

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
HERITAGE PETROLEUM, INC., FOR
COMPULSORY POOLING, RIO ARRIBA
COUNTY, NEW MEXICO

Case No. 14904

JICARILLA APACHE NATION'S MOTION TO DISMISS

COMES NOW the Jicarilla Apache Nation (hereafter "Nation"), by and through its attorneys, and respectfully moves the Division to dismiss this action for lack of jurisdiction. In support of this Motion, the Nation states as follows:

1. This action concerns an Application filed by Heritage Petroleum, Inc. ("Heritage" or "Applicant"), under the laws of the State of New Mexico, for a compulsory pooling order and other relief in relation to certain lands and mineral interests that are held in trust by the United States for the Nation and located on the Jicarilla Apache Reservation ("Reservation"). The Application also seeks compulsory pooling of on-reservation mineral interests that are owned in fee simple status by the Nation.

2. The Nation has entered a Special Appearance in this action, but it has not consented to the jurisdiction of the Division. Nor has the Nation consented to be joined as a party to this action.

3. The Nation maintains that, for several reasons, the Division does not have jurisdiction to issue a compulsory pooling order or award other relief concerning lands and mineral interests that are held in trust by the United States for the Nation and located on the Reservation. Nor does the Division have jurisdiction to issue a compulsory pooling order in respect to on-reservation mineral interests that are owned in fee simple status by the Nation.

4. Federal and Nation law provide a comprehensive and exclusive framework for the development of Indian mineral interests on the Reservation. Under those laws, Nation consent and approval by the United States Secretary of the Interior ("Secretary") are absolute prerequisites for any development of the Nation's mineral assets on the Reservation. The Application is an impermissible effort to evade these legal prerequisites, and the Division has no authority to approve it.

5. Heritage does not have a mineral lease or mineral development agreement with the Nation and, as a consequence, no such lease or agreement has been approved by the Secretary.

6. State jurisdiction over the on-reservation mineral interests of the Nation—whether leased or unleased—is preempted by Federal and Nation law.

7. Further, Federal and Tribal sovereign immunity preclude the Division from adjudicating the interests of the United States and the Nation with respect to lands and mineral interests that are held in trust by the United States for the Nation and located on the Reservation.

8. The Nation submits herewith its Memorandum of Law in support of this Motion, and incorporates herein the contents of the said Memorandum as if fully set forth herein.

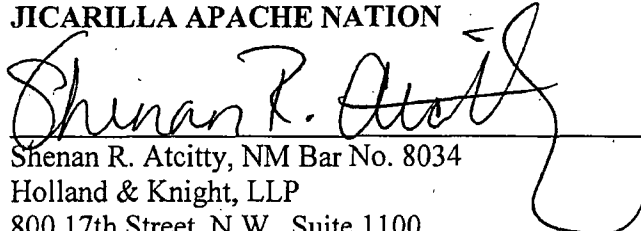
WHEREFORE, the Nation respectfully requests that the Division grant this Motion and dismiss the Application for lack of jurisdiction.

Dated: August 30, 2012

Respectfully submitted,

JICARILLA APACHE NATION

By:



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CERTIFICATE OF SERVICE

I certify that on this date, August 30, 2012, I caused a true and accurate copy of the foregoing to be served on the following parties and attorneys of record by depositing the same in the United States mail, postage prepaid, addressed as follows:

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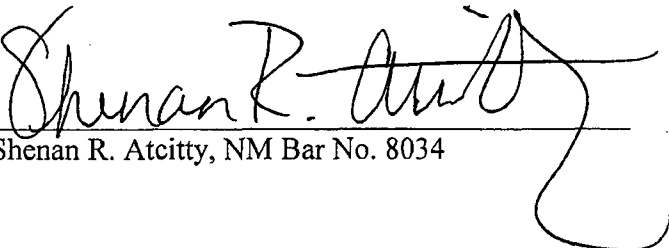
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