

JA ASSOCIATES

FACSIMILE COVER SHEET

To: OCD examiner 14629 Date: 5-19-11

Organization: OCD

Number of Pages: 55
(Includes cover sheet)

Fax Number: (505) 476-3462

Telephone Number: () _____

Please Reply

For Review

From: Sheeran Atkitty

Urgent

Organization: _____

FYI

Fax Number: (505) 242-2236

Telephone Number: (505) 242-2214

RECEIVED OCD
2011 MAY 19 P 4:38

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

Jicarilla Apache Nation's Memorandum of Law
in Support of the Jicarilla Apache Nation's Motion to Dismiss ✓
In Reply to Applicant's response to the Nation's Special appearance.

IMPORTANT WARNING: This message is intended for the use of the person or entity to which it is addressed and may contain information that is privileged and confidential, the disclosure of which is governed by applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this information is **STRICTLY PROHIBITED**. If you have received this message in error, please notify the sender immediately and arrange for the return or destruction of these documents.

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

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

Case No. 14629

**MEMORANDUM OF LAW IN SUPPORT OF THE JICARILLA APACHE NATION'S
MOTION TO DISMISS AND IN REPLY TO APPLICANT'S RESPONSE TO THE
NATION'S SPECIAL APPEARANCE**

INTRODUCTION

In this action, Blue Dolphin Production, LLC ("Applicant") seeks compulsory pooling, under New Mexico State Law, of certain subsurface mineral interests that are held in trust by the United States for the Jicarilla Apache Nation ("Nation"). These mineral interests lie beneath surface lands that are also held in trust by the United States for the Nation. The mineral interests and surface lands are located within, and are a part of, the Jicarilla Apache Reservation ("Reservation"). They are within the "Indian country" of the Nation, and as such, they are subject to Federal and Nation regulation, not State regulation.

Federal and Nation laws and regulations provide a comprehensive and exclusive framework for the development of Nation trust mineral interests on the Reservation. Applicant seeks to evade this framework and avoid compliance with Federal and Nation laws and regulations through a forced pooling order under State law.

The Nation respectfully submits that the State of New Mexico does not have jurisdiction to issue a forced pooling order concerning the Nation's mineral interests or surface lands. Those interests and lands, and Applicant's use thereof, are subject to Federal and Nation jurisdiction, not State jurisdiction. Further, Federal and Nation sovereign immunity preclude the Division

from adjudicating the interests of the United States and the Nation in the mineral estate and subject lands. Accordingly, the Application should be dismissed.

ARGUMENT

I. **THE SURFACE LANDS AND SUBSURFACE MINERAL ESTATE ARE WITHIN AND PART OF THE JICARILLA APACHE RESERVATION.**

This case concerns the Application of Blue Dolphin Production, LLC, for compulsory pooling of all interests in all pools or formations underlying all or part 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. *See*, Pooling Application at 4. (The 40 acre parcel is identified hereafter as the "Subject Parcel").

The Subject Parcel is part of, and wholly included within, the property known as the "Theis Ranch property." The Nation purchased the surface lands of the Theis Ranch property from the Theis Company on or about June 21, 1985. The Nation also purchased an undivided fractional interest in and to all oil, gas, and other minerals under the Theis Ranch property from the Theis Company on or about June 21, 1985. (The remaining fraction of the mineral estate is owned by the Theis Company and third parties, all of whom reportedly have leased their interests to Applicant.)

The Nation conveyed the surface lands of the Theis Ranch property to the United States, to be held in trust for the Nation, on or about November 6, 1987. The Nation conveyed its interest in the mineral estate under the Theis Ranch property to the United States, to be held in trust for the Nation, on or about December 4, 1987.

On or about March 10, 1988, pursuant to 25 U.S.C. § 465, the United States accepted these conveyances and approved the trust status of the surface lands of the Theis Ranch property and the Nation's undivided interest in the subsurface mineral estate. *See*, Sydney L. Mills, Area

Director, Albuquerque Area Office, Bureau of Indian Affairs, Memorandum on "Approved Trust Status for Theis Ranch," dated March 10, 1988 (attached hereto as Exhibit A).

On or about September 1, 1988, pursuant to 25 U.S.C. § 467, the United States added the surface lands of the Theis Ranch property and the Nation's undivided interest in the subsurface mineral estate to the Reservation. *See, Proclamation of Certain Lands as Part of the Jicarilla Apache Reservation*, 53 Fed. Reg. 37355-02 (Sept. 26, 1988).

II. BLUE DOLPHIN HAS MISREPRESENTED THE STATUS OF THE SUBJECT PARCEL TO THE OIL CONSERVATION DIVISION.

Applicant misrepresented the status of the Subject Parcel in Case No. 14548, in which Applicant sought approval of 21.0 ± acres of the Subject Parcel as a non-standard spacing and proration unit, and Applicant continues to misrepresent the status of the Subject Parcel in this action, in which Applicant seeks an order pooling all interests in all pools or formations underlying the 21.0 ± acres constituting the non-standard spacing and proration unit.

A. Misrepresentations in Case No. 14548.

In its Application in Case No. 14548, Applicant represented that, of the 40 acres comprising the Subject Parcel, only the 19.0 ± acres located in the approximate west half of the Subject Parcel are within the "reservation system lands administered by the BIA and Jicarilla Apache Nation." Non-Standard Spacing Unit Application (attached hereto as Exhibit B) at ¶ 7. Applicant represented that the remaining 21.0 ± acres, located in the approximate east half of the Subject Parcel, are in "proximity to Jicarilla Apache Nation lands," but not within the Reservation or a part of the Nation's lands. *Id.*, at ¶ 6. Applicant proposed that those 21.0 ± acres be designated as a non-standard spacing and proration unit under State law.

At the hearing in Case No. 14548, Applicant represented that the proposed 21.0 ± acre unit is "entirely east of the reservation boundary." Transcript of Hearing Proceedings (attached

hereto as Exhibit C) at 7:22-23. Applicant further represented that: the proposed 21.0 ± acre unit consists of “unsurveyed lands bordering the Jicarilla Apache reservation,” *id.*, at 5:17-18; *see also, id.*, at 6:23-24; the Reservation is “to the west” of the proposed 21.0 ± acre unit, *id.*, at 5:21-6:3; *see also, id.*, at 9:3-6; and the proposed 21.0 ± acre unit is “355 feet off of the Jicarilla boundary,” *id.*, at 7:13-14. *See also*, Hearing Exhibits 1-5 (attached hereto as Exhibit D).

All of these representations are false. The entire Subject Parcel is held in trust for the Nation and included within the Reservation. Further, an undivided fractional interest in the mineral estate underlying the entire Subject Parcel is also held in trust for the Nation and included within the Reservation.

Not knowing Applicant’s representations were false, the Division approved Applicant’s proposed non-standard spacing and proration unit. In its Order, the Division was careful to exclude any Reservation lands from the non-standard spacing unit. The Division specifically stated that: the 21.0 ± acre non-standard spacing and proration unit “consisted of that portion of the SW/4 NE/4 of Projected Section 27 lying east of the eastern boundary of the Jicarilla Apache Reservation,” Order No. R-13326 (attached hereto as Exhibit E) at 1; “the proposed non-standard location is more than 330 feet from the eastern boundary of the Jicarilla Apache Reservation,” *id.*, at 2; and “the only lands within the quarter-quarter section that will not be included in the proposed non-standard unit are those lands within the Jicarilla Apache Reservation.” *Id.*, at 2.

It is clear from these findings that the Division did not know that the non-standard spacing and proration unit was within the Reservation. It also appears clear that the Division would not have approved the unit had it known the unit was wholly within the Reservation. The Division does not have jurisdiction over on-reservation lands, mineral estates, or fractional interests therein that are held in trust by the United States for the Nation.

B. Misrepresentations in This Action.

In its Response to the Nation's Special Appearance in this action, Applicant repeats its claim that the lands comprising the non-standard spacing and proration unit are not within the Reservation. It states: "These lands are *extra-reservation* lands located outside the Jicarilla Apache Reservation but immediately adjacent to the reservation boundary." Applicant's Response at 1 (emphasis in original). Further, Applicant claims that this case, "does not affect Jicarilla reservation lands." Applicant's Response at 2. These assertions are patently false. They ignore the relevant facts and misapply the law.

In respect to the facts, Applicant acknowledges that the Nation purchased the lands in question along with a mineral interest in the lands. It states:

These lands are known as the Theis Ranch and were only recently purchased on the open market by the Nation in 1985. The Nation also purchased a 16.63125% unleased mineral interest in these particular *extra-reservation* lands.

Id. (emphasis in original). *See also, id.*, at 2. Yet, Applicant fails to acknowledge that, in 1987, the Nation conveyed the Theis Ranch lands and the Nation's interest in the subsurface mineral estate to the United States, to be held in trust for the Nation. Applicant also fails to acknowledge that, in 1988, pursuant to 25 U.S.C. § 465, the United States accepted these conveyances and approved the trust status of the Theis Ranch lands and the Nation's interest in the subsurface mineral estate. Moreover, Applicant fails to acknowledge that, in 1988, pursuant to 25 U.S.C. § 467, the United States added the Theis Ranch lands and the Nation's interest in the subsurface mineral estate to the Reservation. *See, Proclamation of Certain Lands as Part of the Jicarilla Apache Reservation*, 53 Fed. Reg. 37355-02 (Sept. 26, 1988).

There is simply no question, based on these facts, that the lands and mineral interests at issue are held in trust by the United States for the Nation and are a part of the Jicarilla Apache

Reservation. Further, there is no suggestion that the lands or mineral interests have lost their trust or reservation status since 1988. They have not.

Nonetheless, Applicant argues that the lands at issue are “*extra-reservation* lands” over which the State, not the Nation, has sovereign authority. Applicant’s Response at 2 (emphasis in original); *see also, id.* at 2-3. Applicant bases this argument on the fact that the lands were once outside the Reservation and the fact that they were purchased relatively recently (approximately 26 years ago) by the Nation. But, these facts are of no legal significance. Once the lands and mineral interests were purchased, the Secretary of the Interior promptly placed them into trust and added them to the Reservation, pursuant to its lawful authority under 25 U.S.C. §§ 465 and 467. Nothing in these statutes prohibits the United States from taking recently acquired, off-reservation lands into trust for the Nation or adding the lands to the Reservation.

