

August 20, 2005

**BY HAND DELIVERY**

Mark E. Fesmire, P. E.  
Director  
Oil Conservation Division  
New Mexico Department of Energy, Minerals and Natural Resources  
1220 South Saint Francis Drive  
Santa Fe, New Mexico 87505

**RE: New Mexico Oil Conservation Division Case No.13504: Application of Apache Corporation for Statutory Unitization, Lea County, New Mexico. Order No. R-12395.**

Dear Mr. Fesmire:

On July 22, 2005, the Oil Conservation Division entered Order No. R-12395 which granted the application of Apache Corporation for an order statutorily unitizing the East Blinbry-Drinkard Unit Area comprised of 2,080 acres in Lea County, New Mexico. I appeared in that case for BP America Production Company ("BP").

Prior to the hearing, Apache Corporation, BP and others had agreed to revise the proposed Unit Agreement and the proposed Unit Operating Agreement. Revisions were contained in Apache Exhibit No. 17, a copy of which is attached to this letter, and Apache requested that the Unit Agreement and the Unit Operating Agreement be revised to incorporate these revisions.

Order No. R-12395 grants Apache's application and Finding 23 and Order Paragraph 4, incorporate Apache Exhibit Nos. 3 and 5, the Unit Agreement and the Unit Unit Operating Agreement, into the Order. These exhibits are the original Unit Agreement and the original Unit Operating Agreement that do not contain the revisions requested by Apache and set out in its Exhibit No. 17. The original Unit Agreement and original Unit Operating Agreement are also mentioned in Findings (3) and (26).

The revisions are needed for the effective operation of this unit and, to avoid any confusion as to the agreements approved by the Division. BP America Production Company therefore requests that a Nunc Pro Tunc Order be entered that adopts the revisions proposed by Apache.



I have prepared a draft Nunc Pro Tunc Order for your consideration. W. Thomas Kellahin, Attorney for Apache, concurs in this request for a Nunc Pro Tunc Order.

Your attention to this request is appreciated.

Very truly yours,

William F. Carr  
Attorney for BP America Production Company

W. Thomas Kellahin  
Attorney for Apache Corporation

Enclosure

cc: David R. Catanach  
Hearing Examiner  
Oil Conservation Division

Thomas M. Furtwangler  
Senior Land Negotiator  
BP America Production Company

W. Thomas Kellahin, Esq.  
Apache Corporation

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

**CASE NO. 13504  
ORDER NO. R-12395-A**

**APPLICATION OF APACHE CORPORATION FOR STATUTORY  
UNITIZATION, LEA COUNTY, NEW MEXICO.**

**NUNC PRO TUNC ORDER**

**BY THE DIVISION:**

It appearing to the Oil Conservation Division that Order No. R-12395, dated July 22, 2005, does not correctly state the intended order of the Division,

**IT IS THEREFORE ORDERED THAT:**

(1) Finding (3) is hereby amended to read in its entirety as follows:

(3) The applicant, Apache Corporation ("Apache" or "applicant"), seeks: (i) the statutory unitization, pursuant to the Statutory Unitization Act, sections 70-7-1 through 70-7-21, NMSA 1978, of 2,080 acres, more or less, of all mineral interests in the Blinebry, Tubb and Drinkard formations, Lea County, New Mexico, and to be known as the East Blinebry-Drinkard Unit Area, hereinafter referred to as the "Unit Area"; and (ii) approval of the Unit Agreement and the Unit Operating Agreement, which were submitted in evidence as applicant's Exhibits No. 3 and No. 5, respectfully, as revised by Apache's Exhibit No. 17 in this case entitled "Revisions to Agreements."

(2) Finding (23) is hereby amended to read in its entirety as follows:

(23) The Unit Agreement as revised and the Unit Operating Agreement as revised, applicants exhibits No. 3 and No. 5, as revised by Applicant's Exhibit No. 17, should be incorporated by reference into this order.

(3) Finding (26) is hereby amended to read in its entirety as follows:

(26) The applicant's Exhibit No. 5, East Blinebry-Drinkard Unit Operating Agreement, as revised, contains a provision whereby any working interest owner who elects not to

pay its share of unit expense shall be liable for its share of such unit expense plus an additional 200 percent thereof as a non-consent penalty, and that such costs and non-consent penalty may be recovered from each non-consenting working interest owner's share of unit production.

