IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

IN RE:	)	**No. 09-10832-m11**
	)	
PLATINUM OIL PROPERTIES, LLC,	)	**Chapter 11**
	)	
Debtor.	)	**Judge Jacobvitz**

THE JICARILLA APACHE NATION'S REPLY IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT AND IN OPPOSITION TO PLATINUM OIL PROPERTIES, LLC'S CROSS-MOTION FOR SUMMARY JUDGMENT

NOW COMES the Jicarilla Apache Nation (the "Nation"), a federally recognized sovereign Indian Nation, by its counsel Holland & Knight LLP, and hereby submits, pursuant to Federal Rule of Civil Procedure 56(c) and Federal Rule of Bankruptcy Procedure 7056(c), its Reply in Support of Its Motion for Summary Judgment and in Opposition to Platinum Oil Properties, LLC's Cross-Motion for Summary Judgment (the "Reply"). In support of its Reply, the Nation respectfully states as follows:

1. The Nation relies on the Nation's contemporaneously filed Memorandum of Law in Support Jicarilla Apache Nation's Reply in Support of Its Motion for Summary Judgment and in Opposition to Platinum Oil Properties, LLC's Cross-Motion for Summary Judgment, and on exhibits attached thereto.

2. There is no genuine issue of material fact, and the undisputed facts establish that Platinum Oil Properties, LLC ("Platinum") does not possess operating rights in the Jicarilla Lease 71 or Jicarilla Lease 363, and any limited working interests Platinum may have taken under the Stipulated Order are unenforceable as Platinum failed to obtain the approval of the Nation pursuant to the Nation's Code and federal law.

WHEREFORE, the Jicarilla Apache Nation respectfully requests entry of an Order: (i) declaring that Platinum holds no operating rights for Jicarilla Lease 71 or Jicarilla Lease 363; or, in the alternative, (ii) declaring that any working interests Platinum may have in Jicarilla Lease 71 or Jicarilla Lease 363 are limited to those it took under the Stipulated Order and are unenforceable because such transfer was not approved by the Nation; and (iii) granting such other relief as this Court deems just and proper.

DATE: April 19, 2010

Respectfully submitted,

THE JICARILLA APACHE NATION

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IN RE	)	**Case No. 09-10832-m11**
	)	
PLATINUM OIL PROPERTIES, LLC,	)	**Chapter 11**
	)	
Debtor.	)	**Honorable Judge Jacobvitz**
	)	**United States Bankruptcy Judge**

MEMORANDUM OF LAW IN SUPPORT OF THE JICARILLA APACHE NATION'S REPLY IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT AND IN OPPOSITION TO PLATINUM OIL PROPERTIES, LLC'S CROSS-MOTION FOR SUMMARY JUDGMENT

The Jicarilla Apache Nation (the "Nation" or "JAN"), a federally recognized sovereign Indian Nation, by its counsel Holland & Knight LLP, submits its Reply in Support of the Nation's Motion for Summary Judgment and its Response to the Cross-Motion and Memorandum ("Memorandum") for Summary Judgment of Platinum Oil Properties, LLC ("Platinum"). In support of its Reply and Response, the Nation respectfully states as follows:

PRELIMINARY STATEMENT

The central dispute is whether Platinum, Sagebrush Holdings/O&G, LLC ("Sagebrush") and Madison Capital Company, LLC ("Madison")[1] must submit to the regulatory power of the Department of the Interior ("DOI") and the Nation. The IMLA provides an established procedure, as well as administrative law tribunals, for resolving disputes regarding the Indian Mineral Lease Act.[2] Yet, Madison and Sagebrush elected to acquire Platinum, a non-operating

[1] Madison, Sagebrush and Platinum continue to present themselves collectively in their dealings with the Department of the Interior, most recently in a February 17, 2010 letter from Ms. Julia Hook ("February 17 Hook Letter"), sent on behalf of all three entities, to the Assistant Secretary of Indian Affairs, Mr. Larry Echohawk, of the Department of the Interior, seeking intervention by the DOI in this dispute. A copy of Ms. Hook's letter is attached as **Exhibit A**.

[2] The Interior Board of Indian Appeals gains jurisdiction of Indian Mineral Lease Act leases under 25 C.F.R. § 211.58. The Interior Board of Land Appeals gains jurisdiction of Indian Mineral Lease Act leases under 30 C.F.R.§ § 290.101 (applying Title 30 part 290 subpart B to all federally-administered mineral leases on Indian tribal and individual Indian mineral owner's lands, regardless of the statutory authority under which the lease was issued or

shell company, in order to manufacture this bankruptcy case so that they might "cut through" the disputed issues regarding ownership of the working interests and operating rights for certain wells on certain Tracts of Leases 71 and 363. (February 17 Hook Letter at 10.) The result is that Madison, Sagebrush and Platinum are asking this Court to address regulatory and ownership issues normally resolved by judges with specific jurisdiction to determine such matters.

Platinum has – for whatever reason – selected bankruptcy court as the forum for prosecuting a claim that it acquired Operating Rights on the Nation's Reservation, as well as Platinum's corollary claim that it continues to hold these rights, despite its prior assignment of the very same interest that it now purports to hold. Nevertheless, Platinum cannot evade the simple and immutable fact that any and all interests in Indian trust land must be derived through a federal statute that authorizes the Secretary of Interior ("Secretary") to grant or approve a lease or encumbrance. 25 U.S.C. § 194. Furthermore, the IMLA also provides that express tribal consent must be secured before the Secretary can even decide whether to approve an encumbrance or issue a grant.

Making matters worse is that no Operating Rights Agreement exists to define the rights now claimed by Platinum, and each party has struggled to define exactly what rights are being claimed and how to describe Platinum's alleged interests when so many links in the alleged chain of title from Chace Oil to Platinum to are incomplete or entirely missing. Confusion exists even with terminology because terms of art such as Record Title Holder, Operating Rights, Operator Permit, Working Interests and Tracts are used interchangeably, and often incorrectly.

The crux of Platinum's argument is that it was granted Operating Rights and Working Interests in certain wells located on Leases 71 and 363 pursuant to the Order entered by the

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maintained) and § 290.108 (providing a party adversely affected by a minerals management or royalties decision of the Minerals Management Service or Deputy Commissioner of Indian Affairs the right to appeal to the Interior Board of Land Appeals under 43 C.F.R. part 4, subpart E).

Bankruptcy Court on October 6, 2004, confirming a Plan of Reorganization in the Golden Oil Chapter 11 case (the "Confirmation Order") and another Order approving a June, 2005 settlement between the McKay-Lotspeich Group ("MLG") and Reorganized Golden Oil. Platinum's initial problem is that a plain reading of the Plan and Confirmation Order shows that Platinum took no rights under Settlement Agreement, the Golden Oil Plan or the Confirmation Order.[3]

To overcome this fatal defect, Platinum offers as fact a smoke screen of half-truths, irrelevant assertions, straw arguments and outright misstatements, including that:

> – the Nation has admitted that the Operating Rights were assumed and assigned to Platinum (Platinum Memorandum at 2 – 3);
>
> – the Nation, as a sovereign nation, denies that it is bound by the Golden Oil Plan or the orders of the Bankruptcy Court in Golden Oil (Platinum Memorandum at 4);
>
> – the Plan indicated that an assignment would be made to an MLG "entity" rather than to MLG (Platinum Memorandum at 8);
>
> – on January 5, 2005, the Nation approved Platinum as the "operator of the Lease Interests" (Platinum Memorandum at 13);
>
> – the Golden Oil Plan did not require MLG to comply with Section 211.53 of the IMLA or to execute any of the Nation's forms assuming all prior liabilities (Platinum Memorandum at 12);
>
> – long before confirmation, the Nation was fully aware that MLG had formed Platinum to own the Lease Interests and that the Lease Interests would be assumed and assigned to Platinum (Platinum Memorandum at 13);
>
> – the approval of Platinum as operator and the issuance of the operating permit to Platinum evidences that the Nation believed no further approval of the transfer of the Lease Interests to Platinum was required (Platinum Memorandum at 13);

[3] Citations to documents referred to herein are set forth in the Nation's Memorandum in Support of its Motion for Summary Judgment filed in this case as Doc #104 on September 13, 2009.

– the Nation initially recognized that the Lease Interests had been assumed and assigned to Platinum but later demanded that Platinum execute forms, referred to as JAN-2 forms, assuming all prior liabilities under the Jicarilla Leases (Platinum Memorandum at 15); and

– it is undisputed that the MLG group is not a legal entity but was instead a term used to refer to a large group of 36 unaffiliated individuals.

None of these assertions is true, and each will be addressed in the Nation's Response to Platinum's Statement of Uncontested Facts filed contemporaneously in this case. Rather, they are offered to create disputed issues of fact when, as a matter of law and as is clear from their plain language, the Golden Oil Plan and Confirmation Order granted Platinum no Operating Rights or Working Interests. As cited in the Nation Memorandum, section 5.5.1 of the Golden Oil Plan specifically provided that:

> "MLG shall receive the benefit of the Settlement Agreement, the respective interest in the 71 and 363 lease described therein, and the liabilities associated therewith."