Applicant’s reference to *City of Sherrill v. Oneida Indian Nation of New York*, 544 U.S. 197 (2005), misses the mark entirely. *Sherrill* dealt with off-reservation, fee-patented lands that had been purchased by an Indian Tribe, but that had not been taken into trust by the United States pursuant to 25 U.S.C. § 465 or added to the Tribe’s reservation pursuant to 25 U.S.C. § 465. The Tribe in *Sherrill* sought to enjoin the City of Sherrill from taxing the lands, arguing that they were within the Tribe’s aboriginal territory and that, by purchasing the lands, the Tribe “unified fee and aboriginal title,” such that the Tribe, not the City, had “sovereign dominion over the parcels.” 544 U.S. at 213. The Court rejected this “unification theory,” *id.*, at 214, holding that, under the facts presented, the mere acquisition of lands within the Tribe’s aboriginal territory was insufficient to divest the City of its taxing authority. *Id.*, at 221. The Court found that the Tribe last occupied the lands in 1805, *id.*, at 202, and:

For the past two centuries, [the State] and its county and municipal units have continuously governed the territory. The [Tribe] did not seek to regain possession

of their aboriginal lands by court decree until the 1970's. And not until the 1990's did [the Tribe] acquire the properties in question and assert its unification theory to ground its demand for exemption of the parcels from local taxation. This long lapse of time, during which the [Indians] did not seek to revive their sovereign control through equitable relief in court, and the attendant dramatic changes in the character of the properties, preclude [the Tribe] from gaining the disruptive remedy it now seeks.

Id. at 216-217 (internal citations omitted). The Court held that these facts "evoke the doctrines of laches, acquiescence, and impossibility," and "render inequitable" the Tribe's unilateral assertion of sovereign authority over the lands. *Id.*, at 221.

But, the *Sherrill* Court specifically stated that, "[25 U.S.C.] Section 465 provides the proper avenue for [the Tribe] to reestablish sovereign authority over [the] territory ..." 544 U.S., at 221 (referring to 25 U.S.C. § 465). Specifically, the Court opined:

Congress has provided a mechanism for the acquisition of lands for tribal communities that takes account of the interests of others with stakes in the area's governance and well-being. Title 25 U.S.C. § 465 authorizes the Secretary of the Interior to acquire land in trust for Indians and provides that the land "shall be exempt from State and local taxation." See, *Cass County v. Leech Lake Band of Chippewa Indians*, 524 U.S. 103, 114-115 (1998). The regulations implementing § 465 are sensitive to the complex interjurisdictional concerns that arise when a tribe seeks to regain sovereign control over territory.

Id., at 220-221. Thus, the doctrines of laches, acquiescence, and impossibility do not bar a Tribe from "reeestablish[ing] sovereign authority over territory," even territory "last held by [the Tribe] 200 years ago," provided the Tribe uses the proper mechanism set forth in 25 U.S.C. § 465. *Id.*, at 221.¹

In this case, unlike *Sherrill*, the lands at issue have been taken into trust by the United States, pursuant to 25 U.S.C. § 465. In this case, unlike *Sherrill*, the lands at issue have also been added to the Reservation, pursuant to 25 U.S.C. § 467. Thus, in this case, unlike *Sherrill*,

¹ Lands that have been taken into trust for an Indian Tribe pursuant to 25 U.S.C. § 465 may thereafter be added to the tribe's reservation pursuant to 25 U.S.C. § 467.

the lands at issue are on-reservation, trust lands subject to Tribal and Federal authority, not off-reservation, fee-patented lands subject to State and local authority.

The surface lands of the Theis Ranch property and the Nation's undivided, fractional interest in the underlying mineral estate constitute "Indian country" within the meaning of 18 U.S.C. § 1151. *See, e.g., United States v. Roberts*, 185 F.3d 1125, 1133 & n.4 (10th Cir. 1999) (lands taken into trust are "Indian country" within the meaning of 18 U.S.C. § 1151); *Cheyenne-Arapaho Tribes v. Oklahoma*, 618 F.2d 665, 668 (10th Cir. 1980) (same); 18 U.S.C. § 1151(a) ("all land within the limits of any Indian reservation" is "Indian country"). The same could not be said of the off-reservation, fee-patented lands at issue in *Sherrill*.

III. THE OIL CONSERVATION DIVISION DOES NOT HAVE JURISDICTION OVER THE NATION'S INTERESTS IN THE SUBJECT PARCEL.

The Nation has entered a Special Appearance in this action, but it has not consented to the jurisdiction of the Division and it has not consented to be joined as a party to this action. To the contrary, the Nation maintains that, for several reasons, the Division lacks jurisdiction over the on-reservation mineral interests held in trust by the United States for the Nation. Under Federal and Nation law, Nation consent and Secretarial approval are absolute prerequisites for any development of Indian mineral assets on the Reservation. Consequently, the Application is an impermissible effort to evade these insuperable requirements, and the Division has no authority to approve it. State jurisdiction over the on-reservation mineral interests held in trust by the United States for the Nation—whether leased or unleased—is preempted by Federal and Nation law. Further, Federal and Nation sovereign immunity preclude the Division from adjudicating the interests of the United States and the Nation in the mineral estate.

A. State Jurisdiction over the Nation's On-Reservation Trust Assets Is Preempted by Federal and Nation Law.

As a general rule, absent congressional authorization, States have no authority to tax or regulate the property or conduct of Indian Tribes or their members in Indian country. *See, Okla. Tax Comm'n v. Sac and Fox Nation*, 508 U.S. 114, 125 (1993); *Montana v. Blackfeet Tribe*, 471 U.S. 759, 764 (1985); *Fischer v. Dist. Ct.*, 424 U.S. 382, 386 (1976); *Williams v. Lee*, 358 U.S. 217, 220 (1959); *Worcester v. Georgia*, 31 U.S. 515, 561-562 (1832). Congress has not authorized State authority over the mineral interests held in trust by the United States for the Nation and, as a result, neither the State of New Mexico nor this Division has authority over those mineral interests.

Yet, in the present case, Applicant asks the Division to apply State law to the subject mineral interests, albeit based on a false assertion that the subject lands and minerals are located off the Reservation. Specifically, Applicant asks the Division to exercise jurisdiction to pool the mineral interests held in trust by the United States for the Nation with the other mineral interests leased by Applicant. Further, Applicant asks the Division to designate Applicant as the single operator for the entire 21.0 ± acre non-standard spacing and proration unit. If the Division were to approve Applicant's compulsory pooling application, it would subject all oil and gas development and operations on the 21.0 ± acre unit to State law.

The State's oil and gas laws govern the assignment and leasing of oil and gas interests, wells, liens on wells, unitization of fractional interests, payment of oil and gas proceeds, and protection of surface owners, among other things. *See*, NMSA 1978 ch. 70, arts. 1-12. If the compulsory pooling application were approved, these State laws would be applied to the Nation's mineral interests, which are held in trust by the United States. In addition, the Division would arguably have the authority, under State law, to establish royalty rates for unleased

mineral interests, allocate production between the Nation and Applicant, order prorata reimbursement by the Nation to Applicant for its development and operation costs, and order the Nation to compensate Applicant for the risk involved in drilling the well (which compensation may be as high as 200% of the Nation's prorata share of the cost of drilling and completing the well.). *See*, NMSA 1978 § 70-2-17(C). The Division would also arguably be asserting the authority to settle disputes between Applicant and the Nation. *Id.*

These State laws may not be applied to the development of mineral interests held in trust by the United States for the Nation. Federal and Nation laws and regulations provide the comprehensive, mandatory, and exclusive framework for the development of these Indian mineral interests.

1. Federal Law Governs Oil and Gas Development on the Subject Parcel.

The United States, "acting to safeguard the Indians in the conduct of their affairs, has established a comprehensive statutory and regulatory scheme covering mineral leasing on tribal lands." *United States v. 9,345.53 Acres of Land*, 256 F. Supp. 603, 605 (W.D.N.Y. 1966). The cornerstone of this comprehensive Federal scheme is the Indian Mineral Leasing Act ("IMLA") of 1938. Act of May 11, 1938, c. 198, 52 Stat. 347, *codified as amended at* 25 U.S.C. §§ 396a-396g.²

The IMLA requires Federal and Tribal approval of the development of oil and gas resources on Tribal lands. It allows for the leasing of "lands owned by any tribe" for mining purposes, but requires such leases first to be approved by the Secretary of the Interior, which approval requires the consent of the Indian Tribe on whose lands the mining operations will take place. 25 U.S.C. § 396a. Any instrument that purports to authorize the development of minerals

² The Indian Mineral Development Act of 1982 also governs oil and gas development in Indian country. *See*, Pub. L. 97-382, 96 Stat. 1938, *codified at* 25 U.S.C. §§ 2101-2108.

held in trust has no validity and is void if it fails to comply with the IMLA and applicable federal regulations. *9,345.53 Acres of Land*, 256 F. Supp., at 607-608.

The IMLA also subjects mineral operations on Indian lands to extensive Federal regulation. *See*, 25 U.S.C. § 396d; 25 C.F.R. Part 211. Among other things, Federal regulations govern leases and permits for the development of mineral resources, production requirements and restrictions, Federal inspection of mineral operations, suspension of such operations, and cancellation of mineral development leases and permits. *Id.*

The IMLA applies to “lands owned by any tribe,” 25 U.S.C. § 396a, including “lands or *interests* in lands the title to which is held in trust by the United States.” 25 C.F.R. § 211.1(a) (emphasis added). That includes the Subject Parcel. The entire surface estate of the Subject Parcel is held in trust by the United States for the Nation, and the Nation’s undivided fractional interest in the mineral estate is also held in trust. The Nation’s mineral interest is undivided, meaning it is “not assigned to particular portions of the property.” *Powell on Real Property* § 50.01. Instead, it “may ultimately be satisfied out of any portion of the whole property.” *Id.* Thus, under general common law principles, the Nation has an undivided present possessory interest in the entire mineral estate and a right to use and possess the whole property and every part of it, “regardless of the size of [its] fractional share.” *Id. See also, id.*, at § 50.03; 86 C.J.S. *Tenancy in Common* § 26.

The trust status of the Nation’s mineral interests applies to, and restricts the use of, the entire mineral estate. Although the Theis Company and others are concurrent owners of the mineral estate, their interests are undivided from those of the Nation and cannot be developed separate and apart from the interests of the Nation.

In related contexts, courts have found that the undivided, fractional interests held in trust for Indian Tribes “create tribal land” subject to various restrictions under Federal law. For example, in *Nebraska Public Power District v. 100.95 Acres of Land in County of Thurston*, 719 F.2d 956, 962 (8th Cir. 1983), the court held that lands in which the United States holds fractional, undivided, future interests in trust for a Tribe are “tribal land not subject to condemnation” under 25 U.S.C. § 324. There, as here, the implementing regulations define tribal land as “land or any interest therein, title to which is held by the United States in trust for a tribe.” *Id.* (quoting 25 C.F.R. § 169.1(d)). *Cf.*, 25 C.F.R. § 211.3 (regulation implementing IMLA).

2. Federal Law Allows for the Communitization of the Fractional Mineral Interests in the Subject Parcel.

The IMLA and its implementing regulations allow for the creation of well-spacing programs on Indian lands and for the communitization of fractional interests in mineral estates on Indian lands. *See*, 25 U.S.C. § 396d; 25 C.F.R. § 211.28. The Secretary of the Interior must consider several factors before approving a well-spacing program or communitization agreement, and it must determine that “approval is advisable and in the best interest of the Indian mineral owner.” 25 C.F.R. § 211.28(a). *See also*, *Cheyenne-Arapaho Tribes of Oklahoma v. United States*, 966 F.2d 583, 588-591 (10th Cir. 1992), *cert. denied*, 507 U.S. 1004 (1993).

