

SECTION 12. USE OF SURFACE AND USE OF WATER. The parties to the extent of their rights and interests, hereby grant to Unit Operator the right to use as much of the surface, including the water thereunder, of the Unitized Land as may reasonably be necessary for Unit Operations. Unit Operator's free use of water or brine or both for Unit Operations, shall not include any water, from any well, lake, pond, or irrigation ditch of a surface owner, unless approval for such use is granted by the surface owner. Unit Operator shall pay the surface owner for damages to growing crops, fences, improvements and structures on the Unitized Land that result from Unit Operations, and such payments shall be considered as items of Unit Expense to be borne by all the Working Interest Owners in the Unitized Lands.

SECTION 13. TRACT PARTICIPATION. In Exhibit "B-2" attached hereto there are listed and numbered the various Tracts within the Unit Area, and set forth opposite each Tract are figures which represent the Tract Participation, during Unit Operations if all Tracts in the Unit Area qualify as provided herein. The Tract Participation of each Tract as shown in Exhibit "B-2" has been determined in accordance with the following formula:

Tract Participation: Beginning at 7:00 A.M. on the Effective Date of this Agreement and continuing for the term of this agreement, the Tract Participation of each Tract shall be determined by the formula:

$$\text{Tract Participation} = 95\% \text{ A/B} + 5\% \text{ C/D}$$

A. The number of barrels of cumulative oil produced from the Unitized Formation underlying such Tract from date of first production through June 1, 2004.

B. The total number of barrels of cumulative oil produced from the Unitized Formation underlying all such Tracts from date of first production through June 1, 2004.

C. The number of surface acres constituting such Tract.

D. The total number of surface acres of all such Tracts.

BEFORE THE
OIL CONSERVATION DIVISION
Case No. Exhibit No. — 33
Submitted By:
Apache Corporation
Hearing Date: June 16, 2005