Nation Memo at 7. And, if Platinum was the sole owner of Operating Rights and Working Interests, then why was it necessary for both MLG and Platinum to execute the 2005 assignment of those interests to Star Acquisition?

To the extent that Platinum did acquire some Operating Rights and Working Interests, with respect to certain wells located on a few Tracts of Leases 71 and 363, those interests do not permit Platinum to assume the entire Leases. As Platinum admits, it is not the Record Title holder for those Leases, and only the Record Title holder is in contract with the government and with the Nation.

Finally, it is clear that the assignment from MLG/Platinum to Star Acquisition is not void *ab initio*, because that assignment was not contingent on obtaining the Nation's approval and because Madison and Sagebrush – not the Nation – ended negotiations regarding approval of Operating Rights. Indeed, none of the three parties involved (Star Acquisition, Madison and

Sagebrush) ever completed an application with the Nation seeking approval of the assignment of those rights. The February 17 Hook Letter clearly shows that it was Madison and Sagebrush who decided to terminate discussions with the Nation in 2009 and, instead, invoke this Court's jurisdiction as a means of "cutting through" the outstanding issues.[4]

The undisputed facts show that Platinum took no rights from Golden Oil under any order entered in that Bankruptcy case, that neither it nor MLG ever complied with the Nation's laws for obtaining a valid assignment of Operating Rights (as required by the Golden Oil Plan and Confirmation Order) and that it assigned away to Star Acquisition any rights it might have had. Under the circumstances, the estate has no enforceable interest in the Leases, and this Court can and should grant the Nation's Motion For Summary Judgment.

UNCONTESTED FACTS

Contemporaneously with the filing of this Memorandum, the Nation is filing its objection to the Statement of Uncontested Facts submitted by Platinum. Those objections are incorporated herein as a response to Platinum's "Uncontested Facts" set forth in pages 5 through 16 of Platinum's Memorandum of Law ("Platinum's Memorandum") filed in this case on February 26, 2010 as Docket No. 195 in support of Platinum's Cross-Motion for Summary Judgment.

DISCUSSION

I. A Common Understanding of Oil & Gas Terms.

The Nation views terms such as "Lease," "Record Title holder," "Operating Rights," "Operator Permit," "Working Rights," and "Tracts" from the perspective of a land owner and government regulator enforcing the Tribal Code and IMLA Regulations. On the other hand,

[4] Madison appears to be trying to reverse that decision now, by asking the DOI to intervene and determine the matters currently before this Court.

Platinum views such terms from the perspective of a privately held company that finances, develops and produces hydrocarbons from a variety of tribal, governmental and private lands.

As a result, each party uses common terms in a slightly different manner, which leads to confusion as to the rights in dispute and the law governing such rights. For example, the Nation did not understand until September of 2009, that Platinum claims only to be the holder of "Operating Rights," with respect to certain wells on certain Tracts of Leases 71 and 363, and that Platinum does not claim to be the "Record Title holder" with respect to either Lease.[5] Similarly, it appears that even Platinum did not understand, until depositions conducted in 2010, that their claims are limited to three Tracts on Lease 71 (out of six total Tracts) and to one Tract on Lease 363 (out of 14 total Tracts).

To enable this Court to better understand and to resolve this dispute, the Nation offers the following descriptions of commonly used terms with some examples arising in this case.

Lease – The term "Lease" is used to describe a geographical area, often consisting of thousands of acres, and also describes the written agreement between a Record Title holder and a governmental agency which, among other things, enables the Record Title holder to develop and produce oil, gas and other hydrocarbons from the leased area. An Oil and Gas Lease has no similarity to a standard real estate lease, but the term is commonly used in the industry and will be used here for convenience. *See In re Antweil*, 97 B.R. 65, 68, (Bankr.D.N.M. 1989) ("It is clear that, under New Mexico law, an oil and gas lease is not a 'lease' and does not create a landlord/tenant relationship.").

At issue in this case are two Leases, one executed on March 14, 1951 for 1,920 total acres of the Nation's Land and designated as "**Lease 71**," and the other executed on March 18, 1966

[5] This misunderstanding arose because Platinum's motion pursuant to Section 365, one of the first pleadings filed in the case, seeks authority to assume the Leases, rather than the limited subset of rights that Platinum now claims to hold.

for 2,560 total acres of the Nation's Land and designated as "**Lease 363**." Copies of the original agreements for Lease 71 and Lease 363 are attached, collectively, as **Exhibit B**.

Record Title – Under Federal Oil and Gas law, the Record Title holder is the government's lessee under a Lease and is liable for all obligations arising under the Lease. *Cross Creek Corp.*, 131 IBLA 32, 36 (1994), *citing Harry L. Bigbee*, 2 IBLA 23, 25, 27 (1971). As Lessee, only the Record Title holder is in contract with the government and, therefore, assignments of Record Title are subject to approval of the Department of the Interior under the IMLA and the approval of the Nation under the Nation's Tribal Code. *See Cross Creek*, 131 IBLA at 35 ("Since the assignment of record title, unlike the assignment of Operating Rights, gives rise to a contractual relationship between the lessor and the lessee's assignee, in order to effect a change in the holder of record title, the agency must affirmatively approve an assignment of record title, in order to bring the assignee under the prevailing terms of the contract with the lessor."). Pursuant to the Lease Data Sheets maintained by the Nation, BP America Production Company currently is the approved Record Title holder of Leases 71, and EnerVest Energy Institution Funds IX, LP and EnerVest Energy Institution Funds IX-WI, LP are currently the approved Record Title holders for Lease 363.[6]

Notably, Platinum does *not* claim to be Record Title holder for Lease 71 or Lease 363. In the absence of such a claim by Platinum, the Nation submits that deciding who is the current Record Title holder for these Leases is not required to resolve this dispute.

Operating Rights – Operating Rights are the rights to drill for, produce, remove and dispose of oil, gas and/or condensate that may be found on and produced from the Lease. Operating Rights are sometimes held by the Record Title holder but may be transferred by

[6] A copy of the Lease Data Sheets was produced to Platinum and is attached as **Exhibit C**.

assignment from the Record Title holder to a third party, referred to as the Operating Rights holder. The Operating Rights holder is not a party to the Lease and the rights and, under Federal Oil and Gas law, the obligations of an Operating Rights holder have long been distinguished from those of the Record Title holder.[7]

Because the holder of Operating Rights is not a party to the Lease, approval by the Secretary of the Interior is not required for assignments of Operating Rights.[8] However, because Operating Rights involve the development and extraction of minerals from Tribal Land, transfers of Operating Rights *must* be approved by the Nation. Title 18, Chapter 11 of the Nation's Code §1.[9] Other than the June 2005 Stipulated Order, the Nation is aware of no document purporting to assign Operating Rights to Platinum. Platinum's claim to Operating Rights affects only 22 wells and half of the Tracts in Lease 71 and only 2 wells and 1 of 14 Tracts in Lease 363. *See* Lease Data Sheet.

Operator and Operating Permit – An Operator is the entity or person designated to develop or operate a well. An Operating Permit is a license of limited duration that the Operator

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[7] *Pitch Energy Corporation*, 169 IBLA 267, 274 (2006) ("Departmental regulations differentiate between [Operating Rights and record title], stating that "[a] transfer of Operating Rights is * * * a subsidiary arrangement between the lessee (sublessor) and the sublessee * * * [and does not] affect the relationship imposed by a lease between the lessee(s) and the United States." 43 CFR 3100.0-5(e). The assignee of full title to a Federal oil and gas lease, upon approval of the assignment to him, becomes the Government's lessee and is responsible for compliance with the lease terms and any regulations affecting the lease. *Marlin Oil Corporation*, 158 IBLA 362, 367 (2003); *Ralph G. Abbott*, 115 IBLA 343, 346 (1990). While the designated operator and Operating Rights owner have primary responsibility for plugging wells, the ultimate responsibility remains with the record title owner of the lease. 43 CFR 3100.0-5(a), (d), (j); 43 CFR 3106.7-6(b); *Marlin Oil Corporation*, 158 IBLA at 367; *Ralph G. Abbot*, 115 IBLA at 346; *see also Stanco Petroleum, Inc.*, 143 IBLA 86, 88 (1998).")

[8] *Cross Creek Corp.*, 131 IBLA at 36 n. 10 ("In particular, it appears that the assignment of Operating Rights does not require BIA approval. Appellant has provided a copy of a Sept. 30, 1988, letter from BIA, which states that, as of August 1987, it will no longer process assignments of Operating Rights. The assignment of record title does require BIA approval.").

