD carefully excluded from its Spacing Order. Specifically, the Pooling Application provided to the Nation provides as follows:

Applicant seeks an order for the compulsory pooling of all interests in all pools or formations developed on a 40-acre spacing within the Mancos Shale formation underlying a non-standards oil well spacing and proration unit comprised of the 21.0 (plus or minus) acres in the approximate E/2 SW/4 NE/4 of projected Section 27 [.]

Pooling Application at page 4 (Emphasis supplied).

5. Federal law requires both tribal consent and federal approval for the development of oil and gas resources. See U.S. v. 9,345.53 Acres of Land, More or Less, in Cattaraugus County, 256 F. Supp. 603 (W.D. N.Y. 1966)

6. Federal law also provides that the Bureau of Indian Affairs has exclusive jurisdiction over communization of Indian oil and gas interests and assets. See Cheyenne-Arapaho Tribes of Oklahoma v. U.S., 966 F.2d 583 (10th Cir. 1992) (Federal law requires that the Secretary of the Interior consider a broad array of factors before granting approval to a communitization of Indian oil and gas interests, even where interests were already subject to a lease granted under the Indian Mineral Leasing Act.)

For these reasons set forth in this Special Appearance, the Nation respectfully requests that the OCD avoid any consideration of the Pooling Application that can be construed to include the Jicarilla Apache Reservation, including both the surface estate and any Indian oil gas interests held in trust for the Nation.

At a minimum, it is essential to postpone consideration of the Pooling Application presently set for April 28, 2011 for at least one (1) month.

Respectfully Submitted,

By \_\_\_\_\_  
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CERTIFICATE OF SERVICE

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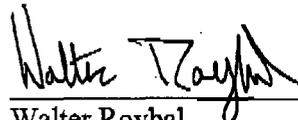
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