Communitization under the IMLA would allow Applicant to develop the fractional mineral interests it leases in the Theis Ranch property, as follows:

Under a communitization agreement, drilling operations conducted anywhere within the unit area are deemed to occur on each lease within the communitized area and production anywhere within the unit is considered to be produced from each tract within the unit.

Cheyenne-Arapaho Tribes of Oklahoma, 966 F.2d, at 585 (citing *Kenai Oil & Gas, Inc. v. Dept. of Interior*, 671 F.2d 383, 384 (10th Cir. 1982)). But, Applicant has not availed itself of this Federal process nor could it unless and until the mineral interests held in trust were subject to a duly granted and approved IMLA lease. 25 U.S.C. § 211.28(a) (restricting communitization to “leased areas”).

3. Nation Law Also Governs Oil and Gas Development on the Subject Parcel.

The Nation exercises concurrent regulatory authority over on-reservation mineral development. This authority is integral to the Nation’s inherent powers of “self-government” and “territorial management”, *see, Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 140-141 (1982), and has been recognized and affirmed by Congress. *See*, 25 U.S.C. §§ 396a & 2108.

Under the Nation’s laws, Applicant may not engage in exploration or development of the Nation’s interest in the Theis Ranch mineral estate without obtaining an oil and gas operating permit from the Nation and complying with the Nation’s development standards and other laws. *See*, J.A.N. Code § 18-1-3.³ The Nation’s laws were approved by the U.S. Department of the Interior are consistent with prevailing Federal law. *See*, J.A.N. Const., Art. XI; J.A.N. Code § 18-1-2.

The Division must not permit Applicant to circumvent the Nation’s laws, or the laws of the United States, through a forced pooling order issued under State law. Applicant’s false predicate assertions to the Division render its application entirely specious.

³ The Nation’s Oil and Gas Code contains mineral development standards and regulations, J.A.N. Code chs. 18-9 & 18-13, restrictions to protect surface lands, *id.*, at ch. 18-8, and regulations governing the assignment, sublease, and designation of oil and gas operating rights on the Reservation, *id.*, at ch. 18-11, among other things. *See generally*, J.A.N. Code Title 18.

B. Federal and Nation Sovereign Immunity Preclude the Division from Adjudicating the Interests of the United States and the Nation in the Subject Parcel.

This action involves the property interests of the United States and the Nation in the mineral estate. It also involves the jurisdictional control of the United States and the Nation over the mineral estate and surface lands on federally protected Reservation lands. The Division cannot issue the compulsory pooling order, single operator designation, or other relief sought by Applicant without affecting these interests. The United States and the Nation are, therefore, necessary and indispensable parties to the adjudication of this matter. Yet, the United States and the Nation both have sovereign immunity and, absent waiver or consent, may not be joined as parties to this action. Accordingly, the action must be dismissed.

1. Federal Sovereign Immunity Requires Dismissal of This Action.

“It is elementary that the United States, as sovereign, is immune from suit save as it consents to be sued, and the terms of its consent to be sued in any court define that court’s jurisdiction to entertain the suit.” *United States v. Mitchell*, 445 U.S. 535, 538 (1980) (internal quotation omitted). The Federal Government’s sovereign immunity applies not just to judicial proceedings, but also to adjudicative proceedings before administrative agencies. *See, Federal Maritime Comm’n v. South Carolina State Ports Authority*, 535 U.S. 743, 760 (2002). “It is common ground that absent waiver or consent, federal sovereign immunity precludes a state from hauling the United States into either a state court or an adversarial state administrative proceeding.” *United States v. Puerto Rico*, 287 F.3d 212, 216 (1st Cir. 2002).

Sovereign immunity is determined not by the party named as the defendant but by the issues presented and the effect of the judgment. *State of New Mexico v. Regan*, 745 F.2d 1318, 1320 (10th Cir. 1984), *cert denied*, 471 U.S. 1065 (1985) (citations omitted). “If the relief

sought ... operates against the sovereign, then the action must be deemed as one against the sovereign.” *Id.* (citing *State of Hawaii v. Gordon*, 373 U.S. 57, 58 (1963)).

This action is directed against property in which the United States has an interest. Among other things, Applicant seeks an order pooling the mineral interests held in trust by the United States for the Nation. Applicant also seeks an order granting it the exclusive right to use, possess, and develop the Nation’s federally protected trust mineral interests.

The Supreme Court has held that, “[a] proceeding against property in which the United States has an interest is a suit against the United States.” *Minnesota v. United States*, 305 U.S. 382, 386 (1939) (citations omitted). Specifically, the Court has held that in cases affecting Indian trust lands, “no effective relief can be given in a proceeding to which the United States is not a party and that the United States is therefore an indispensable party to any suit to establish or acquire an interest in the lands.” *Minnesota*, 305 U.S. at 386 n.1.

This action also will have an effect on jurisdictional control over the mineral interests and lands held in trust by the United States. This action seeks, in effect, a determination that these federally protected trust resources and lands are not subject to the regulatory jurisdiction of the United States or the Nation, but instead are subject to State jurisdiction. At a minimum, the requested relief would affect the ability of the United States to protect, administer, and exercise its governmental authority over the subject lands and resources. This affects the sovereign interests of the government. *See, Idaho v. Coeur d’Alene Tribe of Idaho*, 521 U.S. 261, 282 (1997).

The courts have held that the United States is an indispensable party to any action in which the relief sought would affect or impair its governmental function to protect and

administer property held in trust for an Indian Tribe. *Town of Omekah v. United States*, 140 F.2d 963, 964 (10th Cir. 1944).

The Division cannot fully adjudicate this action without affecting the interests of the United States. Thus, the United States is a necessary and indispensable party. Because the United States is immune from suit and cannot be joined, the action must be dismissed.

2. The Nation's Sovereign Immunity Also Requires Dismissal of This Action.

The Nation has sovereign immunity and is not subject to adjudicative proceedings in State or Federal tribunals unless Congress has authorized the proceedings or the Nation has waived its immunity. *Kiowa Tribe v. Mfg. Technologies, Inc.*, 523 U.S. 751, 754 (1998); *Okla. Tax Comm'n v. Citizen Band of Potawatomi Indian Tribe*, 498 U.S. 505, 509-510 (1991); *Three Affiliated Tribes of Ft. Berthold Reservation v. Wold Eng'g*, 476 U.S. 877, 890-891 (1986); *Puyallup Tribe v. Dep't of Game*, 433 U.S. 165, 172-173 (1977). Congress has not authorized judicial or administrative proceedings against the Nation in respect to the Nation's mineral interests, and the Nation has not waived its sovereign immunity in respect to such proceedings.

The doctrine of tribal sovereign immunity "is a necessary corollary to Indian sovereignty and self-governance." *Three Affiliated Tribes*, 476 U.S. at 890. It extends to the governmental and commercial activities of the Nation, *Kiowa Tribe*, 523 U.S. at 760, and it applies equally to judicial and adjudicative proceedings. See, *Federal Maritime Comm'n*, 535 U.S. at 760.⁴

New Mexico courts have affirmed that, "tribal immunity is a matter of federal law and is not subject to diminution by the states." *Gallegos v. Pueblo of Tesuque*, 46 P.3d 668, 673 (N.M.

⁴ "Sovereign immunity is not so hollow a concept as to prohibit proceedings in certain *fora* like a federal or state court while at the same time permitting a similar proceeding to take place under the auspices of a legislative court or an agency adjudication." *South Carolina State Ports Authority v. Federal Maritime Comm'n*, 243 F.3d 165, 172 (4th Cir. 2001), *aff'd*, *Federal Maritime Comm'n v. South Carolina State Ports Authority*, 535 U.S. 743 (2002).

2002). Further New Mexico courts recognize that, “sovereign immunity is not a discretionary doctrine that may be applied as a remedy depending on the equities of a given situation ... Rather, it presents a pure jurisdictional question.” *Armijo v. Pueblo of Laguna*, 247 P.3d 1119, 1123 (N.M. Ct. App. 2010) (internal citations and quotation marks omitted). *Accord, Antonio v. Inn of Mtn. Gods Resort & Casino*, 242 P.3d 425, 427 (N.M. Ct. App. 2010), *cert. denied*, 241 P.3d 611 (N.M. 2010). *See also, Doe v. Santa Clara Pueblo*, 154 P.3d 644, 651, n.6 (N.M. 2007).

The New Mexico Supreme Court has concluded that an Indian Tribe has an “interest as a sovereign entity in participating in any litigation where its rights and obligations might be adjudicated.” *Gallegos*, 46 P.3d, at 683. In *Armijo*, the court held that proceedings concerning property in which an Indian Tribe has an interest require joinder of the Tribe. 247 P.3d, at 1126.

The instant proceeding clearly affects the Nation’s property interests in the Subject Parcel. The Nation owns the surface estate and an undivided, fractional interest in the subsurface mineral estate, both held in trust status by the United States. Applicant is the lessee of various other undivided, fractional interests in the mineral estate. Applicant seeks an order pooling the Nation’s interests and granting Applicant the exclusive right to use, possess, and develop those interests.

Adjudication of these property interests requires the participation of the Nation. In *Herrera v. Town of Atrisco*, 412 P.2d 253 (N.M. 1966), the New Mexico Supreme Court held that adjudication of the rights of the owner of a fractional interest in a mineral lease required the participation of the owner of the remaining fractional interest in the same lease. *Id.*, at 255. The court held that “there can be no question” that the unjoined concurrent owner “was an indispensable party,” *id.*, a party “without whom the court could not lawfully proceed.” *Id.*

(quoting *Miller v. Klasner*, 140 P. 1107, 1108 (N.M. 1914) (internal citations omitted)). The same conclusion must be reached in this case, since Applicant seeks an adjudication of its rights as lessee of various fractional interests in a mineral estate and the Nation owns the remaining fractional interest in the same estate.

Moreover, this proceeding affects the ability of the Nation – and the ability of the United States, as trustee for the Nation – to govern and regulate the use, possession, and development of the Nation’s mineral interests and surface lands. Adjudication of these interests requires joinder of the Nation as a necessary and indispensable party. Because the Nation is immune from suit and cannot be joined, the action must be dismissed. *Golden Oil Co. v. Chace Oil Co.*, 994 P.2d 772, 773, 774-775 (N.M. Ct. App. 1999).

CONCLUSION

The Nation respectfully submits that the Division does not have jurisdiction to issue a forced pooling order concerning the Nation’s on-reservation mineral interests and surface lands at the Theis Ranch property, which are held in trust status by the United States. Those interests and lands, and Applicant’s use thereof, are subject to Federal and Nation jurisdiction, not State jurisdiction. Further, Federal and Nation sovereign immunity preclude the Division from adjudicating the interests of the United States and the Nation in the mineral estate. For these reasons, the Application should be dismissed.