[9] Section 1 provides: "Under the BIA Regulations . . ., no lease assignment (record title or Operating Rights) of any oil and gas lease within the Jicarilla Apache Nation shall be effective until approval of the Legislative Council of the Jicarilla Apache Nation is obtained. . ."

must obtain from the Nation before being allowed to enter onto and work on the Nation's Land.[10] An Operating Permit is obtained by submitting Form JAN-A-4 captioned as, "Designation of Operator" to the Nation, paying a $200 fee and, among other things, requires compliance with all applicable federal and tribal regulations.

On January 4, 2005, the Nation issued a one-year Operating Permit to an entity named "Platinum Oil Properties Corporation" to operate wells located within Leases 71 and 363. See letter of MLG counsel, Pete Domenici, Jr. notifying the Nation that MLG is appointing a new operator and submitting an Operating Permit Application, attached as **Exhibit D**. Similarly, for a period of two years, Star Acquisition held an Operating Permit to operate wells located within Leases 71 and 363. An Operating Permit conveys no rights, other than the right to enter and work on the Nation's Land, and is separate and distinct from approval of an assignment of Operating Rights, discussed above. If the holder of Operating Rights also is designated as the Operator, then the holder must separately apply for, and obtain, an Operating Permit before commencing any work on the Nation's Land.

Financial Interests – There are several types of financial interests that a party can hold in a Lease. A Working Interest is a financial interest in an Oil and Gas Lease that requires the holder to pay its share of leasing, drilling, producing and operating a well or wells. By contrast, the holder of a right to overriding royalties and production payments holds a financial interest but not a Working Interest, because Overriding Royalty Interest ("ORRI") holders are not responsible for a share of the cost of drilling, completing, or operating oil and gas wells on the

[10] Sandoval Declaration at ¶ 8 attached as Exhibit M to the Nation's Memorandum in Support of Summary Judgment. Nation's Code § 18-1-3.

Lease. As a financial interest, a Working Interest does not convey any right to develop and operate wells on the Lease and thus is not the same as an Operating Right. [11]

Tracts – Tracts are physical subdivisions of a Lease. The Nation maintains Lease Data Sheets containing current and historical information for each Oil & Gas Lease existing on the Nation's Land. Among other information, the Lease Data Sheets list the current Record Title holder for the entire Lease, which is normally divided into separate Tracts. A number of individuals or entities may hold Operating Rights for one or more Tracts within a Lease. The Record Title holder likewise may retain the Operating Rights for certain Tracts.

In this case, the Nation's Lease Data Sheets show that Lease 71 is divided into 6 separate Tracts and that there are different Operating Rights holders for each Tract. The recognized 100% Operating Rights holder for Tract 1 is Apache Corp.; for Tract 2 is John E. Schalk; for Tracks 3, 4 and 5 is Chace Oil; and for Tract 6 is BP America Production Company. In similar manner, the Lease Data Sheets show that Lease 363 is divided into 14 separate Tracts, only one of which is subject to the Operating Rights claims asserted by Platinum.

II. Platinum Took No Rights under The Golden Oil Plan and Confirmation Order

Once a plan is confirmed, neither a debtor nor a creditor can assert rights that are inconsistent with its provisions. *In re Varat Enterprises, Inc.* 81 F.3d 1310, 1317 (4th Cir. 1996). The Nation denies that Platinum took any rights under the Golden Oil Plan or the Confirmation Order because neither document refers to or identifies Platinum, for any reason, and certainly does not identify it as the transferee of Operating Rights or Working Interests. (Nation's Memorandum, at 5 – 9).

[11] At page 7 of its Memorandum, Platinum also separately defines the terms "Working Interests" and "Operating Rights" when discussing rights transferred to MLG under the 2004 Settlement Agreement.

Whatever rights Platinum received came, not through the Golden Oil Plan but through the June 20, 2005 Stipulated Order, entered more than six months after the effective date of the Golden Oil Plan. The Stipulated Order resolved a post-confirmation dispute between MLG and the reorganized Golden Oil. Given that neither MLG nor Golden Oil sought to amend the Golden Oil Plan to include the June 20 Stipulated Order, the rights granted under such order cannot be said to be granted "under the Golden Oil Plan."

Notably, the Nation is not a party to the June 20, 2005 Stipulated Order. Moreover, even the June 20, 2005 Stipulated Order did not transfer any Operating Rights to Platinum from Golden Oil. Rather, pursuant to the Stipulated Order, certain "abandoned" percentages of Working Interests in 15 wells located on Lease 71 and in 2 wells located on Lease 363 were transferred to Platinum from former Golden Oil shareholders. Stipulated Order at Finding ¶ 6A. As discussed above, Working Interests are not the same as Operating Rights, and the Nation knows of no document that specifically attempts to transfer "Operating Rights" to Platinum from Golden Oil.

A. MLG Is a Partnership That Pursued Litigation And Took Rights under the Golden Oil Plan.

In its Memorandum, Platinum dismisses as a "red herring" the troubling lack of any reference to Platinum in the Golden Oil Plan and the absence of any document transferring "Operating Rights" to Platinum. Platinum, it argues, was needed because MLG could not operate the oil and gas rights on Leases 71 and 363.

> It is undisputed that the McKay Lotspeich Group was not a legal entity but was instead a term used to refer to a large group of thirty six unaffiliated individuals." (Platinum Memorandum at 17). The McKay-Lotspeich Group could not have owned or been approved as an operator of the Lease Interests because it had no legal existence. The parties in Golden Oil intended that the McKay-Lotspeich Group would form an entity to own and operate the Lease Interests.

Platinum Memorandum at 17.

The Nation disputes Platinum's assertion as both legally and factually wrong. Legally, it is clear that MLG was a partnership that owned and operated oil and gas wells. For example, under Texas law, any group of individuals may be a partnership and may conduct business or own assets. Section 152.051(b) of the Texas Business Organization Code provides:

> (b)--Except as provided by Subsection (c) and Section 152.053(a), an association of two or more persons to carry on a business for profit as owners creates a partnership, regardless of whether:
>
> (1) the persons intend to create a partnership; or
>
> (2) the association is called a "partnership," "joint venture," or other name.

Although a partnership ordinarily is formed for the transaction of a general business of some particular kind, its purpose may be for the prosecution of a single adventure or transaction. *First. Nat. Bank of Brownwood v. Chambers*, 398 S.W.2d 313, 316 (Tex. Civ. App. 1965). The statements of the parties as to whether they have intended to form a partnership are not conclusive on the question of whether a partnership is in fact formed. *In re Cooper*, 128 B.R. 632, 636 (Bankr. E.D. Texas 1991). Even an express statement in a contract disavowing the intent to form a partnership is not dispositive of the issue. *Id.*

The best refutation of Platinum's position is the fact that MLG, represented by the firm of Dolan & Domenici, P.C., took a very active role in the Golden Oil Chapter 11 case in order to protect its claims against Golden Oil. The dispute between MLG and Golden Oil arose in 1991 after Golden Oil purchased the assets of Chace Oil, and, on June 4, 2004, Golden Oil filed a Motion to Compromise its dispute with MLG (as Docket No. 311). Facing "the prospect of spending a fortune in legal fees to obtain questionable benefit" Golden Oil and MLG decided to compromise their "decade-old dispute:"

> Thus, the parties were motivated to settle their decade-old dispute. The MLG will accept a "divorce" of interests from the Debtor. The compromise requires the Debtor to accept certain interests of the MLG and for the MLG to receive an essentially equivalent value of interests and liabilities.

Motion to Compromise, ¶ 10 at 3.

The Debtor attached a copy of the MLG Settlement Agreement and summarized the Compromise with the following words:

> The general terms of the compromise are that the MLG will receive all of the Debtor's interest in wells in the 71 lease and 363 lease in exchange for releasing all their interests in all other leases. The MLG will fulfill the plugging and abandonment regulations for the well interests on the 71 and 363 leases. The Debtor will, however, continue the rework of certain wells, and recover its costs from production, prior to transfer of those well interests. Both parties receive releases.

Motion to Compromise, ¶ 12 at 3.

The Settlement Agreement, filed on June 4, 2004 as Docket no. 311-2, contains a long list of obligations to be undertaken by and assets to be transferred to MLG, including:

> – the transfer to MLG of all right, title and interest to the gas-gathering system located on Lease 71 (Settlement Agreement ¶ 3(b) at 3);
>
> – the transfer to MLG of certain wells on Lease 71 (Settlement Agreement, ¶ 3(c) at 4);
>
> – an agreement to split the work yard currently located on the well 71-7 location (Settlement Agreement, ¶ 5 at 5);
>
> – the obligation that MLG will maintain its own roads on Lease 71 (Settlement Agreement, ¶ 5 at 5);
>
> – an agreement for Golden Oil and MLG to share field employees and to work for MLG at least 50% of the time (Settlement Agreement, ¶ 6 at 5);
>
> – an agreement that all unclaimed partnership interests in Leases 71 and 363 will go to MLG (Settlement Agreement, ¶ 7(b) at 6);
>
> – an agreement to dismiss, with prejudice, MLG's state court litigation against Golden Oil (Settlement Agreement, ¶ 10 at 8);

– the transfer of all of Golden Oil's right, title and interest to any and all wells located on Lease 363, subject to all liabilities including but not limited to all past due royalty payments involving persons other than Golden Oil (Settlement Agreement, ¶ 11 at 8);

– an agreement for Golden Oil and MLG to "cooperate fully" with each other to obtain any "applicable lease assignments from relevant entities such as the Jicarilla Apache Nation . . ." (Settlement Agreement, ¶ 17 at 11); and

– payment by MLG of "up to $25,000 of Committee Counsel's bill upon final approval (Settlement Agreement, ¶ 18 at 11).

