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April 26, 2012

Ms. Florene Davidson
New Mexico Oil Conservation Division
1220 S. St. Francis Drive
Santa Fe, NM 87505

Hand Delivered

**Re: NMOCD Case No. 14629: Application of Blue Dolphin Production LLC for
Compulsory Pooling, Rio Arriba County, New Mexico**

Dear Ms. Davidson:

On behalf of Blue Dolphin Production LLC, enclosed is an original and one copy
of Applicant's Response to Special Appearance by the Jicarilla Apache Nation.

Thank you.

Very truly yours,

Karen Williams
Assistant to J. Scott Hall

:kw
Enclosure

cc: Blue Dolphin Production LLC
00275179

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

**APPLICANT'S RESPONSE TO
SPECIAL APPEARANCE BY THE JICARILLA APACHE NATION**

The Jicarilla Apache Nation's undated and unsigned "Special Appearance" preparatory to the April 28, 2011 hearing on the above referenced application was received by us via e-mail at 5:36 p.m. on April 25, 2011. The filing itself, the procedural issues and the request for relief in the Special Appearance are all untimely under NMAC §19.15.4.13 B of the Division's rules and regulations.

Further, several of the statements in the Nation's filing evince confusion over the purpose and scope of Blue Dolphin's request for relief in this matter and indicate that the Application "lacks limits". The Application makes clear, and Blue Dolphin will stipulate, that it seeks only the compulsory pooling of an unjoined mineral interest underlying the previously approved non-standard $21.0 \pm$ acre unit located in the approximate E/2 SW/4 NE/4 of projected Section 27; Township 30 North, Range 1 East in Rio Arriba County, New Mexico. These lands are *extra-reservation* lands located outside the Jicarilla Apache Reservation but immediately adjacent to the reservation boundary. 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. The remaining 83.3685% of the mineral interests continues to be owned by various members of the Theis family and other

owners, all of whom have leased to Blue Dolphin. The Application does not affect Jicarilla reservation lands, and the Nation seems to acknowledge this.

Since 2006, Blue Dolphin has made continuous, ongoing efforts to obtain the voluntary participation of the Nation and has followed all the guidance of the BIA and the Nation to include the Nation's 16.63125% interest in this project. To date, Blue Dolphin's requests for participation have not been denied, but neither have they received affirmative approval. Blue Dolphin's lease interests on the remaining 83.36875% in the non-standard unit expire in October of this year.

The Nation cites *U.S. v. 9,354.53 Acres of Land and Cheyenne-Arapaho Tribes of Oklahoma* in support for the broad proposition that the tribe and the federal government have exclusive sovereign authority over Indian reservation lands. Yet, *extra-reservation*, non-aboriginal title lands of relatively recent acquisition are entitled to different consideration under the law. It is not an automatic given, as the Nation would have it, that the recent purchase of a relatively small, undivided mineral interest serves to divest state and local authorities of their regulatory authority. See *City of Sherrill, New York v. Oneida Indian Nation of New York, et al.*, 544 U.S. 197, 198 (2005) ["The Court rejects the theory of OIN and the United States that, because *Oneida II* recognized the Oneida's aboriginal title to their ancient reservation land and because the Tribe has now acquired the specific parcels at issue in the open market, it has unified fee and aboriginal title and may now assert sovereign dominion over the parcels."]

The State should give careful consideration before accepting blanket assertions of exclusive sovereign authority over lands (or fractional interests in land) purchased by Indian tribes on the open market and outside traditional reservation boundaries. The Division should be

mindful, too, of its statutory duties to consolidate unjoined interests in order to protect the correlative rights of the other interest owners and to prevent waste.

The Nation does not provide sufficient grounds to justify a continuance of this case. Instead, the pending expiration of Applicant's lease interests, the short drilling season at the well location, among other reasons, argue for the prompt consideration of the Application in this matter.

Respectfully submitted,

MONTGOMERY & ANDREWS, P.A.

By: J. Scott Hall

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Certificate of Service

I hereby certify that on April 26, 2011, a true and correct copy of the foregoing was e-mailed to the following:

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