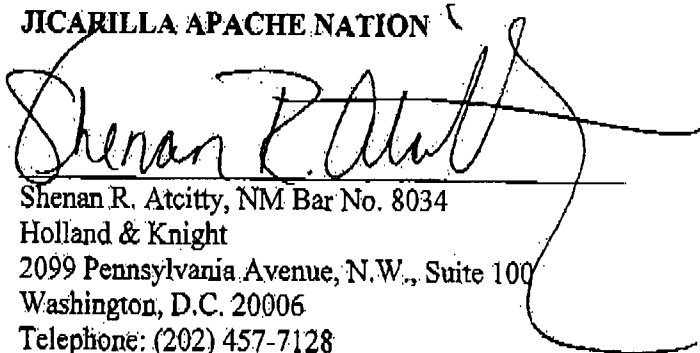
If Applicant seeks to develop the Nation’s mineral interests, it must do so in conformity with prevailing Federal and Nation laws. Federal law allows for the communitization of fractionated mineral interests. Participating in the Federal communitization program would allow Applicant to develop its interests, while at the same time safeguarding the interests of the United States and Nation.

Dated: May 19, 2011

Respectfully submitted,

JICARILLA APACHE NATION

By:



Shenan R. Atcitty, NM Bar No. 8034
Holland & Knight
2099 Pennsylvania Avenue, N.W., Suite 100
Washington, D.C. 20006
Telephone: (202) 457-7128
Facsimile: (202) 955-5564
Email: shenan.atcitty@hklaw.com

Herbert A. Becker, NM Bar No. 3292
JA Associates
2309 Renard Place, S.E., Suite 200
Albuquerque, NM 87106
Telephone: (505) 242-2214
Facsimile: (505) 242-2236
Email: herb.becker@jaassociatesnm.com

Steven J. Gunn, NM Bar No. 141821
1301 Hollins Street
St. Louis, MO 63135
Telephone: (314) 920-9129
Facsimile: (314) 880-2027
Email: sjgunn@wulaw.wustl.edu

*Attorneys for the
Jicarilla Apache Nation*

Exhibit A

**United States Department of the Interior****BUREAU OF INDIAN AFFAIRS**

ALBUQUERQUE AREA OFFICE

P.O. BOX 26367

ALBUQUERQUE, NEW MEXICO 87125-6567

IN REPLY REFER TO:

320 - Real Estate
Services

MAR 10 1988

Memorandum

To: Superintendent, Jicarilla Agency
Attention: Real Property Management

From: Area Director

Subject: Approved Trust Status for Theis Ranch

Attached, for your records, is a copy of the March 3, 1988, Final Title Opinion for the Theis Ranch from the Office of the Field Solicitor, Santa Fe. In accordance with this opinion, we have approved the Warranty and Quitclaim Deeds both dated November 6, 1987, whereby the Jicarilla Apache Tribe conveys all its interest to the subject lands to the United States of America in trust for the Jicarilla Apache Tribe. These conveyances cover 54,843.44 acres of land located off-reservation in Rio Arriba County, New Mexico. We have also approved the Mineral Deed dated December 4, 1987, whereby the Jicarilla Apache Tribe conveys an undivided mineral interest to the United States in trust for the Jicarilla Apache Tribe.

We have attached copies of these deeds for your records. All three of the originals have been sent to the Land Titles and Records Office for recording and will be mailed directly to you when they have finished their recording process. We have also attached the originals of the Title Insurance Policy Endorsement listing the correction on Schedule A and the supplemental Abstract of Title prepared by Escalante Abstract and Title Company.

As a result of these conveyances and approvals, this property has passed into trust status. If you have not done so already, please notify the Rio Arriba County Assessor to remove this property from the tax rolls.

There is a separate process the Central Office follows to have acquired trust land put into "reservation" status. Please discuss with the Tribe whether they wish to have the Theis Ranch put into reservation status. If they do, please obtain a Tribal Council Resolution requesting the Secretary of Interior to put the Theis Ranch into reservation status. You will also have to give the 30-day notice of proposed reservation status to the county and state. When these items have been completed, send them to the Area Office along with your recommendation and we will submit the request with our recommendation to the Central Office. If

-2-

you have any questions regarding these procedures, please contact our Branch of Real Estate Services at (505) 766-3610.

Sidney L Mills

Area Director

Attachments

cc: Les Taylor, Tribal Attorney

Exhibit B

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

RECEIVED OCD

2010 AUG 26 P 4 45

IN THE MATTER OF THE APPLICATION OF
BLUE DOLPHIN PRODUCTION LLC FOR AN
UNORTHODOX WELL LOCATION AND NON-
STANDARD OIL SPACING AND PRORATION
UNIT, RIO ARRIBA COUNTY, NEW MEXICO.

CASE NO. 14548

APPLICATION

BLUE DOLPHIN PRODUCTION, LLC, ("Blue Dolphin") by and through its attorneys, Montgomery and Andrews, P.A. (J. Scott Hall, Esq.), hereby makes application pursuant to *inter alia* Rule 19.15.15.13 and the applicable statewide rules governing oil well locations (Rule 19.15.15.19.A), and 19.15.15.11 NMAC of the Division's Rules and Regulations for an order approving the unorthodox well location for the Theis Greenhorn Test Well No. 1 and the formation of a non-standard oil well spacing and proration unit comprised of 21.0 ± acres located in the approximate equivalent of the E/2 SW/4 NE/4 of projected Section 27, T30N, R1E in Rio Arriba County, New Mexico. In support, Applicant states:

1. Applicant is the operator of the following well:

Theis Greenhorn Test Well No. 1
1643' FNL and 1575' FEL (G)
Projected Section 27, T30N, R1E
Rio Arriba County, New Mexico

2. Applicant proposes to drill this straight-hole well to a depth sufficient to test the Greenhorn member of the undesignated Mancos Shale formation (WC30N1E27). The well is prospective for oil. The nearest production is in the Boulder field approximately 11 miles to the west and the well is defined as a wildcat under the Division's rules. The statewide rules for wildcat oil wells currently provide that wells shall be drilled no closer than 330' to the outer boundary of a standard 40-acre spacing unit.

3. Blue Dolphin seeks an exception from the applicable well location rules for the Theis Greenhorn Test Well No. 1 for the following reason: (1) The well is located in an un-surveyed area within the Tierra Amarilla land grant. The section/township/range description of the location is based on unofficial, projected township and section lines from an adjoining survey and therefore, it is not possible to state the proximity to actual section lines or quarter-quarter subdivisions boundaries with certainty. However, the location descriptions by latitude/longitude and by reference to the New Mexico State Plane Coordinate System referenced on the C-102 for the well are accurate. (2) Although this well is not subject to the Design and Operational Standards for Oil and Gas Development of Rio Arriba County Ordinance No. 2009-01, it has been sited at the proposed location in consultation with Rio Arriba County planning and zoning department staff, as well as with representatives of the BIA, BLM and Jicarilla Apache Nation. In locating the well, terrain limitations, access roads, proximity to water features, and compatibility with existing land uses were taken into consideration.

4. The location for this well is not located closer than 660' to any existing well or a well that is known to be planned. Blue Dolphin Production, LLC or its affiliates owns or controls the majority of the leasehold working interest in each of the adjoining spacing units toward which the location encroaches and Blue Dolphin would be the operator of each of those units. Further, the mineral interest ownership underlying the proposed unit within projected Section 21 and each of the spacing units toward which the well encroaches is identical.

5. Applicant also seeks approval of a 21.0 ± acre non-standard spacing and proration unit to be dedicated to the referenced well and comprised of the approximate E/2 SW/4 NE/4 of projected Section 27.

6. The statewide oil well location and acreage dedication rules applicable to wildcat wells provide that oil wells shall be located on a spacing unit "...consisting of approximately 40 contiguous surface acres, substantially in the form of a square that is a legal subdivision of the United States public land survey and is a governmental quarter-quarter section or lot..". See Rule 19.15.15.9.A. Rule 19.15.15.11 B(1) authorizes approval of non-standard units when necessitated by "a variation in the legal subdivision of the United States public land surveys..." In this circumstance, the variation results from the application of the *projected* survey and the proximity to Jicarilla Apache Nation tribal lands on the western boundary of the unit.

7. Within the 40 acres comprising the equivalent of the SW/4 NE/4 of projected Section 27, the approximate W/2 SW/4 NE/4 are reservation system lands administered by the BIA and Jicarilla Apache Nation. These lands have not been consolidated with the remainder of the lands comprising the approximate E/2 SW/4 NE/4.

8. Designation of the non-standard unit will permit future development patterns in the surrounding projected units to remain consistent with the projected section subdivision boundaries. Approval of the non-standard unit will afford the Applicant the opportunity to produce its just and equitable share of hydrocarbons underlying the spacing unit, will avoid the drilling of unnecessary wells, will prevent waste and will protect correlative rights.

WHEREFORE Applicant requests that this Application be set for hearing before a duly appointed examiner of the Oil Conservation Division on September 30, 2010, and that after notice and hearing as required by law, the Division enter its Order approving the unorthodox well location and the designation of the non-standard spacing unit

Respectfully submitted,

MONTGOMERY & ANDREWS, P. A.

By: J. Scott Hall

J. Scott Hall

P.O. Box 2307

Santa Fe, NM 87504-2307

(505) 982-3873 - Telephone

(505) 982-4289 - Fax

Attorneys for Blue Dolphin Production, LLC

00213771

Case 14548: Application of Blue Dolphin Production, LLC for Unorthodox Well Location and Non-Standard Spacing Unit, Rio Arriba County, New Mexico. Applicant seeks an order approving the formation of a non-standard oil well spacing and proration unit comprised of 21.0 ± acres located in the E/2 SW/4 NE/4 of projected Section 27, T30N, R1E in Rio Arriba County, New Mexico. The proposed non-standard unit will be dedicated to the following well to be drilled at an unorthodox location to the Greenhorn member of the undesignated Mancos Shale formation, (WC30N1E27):

Theis Greenhorn Test Well No. 1
1643' FNL and 1575' FEL (G)
Projected Section 27, T30N, R1E
Rio Arriba County, New Mexico

The well and lands are located approximately one-half mile south of Horse Lake, New Mexico.

00213771

Exhibit C

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

ORIGINAL

IN THE MATTER OF THE HEARING CALLED
BY THE OIL CONSERVATION DIVISION FOR
THE PURPOSE OF CONSIDERING:

CASE NO. 14548

APPLICATION OF BLUE DOLPHIN PRODUCTION,
LLC FOR UNORTHODOX WELL LOCATION IN
NONSTANDARD SPACING UNIT,
RIO ARRIBA COUNTY, NEW MEXICO

REPORTER'S TRANSCRIPT OF PROCEEDINGS
EXAMINER HEARING

RECEIVED OGD
2010 OCT - 7 11 2 09

BEFORE: MR. TERRY WARNELL, Technical Examiner
MR. DAVID K. BROOKS, Legal Examiner

September 30, 2010

Santa Fe, New Mexico

This matter came on for hearing before the New Mexico Oil Conservation Division, TERRY WARNELL, Technical Examiner and DAVID K. BROOKS, Legal Examiner, on Thursday, September 30, 2010, at the New Mexico Energy, Minerals and Natural Resources Department, 1220 South St. Francis Drive, Room 102, Santa Fe, New Mexico.