The Settlement was executed by George Lotspeich, Horace McKay and by Peter Domenici, Jr., as counsel for MLG. Although the Motion to Compromise was filed months after Platinum was formed, no mention is made of Platinum, either in the Settlement Agreement or in the Motion to Compromise. Clearly, MLG, by assuming obligations, providing releases and accepting both assets and employees, acted as a legal partnership entity with continuing operations.

It is also clear that MLG intended to accept well interests on Lease 71 and Lease 363 subject to most liabilities and with an agreement to cooperate to "obtain any applicable lease assignments" from the Nation. (Settlement Agreement, ¶ 11 at 8). Thus, the Settlement Agreement, like the Golden Oil Plan, anticipates that MLG and Golden Oil will cooperate to obtain approvals and licenses as required by the Nation.

Platinum fails to provide any evidence that MLG or any other party have paid the outstanding royalty payments to the Nation, as provided in the Settlement Agreement. Platinum also offers no evidence that Golden Oil ever executed documents required under the Golden Oil Plan and Confirmation Order to transfer "legal title" under the 1991 asset purchase agreement,[12]

[12] Recognizing that a break exists in the chain of title from Chace Oil to Golden Oil, the Settlement Agreement provides at paragraph 16(b) "In the Debtor's Plan of Reorganization, the parties agree that a person (not MLG) will be authorized by the Court on behalf of Chace Oil Company, Ltd. to execute all title transfer forms and documentation as may be deemed necessary or desirable by counsel for GOC to complete and perfect the

and neither the Debtor nor MLG executed the "forms required by the Jicarilla Apache Nation" as was also required by the Golden Oil Plan and Confirmation Order.[13] Because no such documents were executed, Platinum's chain of title is missing an important link.

Moreover, not a single provision of either the Golden Oil Plan or Confirmation Order attempts to override the Tribal Code or the IMLA.[14] To the contrary, the Golden Oil Plan and Confirmation Order specifically require the Debtor and MLG to execute JAN documents necessary to the transfer of such assets, which execution also never occurred. And recent case law makes clear that assumptions, assignments or sales of estate assets or leases remain subject to governmental regulations and rules adopted by organizations governing such rights. *See*, *In re Dewey Ranch Hockey, LLC*, 414 B.R. 577, 590 (Bankr. D. Ariz. 2009). ("In the final analysis, the court can not find or conclude that the interests of the NHL can be adequately protected if the Coyotes are moved to Hamilton without first having a final decision regarding the claimed rights of the NHL and the claims of the debtors and PSE."); *In re Magness*, 972 F.2d 689, 697 (6th Cir. 1992) (court prohibited chapter 7 trustee from selling a golf club and country club membership where such sale would move the sale of that membership ahead of those on the country club's

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conveyance to Golden Oil Company and/or a wholly-owned subsidiary corporation thereof, of all assets originally purchased from Chace Oil Company pursuant to that certain Asset Purchase Agreement dated April 5, 1991." While the Golden Oil Plan so provided, no action was taken to execute such transfer forms and documentation. *See* Nation's Memorandum at 7.

[13] Platinum's Memorandum fails to respond to the specific language of the Confirmation Order which recognizes that the Debtor must execute documents necessary to transfer "legal title of assets under the 1991 asset purchase agreement between Chace and the debtor, specifically including forms required by the Jicarilla Apache Nation and the documents necessary to transfer assets to the MLG group in accordance with Article 7 of the Plan." Confirmation Order ¶ 33.

[14] Indeed, neither the Plan nor the Confirmation Order can be construed as a waiver of one of the Nation's sovereign powers unless Platinum can show that they constitute such a waiver by the Nation "in unmistakable terms." *Merrion v. Jicarilla Apache Nation*, 455 U.S. 130, 148 (failure to expressly reserve the right to tax production by an IMLA lessee held not to constitute a waiver of the right to impose taxes on production). Platinum makes no effort to satisfy this heavy burden, nor could it if it tried. Indeed, as discussed below, the IMLA also expressly recognizes continuing inherent tribal jurisdiction over such leases.

waiting list.) Thus, the Nation has shown that it is entitled to summary judgment as a matter of law.

B. The Nation Has Not Admitted That Platinum Holds Operating Rights.

At several points in Platinum's Memorandum, Platinum claims that the Nation took a "dramatically different position in the Adversary Proceeding than in the JAN's Objection to Motion to Assume." Platinum Memorandum at 3. Based on those allegedly new and contrary positions, Platinum argues that the Nation should be deemed to have admitted that the Leases were assumed and assigned to Platinum under the Golden Oil Plan. Platinum also relies, impermissibly, on certain Settlement Documents exchanged between Madison and the Nation in 2008 as the parties sought to avoid litigation.

1. The Nation's Position in This Case Has Not Changed, and Isolated Clauses and Sentences Taken from Pleadings Are Not Admissions.

Platinum points to several perfunctory sentences in the Nation's Objection to Platinum's Motion to Assume and in the Nation's Motion to Dismiss and argues that the Nation has admitted the very thing it contested, that Platinum holds any rights in Leases 71 and 363. (Platinum Memorandum at 2 – 4). That argument legally is wrong and, in fact, absurd because the Debtor's Motion to Assume Leases ("Motion to Assume") did not allege that Platinum received Operating Rights in the Golden Oil bankruptcy. Rather, Platinum's Motion to Assume asserted that Platinum was the lessee of Leases 71 and 363, a position which Platinum effectively abandoned when it admitted that it does not hold or claim Record Title to either Lease. As discussed above, only the Record Title holder is the lessee under the IMLA and applicable case law.

At the outset of this Case, the Nation denied that Platinum took any rights under the Golden Oil Plan, and the Nation's current position remains the same – Platinum received nothing under the Golden Oil Plan and Platinum remains subject to the IMLA and the Nation's Code. Any perceived changes by the Nation are simply responses to changes in Platinum's position, from a claim that it owned the Leases to its current position that it owns only certain Working Interests and Operating Rights.

The Tenth Circuit Court of Appeals specifically rejected Platinum's position, that pleadings submitted by counsel are part of the factual record and are treated, *per se*, as judicial admissions. *Guidry v. Sheet Metal Workers Int'l Assoc., Local No. 9*, 10 F.3d 700, 716 (10th Cir. 1993) ("[I]n the Tenth Circuit briefs are not part of the record, and statements made in briefs may be considered admissions at the court's discretion."). Rather, judicial admissions are formal, deliberate declarations which a party or his attorney makes in a judicial proceeding for the purpose of dispensing with proof of formal matters or of facts about which there is no real dispute. *U.S. Energy Corp. v. Nuken, Inc.*, 400 F.3d 822, 833 n. 4 (10th Cir. 2005).

The positions taken by the Nation are not inconsistent. Yet, even if they were, inconsistent statements made in the alternative are not formal, deliberate declarations that reasonably could be construed as judicial admissions. *Id. See also* this Court's unreported decision in *Lopez v. Lopez*, No. 07-03014749 JA, 2009 WL 3754204 (Bkrtcy. D.N.M. Nov. 5, 2009).

2. Platinum's Pleading Has Changed, Not the Nation's Opposition to Platinum's Effort to Assume the Leases.

Platinum's Motion of the Debtor to Assume alleged that Platinum had acquired Leases 71 and 363 pursuant to the June 20, 2005 Stipulated Agreement and requested that Platinum be authorized to assume the original 1951 and 1966 Leases, copies of which were attached to

Platinum's Motion. At first (and until September, 2009), the Nation understood that Platinum was claiming to be the Record Title holder and seeking to assume the entire Leases. Subsequently, Platinum's position changed and it now claims that it holds only certain Working Interests and Operating Rights in the Leases. (*See*, Platinum Memorandum at 7). In its Motion to Assume, Platinum alleged:

> The order confirming the Golden Oil Plan was entered on October 6, 2004 [Docket No. 399]. Following confirmation of the Golden Oil Plan, the Bankruptcy Court in *Golden Oil* entered an order specifically enforcing a settlement among the Debtor and other parties providing for the assignment to the Debtor of the interests of various lessees under the Leases (the "Order Enforcing Settlement"). The Order Enforcing Settlement was entered on June 20, 2005 [Docket No. 466].

Motion to Assume, ¶ 3 at 2.

