

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

RECEIVED OOD
2012 AUG 31 A 9:03

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 PRE-HEARING STATEMENT

COMES NOW the Jicarilla Apache Nation (Nation), without consenting to the jurisdiction of the Division over this action, and submits this Pre-Hearing Statement, pursuant to 19.15.4.13 NAMC.

(A) Appearances

The Nation has entered a Special Appearance to contest the Division's jurisdiction over this action. The Nation has not consented to the jurisdiction of the Division, and it has not consented to be joined as a party to this action. The Nation has filed a Motion to Dismiss the Application in which it respectfully submits that the Division does not have jurisdiction to enter the order or orders sought by Heritage Petroleum, Inc. (herein referred to as "Heritage" or "Applicant"). The Nation's attorneys are as follows:

Shenan R. Atcitty, NM Bar No. 8034
Holland & Knight, LLP
800 17th Street, N.W., Suite 1100
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 LLC
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

(B) Concise Statement of the Case and of the Nation's Reasons for Opposing the Application

This action concerns an Application filed by Heritage, 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"). For the reasons set forth herein, the Nation opposes the issuance of the requested compulsory pooling order and all other requested relief.

The Nation has entered a Special Appearance to Contest Jurisdiction. The Nation has filed a formal Motion to Dismiss the action for lack of jurisdiction. 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.

Specifically, 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 Federal approval, via the United States Secretary of the Interior, are absolute prerequisites for any development of the Nation's mineral assets on the Reservation. Moreover, Heritage does not have a mineral lease or mineral development agreement with the Nation. Thus its Application is an impermissible effort to evade these prerequisites, 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 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.

The Nation has filed a comprehensive Memorandum of Law in support of the Nation's Motion to Dismiss. That Memorandum sets forth the Nation's reasons for opposing the issuance of the requested compulsory pooling order and all other relief sought by Applicant. The Nation hereby incorporates the contents of that Memorandum as if fully set forth herein.

(C) Witnesses

The Nation intends to call the following witnesses in opposition to the Application and in support of its Motion to Dismiss:

William T. Walker, Regional Director
Southwest Regional Office
Bureau of Indian Affairs
United States Department of the Interior

Marlena Reval, Realty Specialist
Jicarilla Apache Agency
Bureau of Indian Affairs
United States Department of the Interior

Dixon Sandoval, Director
Oil and Gas Administration
Jicarilla Apache Nation

Rhoda Sandoval, Acting Director
Land Administration Office
Jicarilla Apache Nation

(D) Approximate Time to Present the Nation's Case

The Nation anticipates that it will take four hours to present its case.

(E) Procedural Matters

The Nation has filed a Motion to Dismiss this action for lack of jurisdiction. The Nation respectfully requests that the Division consider and grant the Nation's Motion to Dismiss as a jurisdictional threshold matter prior to any hearing on the Application.

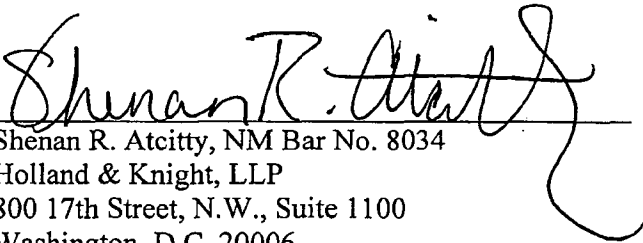
The Nation has filed a written request that the Division issue subpoenas to compel the attendance of two witnesses at any hearing in this matter. The testimony of these witnesses is necessary on the Motion to Dismiss and in respect to the Nation's case in opposition to the Application. The Nation respectfully requests that the Division grant the Nation's written request and issue the subpoenas prior to any hearing in this matter.

Dated: August 30, 2012

Respectfully submitted,

JICARILLA APACHE NATION

By:


Shenan R. Atcitty, NM Bar No. 8034
Holland & Knight, LLP
800 17th Street, N.W., Suite 1100
Washington, D.C. 20006
Telephone: (202) 457-7128
Facsimile: (202) 955-5564
Email: Shenan.Atcity@hklaw.com

Herbert A. Becker, NM Bar No. 3292
JA Associates LLC
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 Nation

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:

J. Scott Hall, Esq., and Seth McMillan, Esq.
Montgomery & Andrews PA
523 Paseo de Peralta
Santa Fe, New Mexico 87051
Attorneys for Heritage Petroleum, Inc.

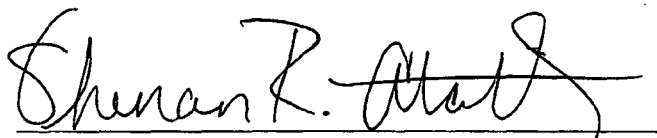
Superintendent Sherryl Vigil
Jicarilla Agency
Bureau of Indian Affairs
P.O. Box 167
Dulce, NM 87528

Donald Laverdure
Acting Assistant Secretary
Bureau of Indian Affairs
MS-4141-MIB
1849 C Street, N.W.
Washington, D.C. 20240

Farmington Field Office
Bureau of Land Management
6251 College Blvd. Suite A
Farmington, NM 87402

Jesse June, State Director
Bureau of Land Management
301 Dinosaur Trail
Santa Fe, NM 87508

Ken Salazar, Secretary
Department of the Interior
1849 C Street, N.W.
Washington DC 20240


Shenan R. Atcitty, NM Bar No. 8034