REPORTED BY: Jeannine K. Sims, RPR, NM CCR #12
Paul Baca Court Reporters
500 Fourth Street, NW, Suite 105

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S

FOR THE APPLICANT:

Mr. J. Scott Hall
MONTGOMERY & ANDREWS
325 Paseo de Peralta
Santa Fe, New Mexico 87501
505-670-7362
shall@montand.com

WITNESSES:

PAGE

Richard D. Volecek:

Direct Examination by Mr. Hall	4
Examination by Examiner Brooks	13
Examination by Examiner Warnell	15

EXHIBITS 1 THROUGH 5 WERE ADMITTED 13

REPORTER'S CERTIFICATE 19

1 HEARING OFFICER BROOKS: I saw some people
 2 come in. We had a call from someone who was coming from
 3 Espanola. Are they among the people who came in?

4 UNKNOWN SPEAKER: Yes.

5 HEARING OFFICER BROOKS: Everybody's here?
 6 Let's take a ten-minute recess and then we'll go on with
 7 the remaining case.

8 (Break.)

9 HEARING OFFICER BROOKS: Okay. At this time
 10 we'll call Case No. 14548, application of Blue Dolphin
 11 Production, LLC for unorthodox well location in
 12 nonstandard spacing unit, Rio Arriba County, New Mexico.
 13 Call for appearances.

14 MR. HALL: Mr. Examiner, Scott Hall,
 15 Montgomery and Andrews law firm, Santa Fe, appearing on
 16 behalf of the applicant Blue Dolphin, LLC with one
 17 witness this morning.

18 HEARING OFFICER BROOKS: Okay. Will the
 19 witness be sworn.

20 (One witness was sworn.)

21 RICHARD VOLECEK,
 22 having been first duly sworn testified as follows:

23 * * *

24 E X A M I N A T I O N

25 BY HEARING OFFICER BROOKS:

1 Q. Would you state your name for the record,
2 please.

3 A. Richard D. Volecek.

4 HEARING OFFICER BROOKS: You may proceed,
5 Mr. Hall.

6 Q. (BY MR. HALL) Again for the record, state
7 your name and tell us where you live.

8 A. Richard D. Volecek, 33 Conifer Drive,
9 Evergreen, Colorado.

10 Q. Who are you employed, Mr. Volecek?

11 A. Blue Dolphin Production and Discovery
12 Exploration as manager of the New Mexico project and
13 geophysicist by training.

14 Q. All right. You have previously testified
15 before the Division and had your credentials accepted; is
16 that correct?

17 A. Correct.

18 Q. Would you give the hearing examiner a brief
19 summary of your educational background and work
20 experience.

21 A. I have BS in geophysical engineering from
22 Colorado School of Mines in 1970. Initially started
23 working with Humble which then became Exxon, got 40 years
24 of continuous experience in the oil industry, 15 years
25 working on west bank of the San Juan Basin and Chama

1 Basin. Started really a little bit in the late '70s.
2 And then from 1990 on countiously working on the
3 Jicarilla reservation off on the east flank of the basin
4 into the Chama Basin.

5 Q. Are you familiar with the lands in the
6 application in this matter?

7 A. Yes.

8 MR. HALL: At this point, Mr. Examiner, we
9 offer Mr. Volecek as a qualified expert petroleum
10 geophysicist.

11 HEARING OFFICER BROOKS: So qualified.

12 Q. (BY MR. HALL) Mr. Volecek, tell us what
13 Blue Dolphin is asking by its application.

14 A. We want to gain authorization for the
15 establishment of a non-standard unit for the drilling of
16 a well of an unorthodox location to test the Greenhorn
17 and Mancos formation. It's on unsurveyed lands bordering
18 the Jicarilla Apache reservation.

19 Q. All right. Let's turn to Exhibit 1, if you
20 would identify that and tell us what that shows us.

21 A. This covers the area of Township 30 North
22 Range 1 East, Section 27. The north/south green line on
23 the map indicates the boundary of the Jicarilla
24 reservation to the west and the Theis Ranch our leased
25 area to the east proposed location is shown in the

1 southeast of the northeast of Section 27, and our
2 proposed spacing is the east half of that southeast of
3 the northeast.

4 Q. And what is the size of your proposed
5 non-standard unit?

6 A. 21 acres.

7 Q. Okay. What's the primary objective for the
8 well?

9 A. The Mancos formation and secondary is the
10 Greenhorn formation just below the Mancos.

11 Q. These are 40-acre wildcat oil wells for this
12 area?

13 A. Yes.

14 Q. And Blue Dolphin has the right to drill in
15 the proposed non-standard unit?

16 A. Yes. Blue Dolphin has an 8e percent mineral
17 interest leased within that spacing unit or proposed
18 spacing unit.

19 Q. Now, explain to us why you're seeking a
20 non-standard unit rather than a standard 40-acre unit.

21 A. The well is proposed to be drilled on the
22 Theis Ranch which is an unsurveyed area so the sections
23 have not been defined. The Theis Ranch borders the
24 Jicarilla Apache reservation. We have selected an
25 optimum location for the location within the Theis Ranch

1 leased portion based on seismic control and project in
2 the Township range and sections onto the unsurveyed Theis
3 Ranch. This resulted in a 21-acre spacing unit.

4 Q. Let's turn to Exhibit 2. Is Exhibit 2 a
5 copy of the Division C 102 form that you intend to file
6 with the Division for this well?

7 A. Yes.

8 Q. And does it show the unorthodox location for
9 the well?

10 A. Yes.

11 Q. The footage locations? Would you read those
12 into the record, please.

13 A. We are 335 feet off of the Jicarilla
14 boundary, 1575 feet from the east line of the section and
15 1643 feet from the north line of the section.

16 Q. Now, because this area is unsurveyed how
17 were the boundaries of the sections' subdivision
18 established?

19 A. They were projected in from the Jicarilla
20 reservation where the area has been surveyed up to the
21 boundary line. So we just projected them on across.

22 Q. And your proposed unit is located entirely
23 east of the reservation boundary; is that right?

24 A. Yes.

25 Q. The latitude and longitudinal position of the

1 well shown on the C 102 is accurate; is that correct?

2 A. Yes.

3 Q. Are the minerals underlying the west half
4 equivalent of Unit G owned by the Jicarilla nation?

5 A. Yes.

6 Q. Have you attempted to obtain a lease or a
7 mineral development agreement from the Jicarilla nation
8 for those minerals?

9 A. Yes. We have attempted to lease lands on
10 the Jicarilla reservation and were informed in that area
11 they weren't leasable and would never be leasable.

12 Q. Now, Blue Dolphin owns the majority of the
13 working interest in your proposed unit?

14 A. Yes.

15 Q. And those -- the owner of those interests
16 were shown on Exhibit 1; is that correct?

17 A. Yes, sir. The Jicarilla reservation shows
18 it has 100 percent minerals in surface on the Theis Ranch
19 acreage it's hundred percent Jicarilla surface. And then
20 it shows our lease positions with the remaining 16.63
21 percent open, which is owned by the Jicarilla Apache
22 nation.

23 Q. Does Blue Dolphin have any lease expiration
24 issues on the acreage it controls?

25 A. Yes. We have a portion that's leased from

1 the Theis family that goes out October 9th of this year
2 but it is extendable by an additional payment.

3 Q. Now, is the inability to include the tribal
4 acreage in the west half of Unit G in a standard 40-acre
5 unit preventing Blue Dolphin from drilling and developing
6 the acreage it now owns or controls?

7 A. Yes.

8 Q. And if the non-standard unit is not approved
9 will Blue Dolphin proceed to drill the well?

10 A. No.

11 Q. And if the well is not drilled is there a
12 reasonable likelihood that waste will result?

13 A. Yes.

14 Q. Now, have the Jicarilla nation and the BLM
15 been notified of this application?

16 A. Yes, they have. The Jicarilla interest we
17 are attempting to work out a mineral development
18 agreement at this time and we have worked out a surface
19 use agreement as they own a hundred percent of the
20 surface. We are working through the BIA and the BLM as
21 well as through the state.

22 Q. To your knowledge, have either of the BIA,
23 BLM or the Jicarilla nation expressed an objection to the
24 proposed non-standard unit?

25 A. No, sir.

1 Q. And have they objected to the unorthodox
2 location?

3 A. Nope. No, sir.

4 Q. Now, with respect to the unorthodox location
5 why was this particular physical location selected?

6 A. If we can go to Exhibit 3.

7 Q. What is Exhibit 3?

8 A. It's a topo map showing the proposed
9 location, the Jicarilla reservation boundary and the
10 Theis Ranch boundary to -- or the Theis ranch onto the
11 east of the proposed location is in red. As you can see
12 it's a very rough terrain. We selected that location
13 based on proprietary seismic, proprietary geochem data as
14 well as surface topography and surface geology.

15 Q. And the BLM and the tribe were both informed
16 of the proposed location?

17 A. Yes. We had meetings with all of them.

18 Q. And the surface where the well is located,
19 is that tribal surface?

20 A. Yes.

21 Q. Now, is the unorthodox location more than
22 340 feet from the western boundary of the proposed
23 non-standard unit?

24 A. Yes.

25 Q. And is Blue Dolphin the operator of each of

1 the 40-acre subdivisions towards which the location
2 encoaches?

3 A. Yes. Blue Dolphin has a consistent 83
4 percent mineral interest in all of the offset locations.

5 Q. All right. And again, that ownership is
6 shown on your plat Exhibit 1?

7 A. On the land plat, yes.

8 Q. Let's look at your geology exhibits if you
9 would turn to Exhibit 4.

10 A. Okay. Exhibit 4 is a structure map on the
11 Greenhorn formation in time. And then I have noted on
12 that map also some depth numbers. The plat shows the
13 seismic control we have in the area. That map is based
14 on two lines, the north/south line and the northeast/
15 southwest line.

16 It is proprietary data, you can see the
17 proposed location in Section 27 where all the 40-acre
18 units are outlined. It shows dip back to the west, the
19 Mancos formation based on all the research in the area is
20 a gravity drainage situation so we should be draining oil
21 from up tip of that location which is off to the east.

22 Q. So you're satisfied that the relative rights
23 of the mineral interest owner to the west will not be
24 adversely acted by this location?

25 A. Yes.

1 Q. And your location is sensitive to geology
2 structure?

3 A. Yes.

4 Q. Let's look at Exhibit 5 briefly. Would you
5 identify that, please.

6 A. That's a well log from a well Blue Dolphin
7 drilled a few miles to the south that shows the
8 formations we're looking at for production. The Mancos A
9 is noted on there, production in the area has come from
10 the Mancos A, B and C formations that are noted as well
11 as the Greenhorn formation that is right below the Mancos
12 that is also a fractured shale that we have produced from
13 in this well.

14 Q. You have a reasonable expectation that these
15 productive wells will be present at your location?

16 A. Yes.

17 Q. And do you anticipate that the proposed
18 non-standard unit will be productive --

19 A. Yes.

20 Q. -- prospective? And can the non-standard
21 unit be efficiently and economically drained by the one
22 well at that location?