Platinum's Motion to Assume does not refer to Operating Rights or Working Interests at all. Rather, Platinum merely alleged that it became lessee under the Leases as the result of "a settlement among the Debtor [Golden Oil] and other parties . . ." and that it acquired the "interests of various lessees" pursuant to the Order Enforcing Settlement entered in June, 2005.

In its Objection, the Nation argued, among other things, that the Leases were not executory contracts that could be assumed in a bankruptcy case and that Code § 365(c)(1) prohibited assumption and assignment of executory contracts where applicable law excuses the non-debtor party from accepting performance from anyone other than the Debtor. (Objection at 1 – 3; 12 – 15; 17 – 19.) It is axiomatic that, if, as the Nation argued, Platinum could not assume and assign its interests to a third party without approval by the Nation, then the Nation also believed that Platinum could not have received its alleged rights via an assumption and assignment in the Golden Oil Bankruptcy.

In its Memorandum, Platinum cites to another case, *The Jicarilla Apache Nation v. The Bank of Montreal, et al. (In re CDX Rio, LLC*, Case No. 09-32137 (Bankr. S.D. Tex. 2009) in

which the Nation took the same position as was taken in this case – that the Nation's Leases cannot be assumed without the consent of the Nation. There has been no change in the Nation's position, either in this case or in *CDX Rio*. There is absolutely no basis for Platinum's claim that the Nation has changed its position on this issue or that the positions taken by the Nation in the Objection and the Adversary Proceeding are inconsistent. [15]

3. Platinum's Use of Inadmissible Draft Settlement Documents Violates the Federal Rules of Evidence and Does Not Constitute an Admission That Platinum Holds Valid Rights.

Platinum also relies on draft settlement documents having no probative value to establish that the Nation admits Threshold Issues. These settlement documents are inadmissible as well as irrelevant.

In support of its argument, Platinum offers draft, unexecuted, settlement documents exchanged in 2008 between Madison and the Nation, including a draft Memorandum of Understanding. Such documents prepared and exchanged in connection with settlement of anticipated litigation are clearly inadmissible under the Federal Rules of Evidence, incorporated by the Bankruptcy Rules and have no probative value as to the "facts" contained therein.

Evidence of conduct or statements made in anticipation of settlement are inadmissible. Federal Rule of Evidence 408(a)(2) states:

> Evidence of the following is not admissible on behalf of any party, when offered to prove liability for, invalidity of, or amount of a claim that was disputed as to validity or amount, or to impeach through a prior inconsistent statement or contradiction:
>
> . . .

[15] By applying Platinum's logic, the Nation could argue that, in Paragraph 3 of the Motion to Assume, Platinum admits that Platinum took its rights from the Stipulated Order, not under the Golden Oil Plan, or that Platinum is now barred from asserting that it holds only some "Operating Rights" and some "Working Interests" in certain wells because it previously, though mistakenly, alleged that it held rights to the entire Leases. Such arguments would be contrary to established law and are absurd. They would turn a Bankruptcy Case, where many of the facts simply are unknown at the outset, into a ridiculous game of "gotcha."

> (2) conduct or statements made in compromise negotiations regarding the claim, except when offered in a criminal case and the negotiations related to a claim by a public office or agency in the exercise of regulatory, investigative, or enforcement authority.

The general understanding among lawyers is that inconsistent conduct or statements made in connection with compromise negotiations may not be admitted for impeachment purposes. *EEOC v. Gear Petroleum, Inc.*, 948 F.2d 1542, 1545 (10th Cir. 1991). *See generally*, *New Mexico v. Aamodt*, 582 F. Supp. 2d 1313, 1320 (D.N.M. 2007) ("holding that evidence gathered during settlement negotiations of water rights were inadmissible").

During 2008, Madison and the Nation attempted to resolve their dispute regarding the Operating Rights and, in connection with such, exchanged draft settlement documents which were never executed by the parties. To provide the requisite tribal authority anticipated for such settlement, the Nation's Tribal Council passed a resolution, subsequently revoked, that tracked the language requested by Madison and Sagebrush in connection with such settlement.

Such draft documents, resolutions and statements were created in an effort to avoid litigation, and are entirely inadmissible. They have no probative value because the parties who drafted them were attempting to resolve and these draft documents anticipated an amicable resolution of the dispute. Those discussions ended when Madison and Sagebrush adopted a different strategy to resolve the dispute.

As stated in the February 17, 2010 Hook Letter, Madison and Sagebrush decided to follow another way of "cutting through and resolving outstanding title issues with respect to ownership of the working interests/operating rights" for several Tracts of Leases 71 and one Tract of Lease 363. They acquired Platinum and commenced this Chapter 11 case. Accordingly, the draft settlement documents and resolution are not admissible as evidence of any position and

Platinum's somewhat desperate attempt to admit such documents into evidence should be rejected.

III. Assignment of Operating Rights from Chace to Golden Oil, From Golden Oil to MLG and from MLG to Platinum, Each Required The Nation's Approval under the IMLA and the Nation's Code.

In it's original Memorandum, the Nation showed that, pursuant to the IMLA and the Nation's Code, transfers of Operating Rights must be approved by the Nation to be effective against the Nation. (Nation's Memorandum at 18-25). Platinum responds that it need not comply with any requirements contained in Title 18 of the Nation's Code because 25 C.F.R. § 211.53 requires compliance with tribal codes *only if* the underlying lease so requires.[16] (Platinum Memorandum at 29.) Platinum's interpretation violates the "plain meaning" of § 211.53 as well as the special canons of interpretation adopted by the Tenth Circuit and by the United States Supreme Court favoring Indian interests.

It is well settled that, unless there is a clear indication of congressional intent to abrogate Indian sovereignty rights, the court is to apply the special canons of construction to the benefit of Indian interests. *EEOC v. The Cherokee Apache Nation*, 871 F.2d 937, 939 (10th Cir. 1989). Reversing a District Court decision regarding the jurisdictional authority of the Equal Employment Opportunity Commission (EEOC) over the Cherokee Nation, the Tenth Circuit stated:

> While normal rules of construction would suggest the outcome which the district court adopted, the court overlooked the fact that normal rules of construction do not apply when Indian treaty rights, or even nontreaty matters involving Indians, are at issue. *See, e.g.*, *Montana v. Blackfeet Tribe*, 471 U.S. 759, 766, 105 S.Ct. 2399, 2403, 85 L.Ed.2d 753 (1985) ("[S]tatutes are to be construed liberally in favor of the Indians, with ambiguous provisions interpreted to their benefit."); *County of Oneida v. Oneida Indian Nation*, 470 U.S. 226, 247, 105 S.Ct. 1245, 1258, 84 L.Ed.2d 169 (1985) ("[T]he canons of construction applicable in Indian

[16] The operative sentence of 25 C.F.R. § 211.53 relied upon by Platinum is, "The Indian owner also must consent and approve of the transfer or assignment if the relevant lease so requires."

> law are rooted in the unique trust relationship between the United States and the Indians. Thus, it is well established that treaties should be construed liberally in favor of the Indians, with ambiguous provisions interpreted to their benefit.... The Court has applied similar canons of construction in nontreaty matters."); *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 152, 102 S.Ct. 894, 909, 71 L.Ed.2d 21 (1982) ("[I]f there [is] ambiguity ... the doubt would benefit the tribe, for 'ambiguities in federal law have been construed generously in order to comport with ... traditional notions of sovereignty and with the federal policy of encouraging tribal independence.' ") (quoting *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 143-44, 100 S.Ct. 2578, 2583-84, 65 L.Ed.2d 665 (1980)).

EEOC v. The Cherokee Apache Nation, 871 F.2d at 939.

In addition to the Tenth Circuit's holding that statutes are to be construed in favor of Indian tribes, it is hornbook law that courts should attempt to give some reasonable meaning to all of the words included in a legislative enactment. *American Stores Co. v. American Stores Co. Retirement Plan*, 928 F.2d 986, 990 (10th Cir. 1991).

Platinum's interpretation of § 211.53, violates these canons of statutory interpretation because Platinum would turn a provision that makes tribal approval mandatory under certain circumstances ("The Indian owner also must consent . . . ") into its opposite – a provision that prohibits compliance with Tribal Codes if the lease does not so provide. Platinum's interpretation of § 211.53 would effectively eliminate the Nation's ability to control business and mining activity on the Nation's Lands unless the original Lease so provided. No court has ever agreed with Platinum's interpretation of § 211.53.

To the contrary, § 211.53 must be read consistently with the other provisions of the IMLA, such as 25 C.F.R. § 211.1(d), which provides:

> "Nothing in the regulations in this part is intended to prevent Indian tribes from exercising their lawful governmental authority to regulate the conduct of persons, businesses, operations or mining within their territorial jurisdiction."