(4) Order paragraph (4) is hereby amended to read in its entirety as follows:

(4) The East Blinebry-Drinkard Unit Agreement and the East Blinebry-Drinkard Unit Operating Agreement, which were submitted to the Division at the time of the hearing as Exhibits No. 3 and 5, respectively, as revised by Apache's Exhibit 17, are hereby incorporated by reference into this order.

(5) The corrections set forth in this order shall be entered retroactively as of July 22, 2005.

DONE at Santa Fe, New Mexico, on this \_\_\_ day of August, 2005.

STATE OF NEW MEXICO  
OIL CONSERVATION DIVISION

MARK E. FESMIRE, P. E.  
Director

SEAL

Revisions to Agreements

BEFORE THE  
OIL CONSERVATION DIVISION  
Case No. 13503 & 04 Exhibit No. 17  
Submitted By:  
Apache Corporation  
Hearing Date: June 16, 2005  
BEFORE THE

Unit Operating Agreement

1. Exhibit A- Changed Tract 5C E/2E/2 Section 13 to Tract 5D.
2. Exhibit B-1 – (a) Removed E/2E/2 Section 13 from Tract 5C and added Tract 5D E/2E/2 Section 13 , (b) Changed the W/2SE/4 Section 13 to NW/4SE/4 Section 13, (c) Tract 4-Exxon is claiming 5% ORRI as to Tubb and Drinkard Formations, currently credited to Elliott Industries and Elliott Hall Co. Exxon currently sorting out with McElvain Oil & Gas Co.
3. Exhibits B-2, B-3, C of the Unit Operating Agreement changed with the addition of Tract 5D.
4. Article 11.4 and 12.2- Apache and T.H. McElvain has agreed to the following changes:

Delete the following Article 12.2 pages 19 & 20:

“Each Non-Consenting Party shall be deemed to have relinquished to the Carrying Parties, and the Carrying Parties shall own and be entitled to receive, in proportion to their respective Carried Interest, all such Non-Consenting Party’s share of the proceeds of the sale of Unitized substances plus an amount equal to 200% of all such Unit Expenses allocated to such Carried Interest, it being further agreed and understood that the unpaid balance of any amount payable out of such Carried Interest hereunder (including the additional 200% of such Unit Expenses provide for above shall bear interest at the Prime rate set by Chase Manhattan Bank of New York for the same period plus one percent (1%) or the maximum contract rate permitted by applicable usury laws, whichever is the lesser.”

And substitute the following:

“Each Non-Consenting Party shall be deemed to have relinquished to the Carrying Parties, and the Carrying Parties shall own and be entitled to receive, in proportion to their respective Carried Interest, all such Non-Consenting Party's share of proceeds of the sale of Unitized substances (after deducting: Ordinary Unit Expenses, including any accrued interest thereon at the rate of Prime plus 1% in accordance with Section 11.4; applicable ad valorem, production severance and excises taxes; and royalty, overriding royalty and other lease burdens as set forth in Exhibit "B-1" of the Unit Agreement) until such time that the Carrying Parties recover from such Non-Consenting Party's share of proceeds an amount equal to the cost of such Unit Operation conducted subject to Section 3.2.4, plus an additional amount equal to 200% of the cost for such non-consent Unit Operation.”

Further Apache et al has agreed to delete in its entirety the second full paragraph of Section 11.4 page 16 of the Unit Operating Agreement beginning with “Notwithstanding any provision of this Section 11.4 to the contrary.....”.

Page 2- Revisions to Unit and Unit Operating Agreements

5. Signature Page, Page 29- has been changed to reflect CHEVRON U.S.A. INC.
6. Exhibit "D" COPAS: Section I.3.B –Advances and Payment by Non-Operators–  
Added "Chase"

Section III.2. III.3 – Overhead – Major Construction, Catastrophe  
A threshold limit of \$25,000 has been inserted.

Sections IV.2A.2b –Pricing of Joint Account Material Purchases, Transfers and Dispositions- Line Pipe Deleted the words "plus 20%".

**Unit Agreement**

1. Changes to Exhibits A, B-1, B-2, B-3 with the removal of E/2E/2 Section 13 from Tract 5C to creating Tract 5D and adding E/2E/2 Section 13 to Tract 5D.