23 A. Yes.

24 Q. In your opinion will granting Blue Dolphin's
25 application be in the best interest of conservation,

1 prevention of waste, protection of relative rights?

2 A. Yes.

3 Q. Were Exhibit 1 through 5 prepared by you or
4 at your direction?

5 A. Yes.

6 MR. HALL: Completes our direct of the
7 witness, Mr. Examiner. We move the introduction of
8 Exhibits 1 through 5.

9 HEARING OFFICER BROOKS: 1 through 5 are
10 admitted.

11 * * *

12 E X A M I N A T I O N

13 BY HEARING OFFICER BROOKS:

14 Q. Okay. What is the size of this unit that
15 you propose, this non-standard unit?

16 A. 21 acres.

17 Q. 21 acres?

18 A. Yes, sir.

19 Q. And you said that the tribe had been given
20 notice of this application, correct?

21 A. Yes, sir. By our attorneys and I also went
22 to Dolce and had meetings with them.

23 Q. And they were given notice of hearing?

24 MR. HALL: Yes. I have a notice affidavit
25 to submit.

1 HEARING OFFICER BROOKS: Very good.

2 Q. (BY HEARING OFFICER BROOKS) You said Blue
3 Dolphin owned 83 percent mineral interest in the
4 offsetting quarter quarters?

5 A. Yes, sir, they have at least.

6 Q. Yeah. The offsetting quarter quarters would
7 be the northeast of the northeast and the northwest of
8 the northeast and the southeast of the northeast.
9 Because looks like it's less than 330 from both the north
10 and the east lines of the projected section; is that
11 correct?

12 A. Yes, I believe it is 330 from the north line
13 of our quarter quarter section but they do own --

14 Q. That Says 1643. It would have to be 1650 if
15 it were a standard section.

16 A. Okay.

17 Q. But does Blue Dolphin own its 83 percent
18 mineral interest in all three of those quarter quarters?

19 A. Yes, except for where it gets into the
20 Jicarilla Apache reservation.

21 Q. Okay. That is, in the portion of the
22 north -- in the northeast -- northwest/northeast, the
23 western portion of that is in the reservation?

24 A. Yes, sir.

25 Q. Now, does the tribe own the other 17 percent

1 of the mineral interests?

2 A. Yes, sir.

3 Q. Okay.

4 A. It's held in trust by the BIA.

5 Q. Okay. There are no other interest owners

6 other than the Blue Dolphin and the tribe then?

7 A. Correct.

8 Q. Okay. Does Blue Dolphin own the sections to

9 the south also?

10 A. Okay.

11 Q. Are they quarter quarter sections to the

12 south also?

13 A. Yes, sir, once we cross the Jicarilla

14 reservation boundary.

15 Q. So the ownership is the same to the north

16 and to the south?

17 A. Yes, sir.

18 HEARING OFFICER BROOKS: Okay. I believe

19 that's all my questions. Mr. Warnell?

20 * * *

21 E X A M I N A T I O N

22 BY MR. WARNELL:

23 Q. Yeah. Mr. Volecek, I admire the fact that

24 you live in Evergreen but yet work the San Juan area.

25 That's quite a deal. You made mention that the Jicarilla

1 would not lease and would never lease. Why is that? Why
2 would they say something like that?

3 A. You would probably be better asking them
4 that, but that's what they told me, that area they
5 consider important to their tribe and they are not
6 interested in leasing it. They are not leasing much at
7 this point but when I attempted to do that, I have a play
8 over in that area, I've worked on the reservation before,
9 shot a lot of seismic data and they said no, that will
10 never be leased that's important culturally to our tribe.

11 Q. Never is a long time.

12 A. Yes. And it does change with as they get
13 new directors I guess but that's what I was told.

14 Q. Now, this is I understand an oil play?

15 A. Yes, sir.

16 Q. So Mancos oil play. And the well depth is
17 going to be in the neighborhood of --

18 A. 2400 feet.

19 Q. 2400 feet. That won't take you very long to
20 drill that, right? Vertical?

21 A. We think three days.

22 Q. Interesting. What other Mancos oil
23 production do you have in that area? You mentioned at
24 least one well I believe.

25 A. If You go south of there a few miles we

1 drilled -- Blue Dolphin drilled five Mancos Greenhorn
2 tests, all of which were productive, but they are not
3 commercial. We would frac the wells and they'd come on
4 at 50 to 70 barrels a day and die off to one barrel a
5 day. There is no base fracture system in the area based
6 on my seismic data. The area we want to drill now looks
7 completely different seismically and I'm anticipating a
8 fracture system generated by the big fault that runs
9 through the area.

10 MR. WARNELL: Thank you. I have no further
11 questions.

12 MR. HALL: Mr. Examiner, we would offer into
13 evidence our Exhibit No. 6, which is our notice
14 affidavit. Pursuant to earlier direction from the
15 Division we provided notice to all interest owners within
16 a mile, and all operators including the Jicarilla nation,
17 the BLM, the BIA, as well as the mineral interest owners
18 who are leased to Blue Dolphin. We had returns of
19 service on everyone except for one interest owner, Ferne
20 Marshall Theis was returned addressee unknown to us. But
21 Blue Dolphin's testified, controls that particular
22 mineral interest.

23 HEARING OFFICER BROOKS: Okay. Very good.

24 MR. HALL: That's all we have.

25 HEARING OFFICER BROOKS: If there's nothing

1 further then Case No. 14548 will be taken under
 2 advisement. And that being all the business set on this
 3 docket, we will stand adjourned.


4
 5
 6
 7
 8
 9
 10
 11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

I do hereby certify that the foregoing is
 a complete record of the proceedings in
 the Examiner hearing of Case No. 14548
 heard by me on 9-30-2010
David K. Burt Examiner
 Oil Conservation Division

1 THE STATE OF NEW MEXICO :
2 COUNTY OF BERNALILLO

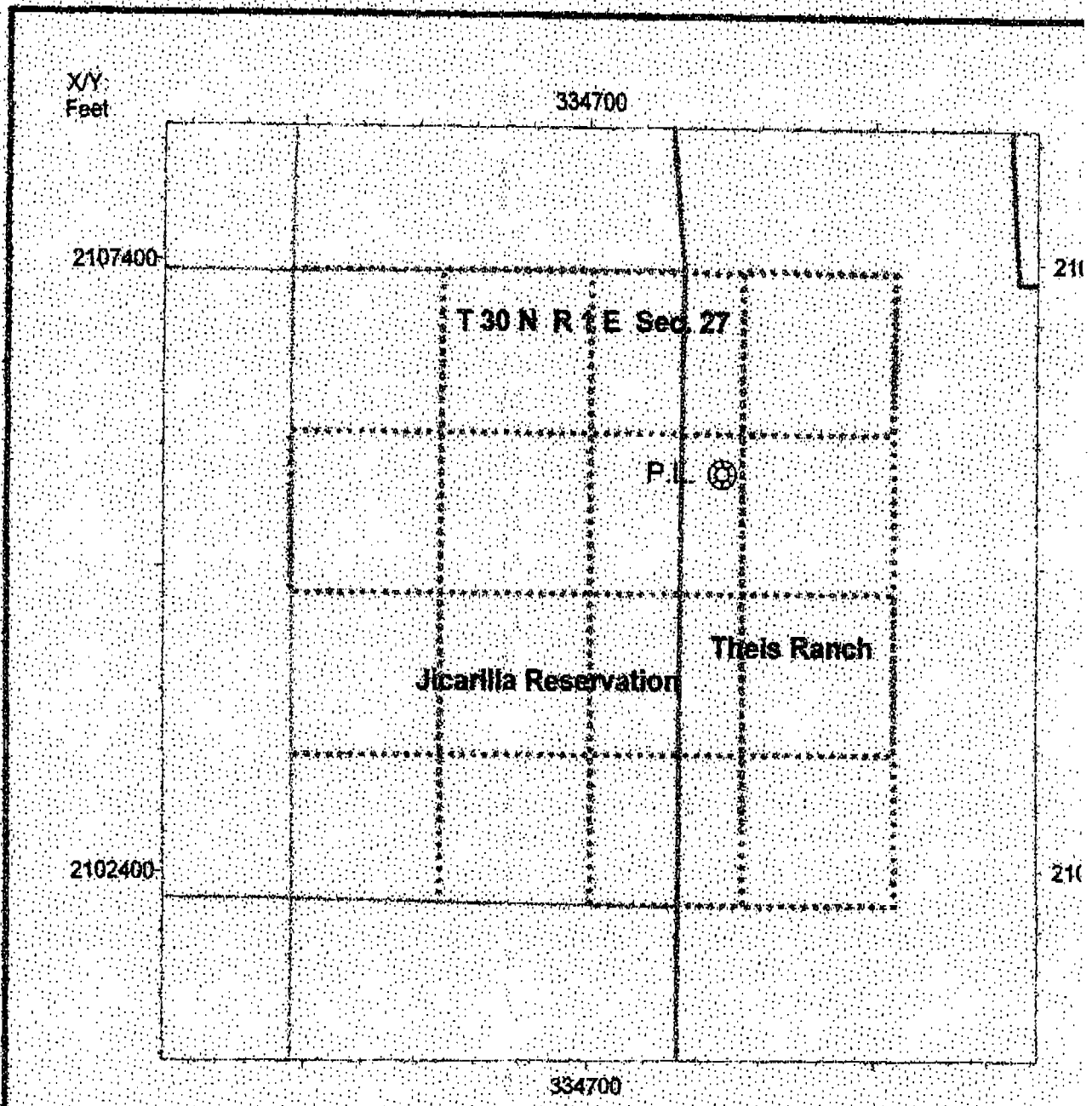
3 BE IT KNOWN that the foregoing transcript of
4 proceedings was taken by me; that I was then and there a
5 Certified Court Reporter and Notary Public in and for the
6 County of Bernalillo, State of New Mexico, and by virtue
7 thereof, authorized to administer an oath; that the
8 witness before testifying was duly sworn by me; that the
9 foregoing 18 pages contain a true and accurate transcript
10 of the proceedings, all to the best of my skill and
11 ability.

12 I FURTHER CERTIFY that I am neither employed by
13 nor related to nor contracted with (unless excepted by
14 the Rules) any of the parties or attorneys in this case,
15 and that I have no interest whatsoever in the final
16 disposition of this case in any court.