Moreover, the Supreme Court has ruled that the IMLA must be interpreted so as to give priority to Tribal Codes and procedures. The standard principles of statutory construction do not

have their usual force in cases involving Indian law. *See Montana v. Blackfeet Tribe,* 471 U.S. 759, 766 (1985). Statutes are to be construed liberally in favor of Indian tribes, with ambiguous provisions interpreted to their benefit. *Id.*

Any other reading would create an exception that swallows the entire regulatory scheme created by the IMLA, the Tribal Code, approved by the DOI and applied by hundreds of court opinions. Given that few oil and gas leases specifically require tribal approval, Platinum's interpretation, supported by no case law, would eliminate the entire regulatory scheme of the IMLA and Title 18 of the Nation's Code.

IV. The Assignment of Operating Rights to Star Acquisition, Which Operated Wells for Two Years after the 2005 Assignment, Is Not Void *Ab Initio* Based on The Nation's Failure to Approve.

In its original Memorandum, the Nation explained that on, June 23, 2005, three days after allegedly receiving rights in the June 20, 2005 Stipulated Order, MLG and Platinum assigned their collective Operating Rights and Well Interests to Star Acquisition reserving only certain "net profits" from certain wells. (Nation's Memorandum at 9 - 13). Star Acquisition then obtained an Operator Permit from the Nation and operated certain wells for the next two years.

In response, Platinum argues that its assignment of rights to Star Acquisition VII, LLC ("Star Acquisition") is void *ab initio* based upon the Nation's and DOI's failure to approve such assignment. To begin with, only the Nation, not DOI, approves assignments of Operating Rights.[17] Thus, on its face, Platinum's argument fails because the "DOI Approval" clause, on which Platinum bases its argument, is ineffective because the DOI does not approve such

[17] *Cross Creek Corp.*, 131 IBLA at 36 n. 10 ("In particular, it appears that the assignment of operating rights does not require BIA approval. Appellant has provided a copy of a Sept. 30, 1988, letter from BIA, which states that, as of August 1987, it will no longer process assignments of operating rights. The assignment of record title does require BIA approval.").

transfers. It is clear that the assignment from MLG/ Platinum to Star Acquisition is not void *ab initio,* because that assignment was not contingent on obtaining the Nation's approval.

Platinum's argument is also defeated by the February 17 Hook Letter from Madison's Counsel to the DOI, which clearly shows that Madison and Sagebrush, not the Nation, decided to end discussions in 2009 to obtain the Nation's approval of the chain of the transfer of certain Working Interests and Operating Rights from Chace Oil. It was Madison and Sagebrush, not the Nation, that decided to buy Platinum, a shell company with no assets or operations, so that they could manufacture this Chapter 11 case and invoke this Court's jurisdiction as a means of "cutting through" the outstanding issues.

That strategy backfired because Platinum cannot now claim that the proposed assignment is void due to the Nation's decision to reject the transfer application. As discussed in the deposition of Kurt Sandoval, the approval process for the transfer of operating rights does not begin until there is a full and complete submission under the required JAN forms under Title 18 and the approval process may take a year or two after a full and complete form is submitted. (Deposition of Kurt Sandoval at 204). It was Platinum's affiliates, Madison and Sagebrush, who cut off discussions, not the Nation. Moreover, none of the claimants to the Operating Rights and Working Interests – Platinum, Star Acquisition, Madison and Sagebrush – *even submitted a completed JAN-2 application to the Nation seeking approval of a transfer of Operating Rights.*[18] The Nation cannot be said to have denied approval when, in fact, the process never began because Madison, Sagebrush and Platinum all failed to property apply for the transfer of

[18] Deposition of Kurt Sandoval, page 170. In response to a question from Mr. Jones as to why the Nation has not approve the transfer to Platinum, Mr. Sandoval states: "To the best of my knowledge, what I understand is the change – change in approval – or the change – change in ownership from Chace Oil on was never approved – or never presented fully to the Nation. And by "fully," I'm saying that the forms were not completed or submitted and signatures were not in those – a lot of those forms. There's been an attempt by different entities to go ahead and try to secure those, but thy can't seem to get everybody to sign the same documents to get – to move that forward. " On the following page, Mr. Sandoval states that he is referring to the JAN-2 forms regarding transfer of operating rights.

operating rights. Given that approval was never sought and given that Madison and Sagebrush ended negotiations with the Nation, the cases cited by Platinum are clearly inapplicable.

Any interest that Platinum may have possessed in the Operating Rights was assigned to Star Acquisition. Platinum's claim that the assignment to Star Acquisition was conditioned upon approval by the Nation – the true entity with approval rights – is simply false. Not only does the purchase and sale agreement cited by Platinum anticipate that Star Acquisition would be unable to obtain Secretary approval before closing, it states that the assignee is to have exclusive control and authority over the Operating Rights *regardless* of Secretary approval. Platinum irrevocably assigned any interest in the Operating Rights and, at most, now has a claim against Star Acquisition for breach of contract.

CONCLUSION

WHEREFORE, the Jicarilla Apache Nation respectfully requests entry of an Order: (i) declaring that Platinum has no Operating Rights in the Jicarilla Leases; or, in the alternative, (ii) declaring that any Operating Rights Platinum may have are limited to those it took under the Stipulated Order, are unenforceable because such transfer was not approved by the Nation and not subject to assumption under section 365; and (iii) granting such other relief as this Court deems just and proper.

Respectfully submitted,

THE JICARILLA APACHE NATION

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February 17, 2010

VIA FEDERAL EXPRESS

Mr. Larry Echohawk
Assistant Secretary for Indian Affairs
United States Department of the Interior
1849 "C" Street, N.W.
Washington, D.C. 20240

Re: Jicarilla Oil and Gas Lease Nos. 71 and 363, Jicarilla Apache Nation, Rio Arriba County, New Mexico

Dear Mr. Echohawk:

We represent Madison Capital Company, LLC ("Madison") and Sagebrush Holdings/O&G, LLC ("Sagebrush"). In February of 2009, for reasons more fully addressed in this letter, Sagebrush acquired ownership of Platinum Oil Properties, LLC ("Platinum"). At the time of the acquisition, Madison and Sagebrush believed (as they continue to believe) that Platinum holds the working interests/operating rights in and to certain tracts/depths in two oil and gas leases covering lands held in trust by the United States for the Jicarilla Apache Nation ("JAN") within the exterior boundaries of the Jicarilla Apache Reservation in Rio Arriba County, New Mexico. The two leases are Jicarilla Oil and Gas Mining Lease – Contract No. 71, dated March 14, 1951 ("Lease No. 71") and Jicarilla Oil and Gas Mining Lease – Contract No. 363, dated April 18, 1966 ("Lease No. 363").

Because of certain actions and inactions of the JAN and the United States Department of the Interior ("DOI"), on March 2, 2009, Platinum was forced to file a Chapter 11 bankruptcy action in the United States Bankruptcy Court for the District of New Mexico, Case No. 09-00922-JEC-LAM. In the bankruptcy case, Platinum is seeking, among other relief, an order of the court authorizing Platinum's formal assumption of Lease Nos. 71 and 363, and a determination that either (i) no defaults exist with respect to Lease Nos. 71 and 363 or (ii) if any defaults exist, the requirements to cure such defaults and an opportunity to cure them. The DOI did not file a formal objection to Platinum's assumption of Lease Nos. 71 and 363, but is now contending that Platinum does not hold the working interests/operating rights under Lease Nos. 71 and 363.

We, along with Platinum, are seeking the assistance of the DOI in achieving a resolution of all of the outstanding issues pursuant to the DOI's trust authority and responsibility with

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respect to the lands that are subject to Lease Nos. 71 and 363, and the DOI's statutory and regulatory authority to issue oil and gas leases and administer oil and gas operations on tribal lands. Platinum would like to assume Lease Nos. 71 and 363, cure any defaults thereunder and resume operations.

FACTUAL BACKGROUND

Between late 2005 and September of 2006, Madison entered into a series of agreements with Star Acquisition VII, LLC ("Star VII") to fund the development of certain tracts/depths in Lease Nos. 71 and 363. At the time of these agreements, Platinum had executed agreements to assign its interests to Star VII, conditioned upon approval of the DOI. Star VII represented to Madison that Star VII was in the process of obtaining DOI approval and that such approval would be forthcoming shortly. In return for the development funding, Star VII granted Madison a significant overriding royalty interest in each of the two Leases; however, under certain circumstances, each of these overriding royalties was escalatable to 100% and convertible to the working interest in the Lease on which it was a charge. Under the terms of the agreements, full escalation of the overriding royalty interests and their conversion to working interests would result in Madison's replacing Star VII as the holder of the working interests/operating rights in both Leases. Further, the agreements gave Madison the right under certain circumstances to remove and replace Star VII as the operator of the two Leases.

When Madison attempted to file the instruments described above with the JAN and with the Bureau of Indian Affairs' title plant in Albuquerque, New Mexico for inclusion in the real property records of the JAN, however, the instruments were returned to Madison with the notation that at that point Star VII did not have an approved record title interest, an operating rights interest, a working interest or an overriding royalty interest in either Lease No. 71 or Lease No. 363 or any of the wells located on the Leases.

