

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

**APPLICATION OF FAE II OPERATING, LLC
FOR STATUTORY UNITIZATION,
LEA COUNTY, NEW MEXICO.**

CASE NO. 22972

**ORDER ON MOTION FOR DETERMINATION ON RATIFICATION REQUIREMENT
OF PHASED ALLOCATION FORMULA UNDER THE STATUTORY UNITIZATION
ACT**

This matter came before the Oil Conservation Division (“Division”) on a Motion for Determination on Ratification Requirement of Phased Allocation Formula Under the Statutory Unitization Act (“Motion”) filed by FAE II Operating, LLC. The Division, having considered the Motion, and the arguments raised in support of, and in opposition to, the Motion, enters the following Order:

1. On July 5, 2022, FAE II Operating, LLC (“FAE”) filed an Application (“Application”) in Case No. 22972 requesting that the Division approve the unitization of an area pursuant to the Statutory Unitization Act, NMSA 1978, §§70-7-1 et seq. (“Act”). The area proposed to be unitized comprises approximately 19,369.77 acres in Lea County and is more specifically described in the Application (“Unit Area”).

2. Entries of appearance in Case No, 22972 were filed by Apache Corporation, Chevron U.S.A. Inc., COG Oil & Gas, LLC, ConocoPhillips, Citation Oil & Gas Corporation, XTO Energy, Inc. and OXY USA Inc. (collectively, “Intervenors”). Each of the Intervenors objected to FAE presenting its case by affidavit.

3. A status conference was conducted on September 1, 2022 with counsel for FAE and the Intervenors attending. The parties identified an initial issue in the case that required briefing. Subsequent to the status conference, the parties filed, and the Division approved, a Stipulated Scheduling Order that allowed briefing by FAE and by Intervenors and provided for an oral argument on November 3, 2022.

4. As its written submittal, FAE filed the Motion on September 29, 2022. The Intervenors filed a joint response to the Motion and FAE then filed a reply brief. Oral argument on the Motion was held on November 3.

5. The Motion seeks an order from the Division that FAE has satisfied the requirements of Section 70-7-8(A) of the Act to obtain approval of the plan for unit operations by persons who will be required initially to pay at least seventy-five percent of the cost of unit operations.

6. FAE proposes a two phase allocation formula which divides the Unit Area into two phases of development with costs and revenues allocated between the two phases. FAE provided testimony that “FAE has obtained over 75% approval from both cost bearing and non-cost bearing interests with respect to Phase I of the Unit”. (Song Affidavit).

7. The Intervenors argued in their response that the Act requires seventy-five percent approval from the initial working interest owners in the entire Unit Area. The Intervenors estimate that the proposed Phase I area constitutes about 6,200 acres or less than one-third of the total Unit Area.

8. The Division concludes that FAE’s request is premature. The approval of the plan for unit operations occurs only after the Division has issued an order providing for unit operations. NMSA 1978, §70-7-8(A). First, an application for statutory unitization must be filed that the Division determines meets the requirements of Section 70-7-5. Then, after notice and hearing, the Division must determine whether the conditions listed in Section 70-7-6 exist and then issue an order that includes all the provisions listed in Section 70-7-7. Only after these steps that define the area and operation of the Unit, including how unit operating costs are allocated to the interest owners and how voting by interest owners is to occur, can the approval of the plan for unit operations occur. None of these steps has occurred in this Case.

IT IS THEREFORE ORDERED THAT the Motion is denied.

**STATE OF NEW MEXICO
OIL CONSERVATION DIVISION**

William R. Brancard
WILLIAM R. BRANCARD
HEARING EXAMINER

Date: December 12, 2022