17
18
19
20
21
22
23
24
25


JEANNINE K. SIMS, CSR, RPR
NM Certified Court Reporter #12
License expires: 12/31/10
Paul Baca Court Reporters
500 Fourth Street, NW, Suite 105
Albuquerque, New Mexico 87102

Exhibit D



Blue Dolphin Production			
Project: Theis Ranch Greenhorn / Mancos Test			
September 17, 2010			
Scale = 1:14360			
0	1197	2393	3590 ft
Lease Information			
EXHIBIT #			

DISTRICT I
1626 N. French Dr., Hobbs, N.M. 88240

DISTRICT II
1301 W. Grand Avenue, Artesia, N.M. 88210

DISTRICT III
1000 Edo Brown Rd., Artesia, N.M. 87410

DISTRICT IV
1220 E. St. Francis Dr., Santa Fe, N.M. 87505

State of New Mexico
Energy, Minerals & Natural Resources Department

OIL CONSERVATION DIVISION
1220 South St. Francis Dr.
Santa Fe, N.M. 87505

Form C-102
Revised July 18, 2010
Submit one copy to appropriate
District Office

AMENDED REPORT

WELL LOCATION AND ACREAGE DEDICATION PLAT

*API Number	*Foot Cont	*Pool Name
*Property Code	*Property Name THEIS GREENHORN TEST	
*Well No.	*Operator Name BLUE DOLPHIN PRODUCTION, LLC	
		*Elevation 7676

15 Surface Location

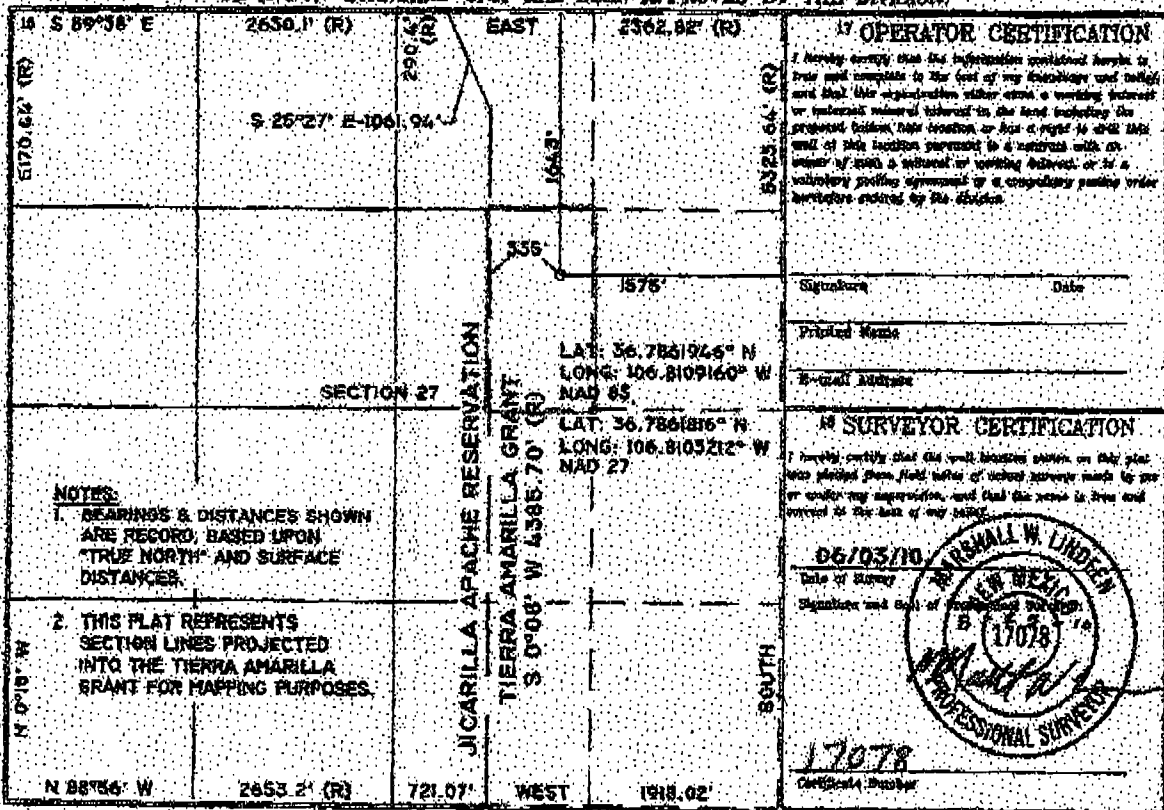
MC or lot no.	Section	Township	Range	Lot No.	Feet from the	North/South line	Feet from the	East/West line	County
G	27	30 N	1 E		1543	NORTH	1575	EAST	RIO ARriba

16 Bottom Hole Location if Different From Surface

MC or lot no.	Section	Township	Range	Lot No.	Feet from the	North/South line	Feet from the	East/West line	County

*Dedicated Area	*Joint or Unit	*Commodities Code	*Order No.

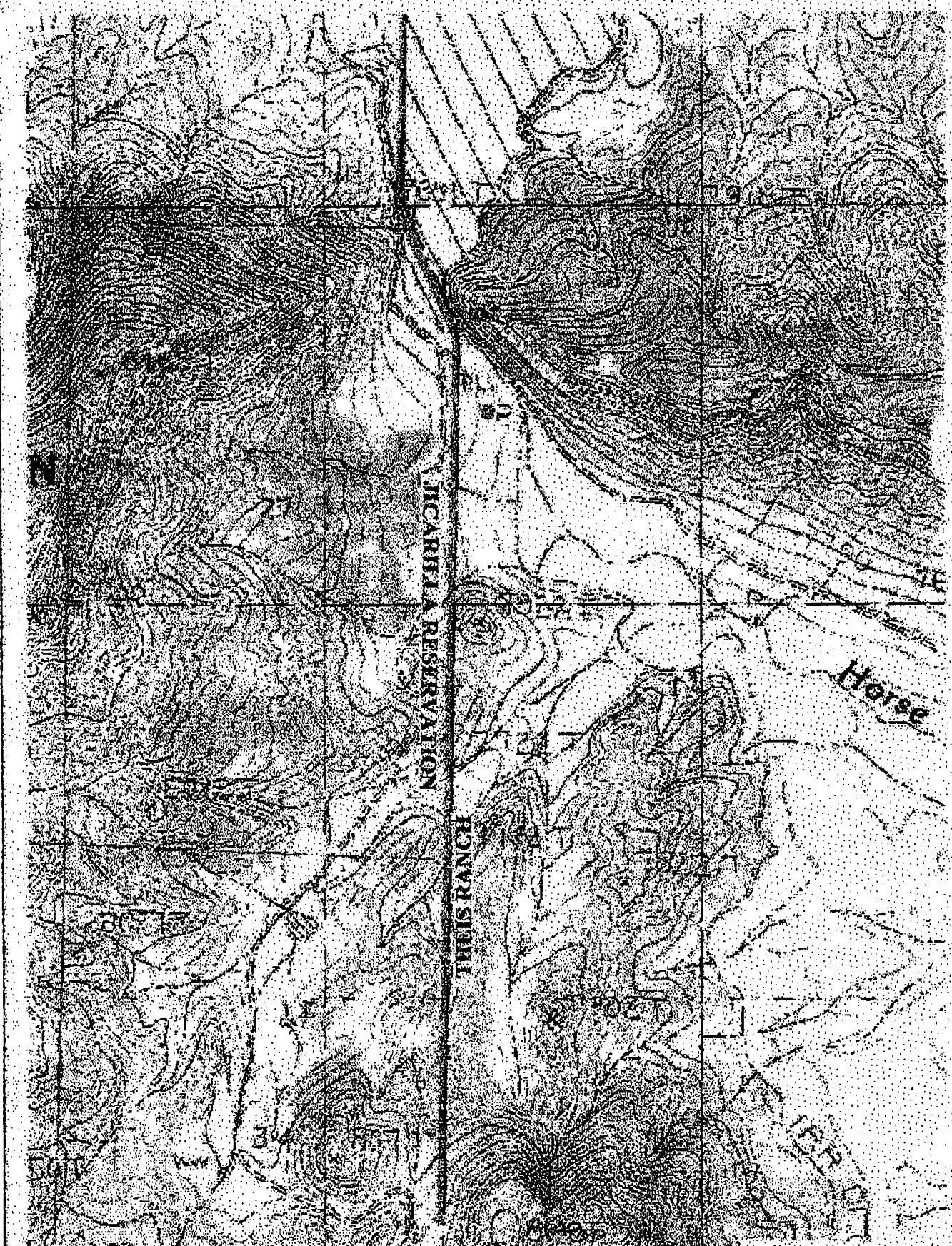
NO ALLOWABLE WILL BE ASSIGNED TO THIS COMPLETION UNTIL ALL INTERESTS HAVE BEEN CONSOLIDATED OR A NON-STANDARD UNIT HAS BEEN APPROVED BY THE DIVISION.



NOTES:
1. BEARINGS & DISTANCES SHOWN ARE RECORD, BASED UPON "TRUE NORTH" AND SURFACE DISTANCES.