The JAN informed Madison and Sagebrush that Platinum held the working interests/operating rights in Lease Nos. 71 and 363[1] because neither the JAN nor the DOI ever approved Platinum's assignments to Star VII. Platinum acquired the working interests/operating rights under Lease Nos. 71 and 363 pursuant to the confirmed Chapter 11 Plan and the orders of the Bankruptcy Court in *In re Golden Oil Company*, Case No. 03-36974-82-11 (Bankr. S.D. Tex. 2003). The *Golden Oil* Bankruptcy Court issued various orders specifically enforcing a settlement among Platinum, Golden Oil and other parties providing for the assignment to Platinum of the working interests/operating rights in the relevant tracts/depths in the Leases/wells. The DOI participated in the *Golden Oil* case, initially objecting to the settlement and assignment of the working interests, but ultimately withdrawing that objection. The confirmed *Golden Oil* Chapter 11 plan discharged certain liabilities of the holder of title to the

[1] Apparently, record title to Lease No. 71 is in BP America Production Company, Inc., and record title to Lease No. 363 is in EnterVest Funds.

working interests/operating rights in the Leases. Although the JAN never filed objections in the *Golden Oil* bankruptcy case, it now contends that it is not bound by the orders of the *Golden Oil* bankruptcy court providing for the assignment to Platinum of the working interests/operating rights in the relevant tracts/depths in the Leases/wells.[2]

As of the fall of 2007, Madison had worked out a potential solution to the problem of title to the working interests/operating rights in the relevant tracts/depths in the Leases/wells with the then-lawyers for the JAN.[3] The proposed approach would have allowed the JAN assignment forms to be modified in a way that was acceptable to the successor holders of title to the working interests/operating right in the relevant tracts/depths in the Leases/wells while ensuring that a final determination would be made as to whether there were any outstanding royalties and taxes due. Amounts for unpaid or underpaid taxes or royalties not discharged in the *Golden Oil* bankruptcy, if any, would be paid by the parties who should have paid them at the time they were incurred. With this, all of the assignments of working interests/operating rights in the relevant tracts/depths in the Leases/wells into Star VII would have been approved and the instruments creating Madison's overriding royalty interests and related rights would have been accepted for filing in the JAN's land title records maintained by the BIA title plant in Albuquerque, New Mexico.

Unfortunately, before this proposal could be presented and necessary approvals obtained, Madison learned from a due diligence exercise that it conducted pursuant to its agreements with Star VII that Star VII was in breach of those agreements. These breaches included the misappropriation and misapplication of the funds provided by Madison. Madison immediately took the step of notifying Star VII that Madison was exercising its right to remove Star VII as the operator of the Leases and of giving notice of its right to escalate and convert its interests so that, in essence, it would replace Star VII in the two Leases.

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[2] In the *Golden Oil* bankruptcy, the BIA first objected to Golden Oil's Chapter 11 Plan and the assignment of the various lessees' interests in the Leases to Platinum, arguing that 11 U.S.C. §365(c)(1) and federal regulations prohibited assignment of the lessees' interests in the Leases to Platinum without the approval of the Secretary of the Interior and the JAN. The BIA later withdrew that objection, consented to the assignment and expressly represented to the *Golden Oil* bankruptcy court that all issues regarding the JAN's approval, the BIA's approval and bonding and submission of documents required by federal regulations had been resolved. In addition, the JAN was represented by counsel, received notices and actively participated in the *Golden Oil* bankruptcy. The JAN never objected to the assignment of the various lessees' interests in the Leases to Platinum. After confirmation of Golden Oil's Chapter 11 plan, Platinum posted the performance bond required by the Secretary of the Interior, and the JAN issued Platinum (and later Star VII) an operating permit.

[3] At this point the JAN was represented by the Nordhaus Law Firm, LLP, Santa Fe, New Mexico. The lead Nordhaus lawyers on the matter were Wayne Bladh, Esq. and Carol Harvey, Esq.

During the period when Madison was conducting its due diligence exercise and after it had given Star VII notice of removal/exercise of the escalation and conversion rights, Madison's lawyers were in frequent contact with the then-lawyers for the JAN to make sure that they were aware of the developing circumstances so that they could communicate them to the JAN.

When Star VII refused to step aside as the operator and contested Madison's contractual right to escalate and convert its interests in the Leases, Madison brought suit against Star VII seeking, in addition to other relief, confirmation of Madison's contractual right to remove Star VII as the operator of the Leases, and of Madison's contractual right to escalate and convert its overriding royalty interests in the Leases. Once again, during the period leading up to the filing of the lawsuit and afterwards, Madison's lawyers were in frequent contact with the JAN's then-lawyers. These contacts were intended to give the JAN assurances that Madison was making every effort to get Star VII out of the picture, was taking actions to ensure that (i) any underpaid/unpaid royalties and taxes were properly calculated and paid, (ii) any on-site operational issues were addressed and (iii) going forward, the Leases/wells would be operated properly with the goal of increasing production and revenues for the benefit of all parties.

During this period, Madison repeatedly asked the JAN's then-lawyers and representatives of the JAN Oil and Gas Administration to determine whether they believed there were any underpaid/unpaid taxes and royalties outstanding, and if so, to provide the backup and calculations supporting their conclusion so that an agreement could be prepared whereby Madison would pay any legitimate amounts. Madison also sought information from representatives of the DOI's constituent agency, the Minerals Management Service ("MMS"), as to any underpaid/unpaid royalties for the same reason. Madison also requested information from the JAN's then-lawyers and representatives about whether any other violations/defaults under the Leases existed so that, after verification, Madison could make arrangements to have them addressed. Madison also sought information about any outstanding violations/defaults under the Leases from the DOI's constituent agency, the Bureau of Land Management ("BLM"), as well as from the BIA.

Madison asked for approval of the proposed solution to the working interests/operating rights title issues that had been worked out in the fall of 2007, but had not been approved by the JAN and/or the DOI. Madison repeatedly requested a sit-down meeting with the decision-makers for the JAN and their lawyers (and anyone else that the JAN wanted to have participate, including representatives of the DOI and its constituent agencies) so that an agreement addressing all outstanding issues with respect to Lease Nos. 71 and 363 could be considered, negotiated and executed and the Leases/wells could be properly operated going forward, producing revenue for the JAN and for Madison.

All of this effort was to no avail and in late October of 2007, while its case against Star VII was proceeding in the courts and Madison was preparing to file for a preliminary injunction (a course of action of which the JAN's then-lawyers were kept apprised), Madison

learned from an unrelated third party that the JAN had shut down Lease Nos. 71 and 363. Neither the JAN's then-lawyers nor representatives of the JAN's Oil and Gas Administration were willing to tell Madison the reason(s) that the Leases had been shut down or the steps that would need to be taken to reopen the Leases. There were vague references to a number of notices of violation (in excess of one hundred), and statements with respect to the failure of Star VII to pay JAN taxes and royalties (although no detail about the alleged violations or alleged underpaid/unpaid taxes and royalties was provided) – the very issues that Madison had notified the JAN about and had been attempting to resolve to everyone's satisfaction for several months.

On November 30, 2007, the judge in Madison's case against Star VII entered a stipulated order (agreed to by Madison and Star VII) under which, in addition to numerous other provisions, Star VII stepped aside as the operator of the Leases/wells and Madison was empowered to name itself or another entity to be the operator of the leases on or before December 14, 2007. The JAN's then-lawyers were promptly provided with copies of the stipulated court order once it was signed and entered by the judge on November 30, 2007. On December 13, 2007, Madison named its affiliate, Sagebrush, as the operator of the Leases and notified the JAN's then-lawyers and provided them with copies of the instrument in which Madison named Sagebrush as the operator of the Leases.

Based on the change of status represented by the November 30, 2007 stipulated order, lawyers representing Madison and Sagebrush, asked the JAN's then-lawyers to: (i) furnish them with copies of the notices of violation that the JAN Oil and Gas Administration had apparently issued with respect to the Leases/wells; (ii) furnish them with copies of the shut down order issued by the JAN as well as the supporting documentation; (iii) furnish them with a statement of the amount of the underpaid Jicarilla taxes, with supporting documentation; (iv) furnish them with a statement of the amount of the underpaid Jicarilla royalties, with supporting documentation; and (v) furnish them with a list of the other actions that would have to be taken in order to cure defaults under the Leases and authorize the reopening of the Leases/wells. In addition, as they had done many times since September of 2007, Madison's and Sagebrush's lawyers and business representatives continually requested a face-to-face meeting with members of the JAN Oil and Gas Administration as well as members of the JAN's governing body and the JAN's then-lawyers in order to discuss and resolve all of the outstanding issues. The JAN's then-lawyers indicated that they could not provide the requested information to Madison/Sagebrush because of "privacy issues" as the JAN did not recognize Sagebrush as the operator of the Leases/wells and the JAN did not recognize that Madison had an interest in the Leases/wells.