2. THIS PLAT REPRESENTS SECTION LINES PROJECTED INTO THE TIERRA AMARILLA GRANT FOR MAPPING PURPOSES.

Exhibit #

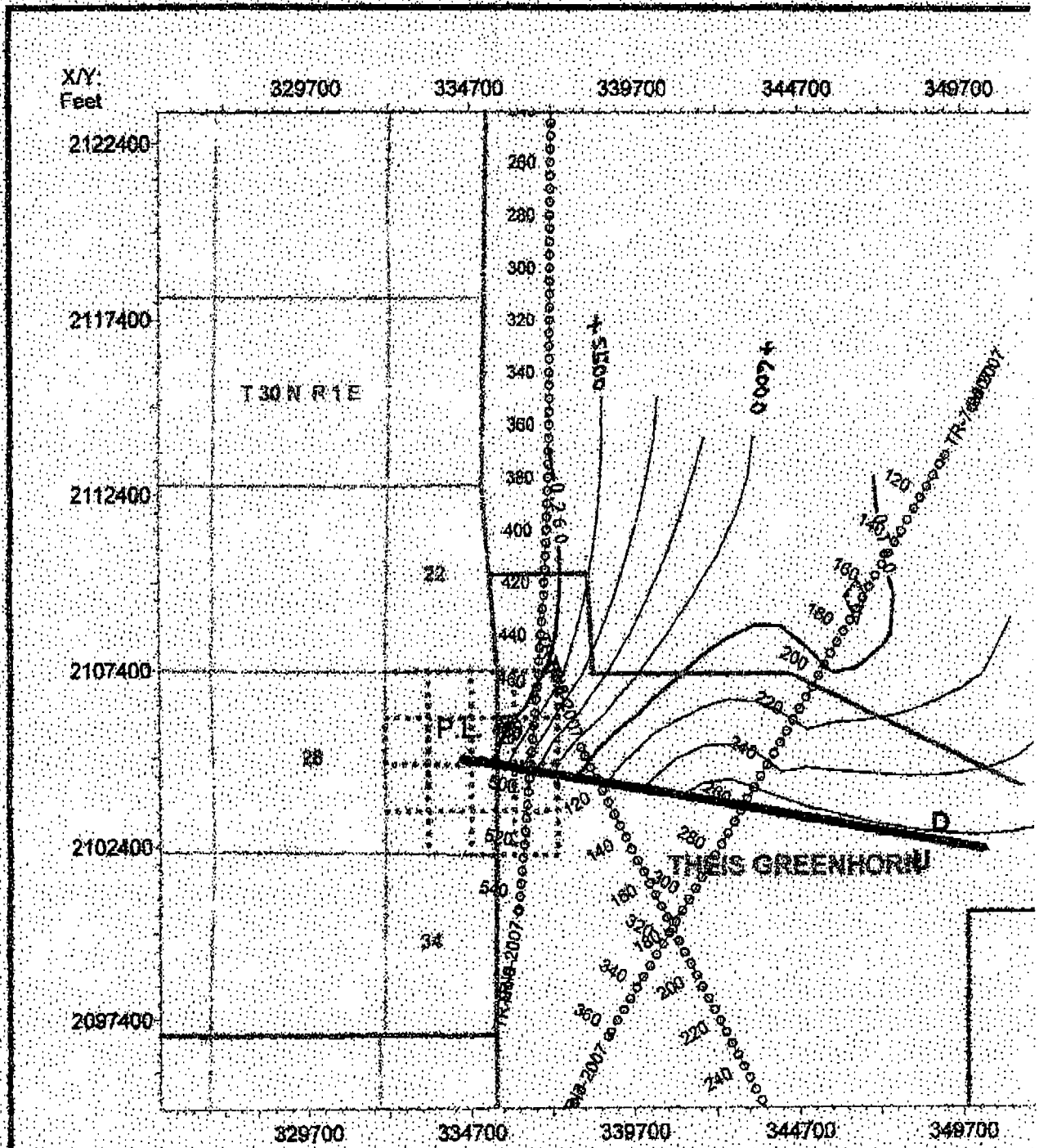


Horse Lake, NM; Scale: 1" = 0.169MI / 305M; 1,000FT; 1 MI = 6,288'; 1 cm = 120M

NMDCD No. 14548 09/30/10

Exhibit #

EXHIBIT 3



Blue Dolphin Production

Project: Theis Ranch Greenhorn / Mancos Test

September 17, 2010

Scale = 1:48000

Greenhorn Time Structure
 CI = 20 ms = 125 feet

HIGH RESOLUTION
INDUCTION
LOG

HALLIBURTON

COMPANY BLUE DOLPHIN PRODUCTION, LLC		STATE NM	
WELL EL POSO No. 5		FIELD WILDCAT	
COUNTY RIO ARRIBA		STATE NM	
API No. 300000000000		Other Services BBL/D&M MEL	
Location 0550 FM 0665 RWL		LAT. 35.37 N LONG. -106.46 W	
Spec. 23		Top 28IN	
Elev. 7104'		Elev. 7109'	
GROUND LEVEL		Elev. 7104'	
Log measured from: K.B. 5		R. above beam datum	
Drilling measured from: KELLY BUSHING			
Date: 06-08-05	Rus. No. ONE		
Depth - Driller 1803'			
Bottom - Logger 1803'			
Top - Logged Interval CASINGS			
Casing - Driller 9.63" @ 179'			
Casing - Logger 180'			
BR Size 7.875"			
Type Fluid In Hole H2O/POLY			
Cons. Visc. 3.7 60			
Phi Fluid Loss 3.0 8.5			
Source of Sample FLOWLINE			
Rn @ Meas. Temp. 2.31 @ 60 F			
Rn @ Meas. Temp. N/A @ N/A			
Rn @ Meas. Temp. N/A @ N/A			
Source Rn @ 100 F N/A N/A			
Rn @ BHT 1.50B @ 100 F			
Time Since Circ 98-99 2030			
Time on Bottom 08-10 007.5			
Max. Rec. Temp. 108 F @ T.D.			
Equip. Location 49268 PMTN			
Recorded By E. MEMENDEZ			
Witnessed By B. SALZMAN			

MANGOS-A

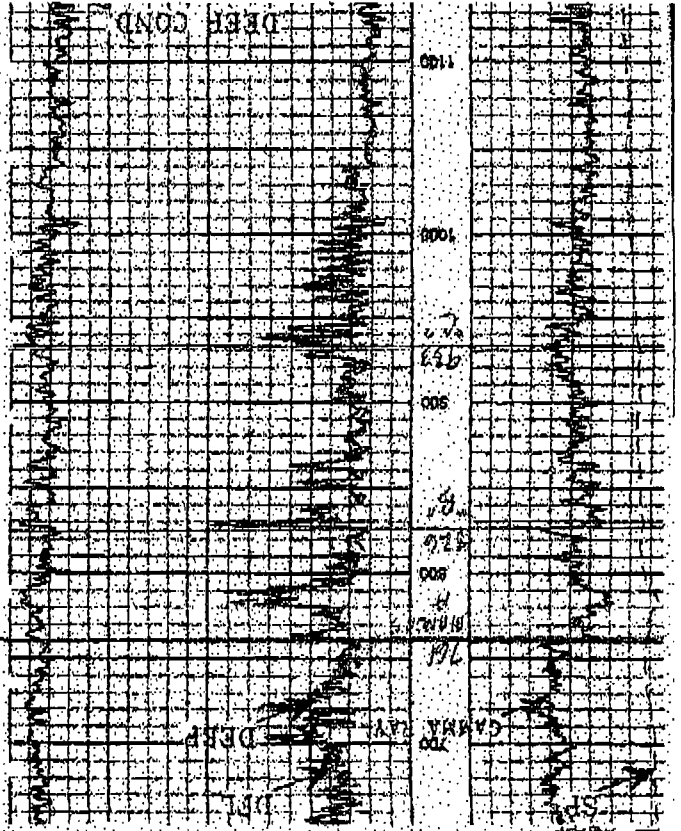


Exhibit E

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

IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
DIVISION FOR THE PURPOSE OF
CONSIDERING:

CASE NO. 14548
ORDER NO. R-13326

APPLICATION OF BLUE DOLPHIN
PRODUCTION LLC FOR AN UNORTHODOX
WELL LOCATION AND NON-STANDARD
OIL SPACING AND PRORATION UNIT, RIO
ARRIBA COUNTY, NEW MEXICO.

ORDER OF THE DIVISION

BY THE DIVISION:

This case came on for hearing at 8:15 a.m. on September 30, 2010, at Santa Fe, New Mexico, before Examiner David K. Brooks.

NOW, on this 20th day of October, 2010, the Division Director, having considered the testimony, the record and the recommendations of the Examiner,

FINDS THAT:

(1) Due notice has been given, and the Division has jurisdiction of the subject matter of this case.

(2) In this application, Blue Dolphin Production LLC ("Applicant") seeks approval of (a) a non-standard oil well location in the Mancos and Greenhorn formations for its proposed Theis Greenhorn Test Well No. 1 (the well), to be located 1643 feet from the North line and 1575 feet from the East line (Unit G) of Projected Section 27, Township 30 North, Range 1 East, NMPM, in Rio Arriba County, New Mexico, and (b) a non-standard 2.1-acre, more or less, oil spacing and proration unit for the said well in the Mancos and Greenhorn formations, consisting of that portion of the SW/4 NE/4 of Projected Section 27 lying east of the eastern boundary of the Jicarilla Apache Reservation (being approximately the E/2 of the said quarter-quarter section).

(3) Applicant appeared at the hearing through counsel and presented testimony and exhibits to the effect that:

Case 14548
Order No. R-13326
Page 2 of 3

(a) Applicant proposes to drill the well at the above-described non-standard location in order to test the Mancos and Greenhorn formations. It expects the well to produce oil.

(b) This is a wildcat area, and spacing is governed by statewide rules which provide for 40-acre units, with wells to be located at least 330 feet from unit boundaries.

(c) Applicant selected the site for the well on the basis of proprietary seismic and proprietary geo-chem data, as well as topography within the proposed non-standard unit.

(d) The proposed non-standard unit is necessary because the western portion of the SW/4 SE/4 of Projected Section 27 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 lands within the Jicarilla Apache Reservation.

(e) The proposed non-standard location is more than 330 feet from the eastern boundary of the Jicarilla Apache Reservation, but less than 330 feet from the eastern and northern boundaries of the SW/4 SE/4 of Projected Section 27. There are no oil or gas wells located on any of the offsetting units. Working interest and mineral ownership in the offsetting lands to the north, east and northeast is identical with ownership of the proposed unit.

(f) The Jicarilla Apache Tribe and all mineral owners in other adjoining tracts were duly notified of this application and of the hearing. Applicant's representatives have conferred with officials of the Jicarilla Apache Tribe who have specifically advised them that the Tribe does not oppose formation of the proposed non-standard unit.

(4) No other party appeared at the hearing or otherwise indicated opposition to the granting of this Application.

The Division concludes that:

(5) In view of the decision of the Jicarilla Apache Tribe not to lease its lands within the subject quarter-quarter section, approval of this non-standard unit is necessary to facilitate the drilling of the proposed well, thereby preventing waste.

(6) The exhibits offered in evidence indicate that any location within the proposed non-standard unit more than 330 feet from the boundary of the Jicarilla Apache Reservation would be non-standard to the east. While a location could have been selected that would be more than 330 feet from the northern unit boundary, in view of the identity of ownership, no one's correlative rights will be affected by location of the well less than 330 feet from the northern boundary of the unit.

Case 14548
Order No. R-13326
Page 3 of 3

(7) Accordingly, the proposed non-standard 21-acre, more or less, oil spacing and proration unit, and the proposed non-standard location for the well, should be approved.

IT IS THEREFORE ORDERED THAT:

(1) Pursuant to the Application of Blue Dolphin Production LLC ("Applicant"), a non-standard 21-acre, more or less, wildcat oil spacing and proration unit is hereby established in the Mancos and Greenhorn formations, consisting of all of the SW/4 NE/4 of Projected Section 27, Township 30 North, Range 1 East, NMPM, in Rio Arriba County, New Mexico, lying east of the eastern boundary of the Jicarilla Apache Reservation.

(2) The unit described in Ordering Paragraph (1) shall be dedicated to Applicant's proposed Theis Greenhorn Test Well No. 1 (the well), to be located 1643 feet from the North line and 1575 feet from the East line (Unit G) of Projected Section 27.

(3) The unorthodox location of the well, as described in Ordering Paragraph (2), in the Mancos and Greenhorn formations, is hereby approved.

(4) Jurisdiction of this case is retained for the entry of such further orders as the Division may deem necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.



SEAL

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

MARK E. FESMIRE, P.E.
Acting Director

CERTIFICATE OF SERVICE

I, Walter Roybal, swear that a copy of the foregoing was sent by email attachment to the following:

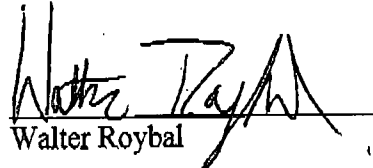
Mr. J. Scott Hall, Esq. ,(Email to: shall@montand.com)
Montgomery & Andrews PA
523 Paseo de Perlata
Sante Fe, New Mexico 87051

Superintendent Sherryl Vigil (Email to: Sherryl.Vigil@bia.gov)
PO Box 167
Dulce, NM 87528

Dixon Sandoval, Director (Email to: dixonssandoval@jicarillaoga.com)
Oil and Gas Administration
Jicarilla Apache Nation
P.O. Box 146
Dulce, New Mexico 87528
(575) 759.3485

And Overnight Mail (2 copies) and facsimile to:

Oil and Gas Conservation Division
Department of Energy Minerals and Natural Resources
1220 South St. Francis Drive
Santa Fe, New Mexico 87505
Fax: (505) 476-3462


Walter Roybal