These attempts to gain the information necessary to resolve the outstanding issues with respect to the Leases and get the Leases/wells reopened and into production – a course of action that should benefit both Madison/Sagebrush and the JAN – continued without result. Then, in mid-January of 2008, the JAN's then-lawyers told Madison/Sagebrush's lawyers that the JAN Oil and Gas Administration would be receptive to a letter requesting a meeting in which the

outstanding issues could be discussed and resolved. The JAN's then-lawyers made it clear that the request for a meeting and the request for documentation needed to be made to the JAN Oil and Gas Administration rather than to the JAN's then-lawyers. The next day, Madison faxed, emailed and sent (by regular mail) a letter to the acting director of the JAN Oil and Gas Administration requesting a meeting where the outstanding issues could be discussed and resolved.

The acting director of the JAN Oil and Gas Administration telephoned a representative of Madison, and in the course of the conversation, the Madison representative asked for the same types of information in advance of the meeting that had previously been requested from the JAN's lawyers, including: (i) copies of the notices of violation that the JAN Oil and Gas Administration had apparently issued with respect to the Leases/wells; (ii) copies of the shut down order issued by the JAN as well as the supporting documentation; (iii) a statement of the amount of the alleged underpaid Jicarilla taxes, with supporting documentation; (iv) a statement of the amount of the alleged underpaid Jicarilla royalties, with supporting documentation; and (v) a list of the actions that would have to be taken in order to cure any defaults under the Leases and thus facilitate the reopening of the Leases/wells. This request for documents was made in order that the meeting between Madison/Sagebrush and the JAN representatives could be a meaningful meeting where the issues could be addressed and solutions proposed and adopted. Several minutes after the end of the first conversation, the acting director of the Oil and Gas Administration called the Madison representative back and indicated that he could not talk with the Madison representative any further "on advice of counsel," and that any further conversations had to take place with the JAN's then-lawyers rather than with representatives of the JAN's Oil and Gas Administration.. This was a complete reversal of what Madison/Sagebrush's lawyers had been told by the JAN's then-lawyers only a week or so earlier. When the Madison/Sagebrush lawyers called the JAN's then-lawyers to try to resolve any problem, they were told that no one should call the JAN Oil and Gas Administration again on Madison/Sagebrush's behalf; and that when the JAN Oil and Gas Administration wanted to talk with Madison/Sagebrush representatives, Madison/Sagebrush would receive a letter from the Oil and Gas Administration. The JAN's then-lawyers also asked the lawyers for Madison/Sagebrush to stop calling them and "putting them in the middle."

Fearing that the JAN intended to ask the DOI to cancel or terminate the Leases, in February of 2008, Madison/Sagebrush contacted the Secretary of the Interior and other officials of the DOI and asked for the DOI's help in resolving the situation to the satisfaction of Madison/Sagebrush and the JAN. While Madison/Sagebrush were convinced that there was no factual basis for the JAN to make a cancellation or termination request or for the DOI to take action to cancel or terminate the Leases, nevertheless, Madison/Sagebrush had real concern that that was what was being contemplated. Of course, under the terms of the applicable statutes, regulations and the terms of the Leases themselves, only the DOI can take action to cancel/terminate the Leases, and such an action may be taken only under circumstances where a legitimate factual basis for such an action exists. In March of 2008, Madison/Sagebrush received

a responsive letter from Lawrence J. Jensen, Deputy Solicitor for the Department of the Interior, declining to get involved in the resolution of the outstanding issues with respect to the Leases/wells, but stating that there had been no request for cancellation or termination of the Leases and that such action was not being contemplated by the DOI.

In January of 2008, Madison/Sagebrush learned that the lawyers who had been representing the JAN had been replaced. Through intermediaries, Madison/Sagebrush made contact with the new lawyers[4] for the JAN to try to set up a meeting with the JAN and their new lawyers to address and resolve all of the outstanding issues so that the Leases/wells could be reopened and placed in production – to the benefit of both Madison/Sagebrush and the JAN. It was not until early May of 2008 that the new lawyers for the JAN offered Madison/Sagebrush a meeting to discuss the outstanding issues with members of the JAN's governing council at the new law firm's offices in Washington D.C. Despite the fact that there was almost no prior notice of the opportunity for this meeting, at significant time commitment and expense, representatives of Madison/Sagebrush (including their lawyers) traveled from Colorado to attend At the time, the meeting appeared to have been productive and to offer the opportunity for the positive resolution of the outstanding issues. At the conclusion of the May 5, 2008 meeting, one of the new lawyers for the JAN asked Madison/Sagebrush to prepare a title memorandum with respect to the ownership of the working interests/operating rights in the relevant tracts/depths in the Leases.

Lawyers for Madison/Sagebrush prepared the requested memorandum and provided it to the lawyers for the JAN on or about May 7, 2008. The JAN's lawyer who had requested the memorandum contacted the lawyer for Madison/Sagebrush who had prepared the title memorandum and requested a far more detailed title memorandum. Knowing the amount of time and money that would be required to prepare a comprehensive title memorandum for all of the interests in the Leases from inception to the current date, in mid-May of 2008, Madison/Sagebrush's lawyer prepared a memorandum for the JAN's lawyers setting out the known title information and seeking to find the point in the chain of title that all parties could agree upon as the reasonable starting point. In response to that memorandum, in late May or early June of 2008, the JAN's lawyer told the Madison/Sagebrush lawyer during a telephone conference that she and her firm's bankruptcy lawyers had looked at the title information provided by Madison/Sagebrush and the title information in the possession of the JAN and had concluded that the working interests/operating rights in the relevant tracts/depths in the Leases/wells were currently held by Platinum by virtue of the bankruptcy court's orders in the *Golden Oil* bankruptcy. From that point forward, all discussions concerning the actions necessary to place title to the working interests/operating rights in the relevant tracts/depths in the Leases/wells were based on the premise that those interests were held by Platinum.

[4] The new lawyers for the JAN were the law firm of Holland & Knight of Washington, D. C. The lead Holland & Knight lawyer was Shenan R. Atcitty, Esq.

Once the parties had agreed that title to the working interests/operating rights in the relevant tracts/depths in the Leases/wells were currently held by Platinum, lawyers for Madison/Sagebrush had a series of conversations in which they attempted to establish the manner in which Platinum could assign its interests to Sagebrush. Neither Platinum nor Sagebrush was willing to sign assignments that would have revived liabilities that had been discharged in the *Golden Oil* bankruptcy. As a result, the appropriate JAN assignment forms would have to be modified to take into account the effect of the discharge in the *Golden Oil* bankruptcy. In addition, the JAN had shut down the Leases/wells in the late fall of 2007, and Sagebrush needed to know the reasons for the closure so that it could design a plan for resolving any defaults under the Leases and reopen the Leases/wells so that production could be reestablished.

The JAN's lawyers took the position that only the JAN's Oil and Gas Administration personnel and Revenue Department personnel could provide a list of the defaults that needed to be addressed from the JAN's perspective, and it was weeks before the JAN's lawyers provided a list of areas of concern to Madison/Sagebrush. At this point (in July of 2008), lawyers for Madison/Sagebrush had lengthy telephone conversations with the JAN lawyers and personnel from the JAN's Oil and Gas Administration and Revenue Department in order to try to clearly identify the Lease defaults that Sagebrush would need to address before the Leases/wells could be reopened. However, it was difficult to get the JAN's representatives to specifically identify the issues, and this process dragged on, with the JAN's lawyers requesting additional information from Madison/Sagebrush. Despite the time and cost that it took to locate this information and put it into a usable form for the JAN's lawyers, Madison/Sagebrush complied with these requests.

It was now mid-summer of 2008, the price of oil was at an all time high, there was no prospect of speedy resolution of the outstanding issues in sight (in fact, the outstanding issues had still not been clearly identified), and the end of the 2008 drilling season was less than two months away. Despite the record high oil prices, there was no production from the tracts/depths in the Leases/wells and neither Madison/Sagebrush nor the JAN was reaping any benefit from the Leases/wells. In addition, Madison/.Sagebrush was very worried that the continued shut-in status of Leases would affect the long-term viability of the wells located thereon. All of these concerns were conveyed to and discussed with the JAN's lawyers, and it was at this point that Madison/Sagebrush reluctantly suggested that Sagebrush and the JAN enter into an agreement that would have Sagebrush named as the operator of the relevant tracts/depths in the Leases/wells with the right to reopen the Leases/wells and reestablish production while the JAN

and Sagebrush continued to identify and work through the outstanding issues and reduce the agreements between Sagebrush and the JAN to writing.[5] The JAN's lawyers were amenable to this approach and at great expense, Madison/Sagebrush prepared and presented a draft of the MOU to the JAN's lawyers. There were discussions between the JAN's lawyers and lawyers for Madison/Sagebrush, and Madison/Sagebrush's lawyers then redrafted the MOU to meet concerns raised by the JAN's lawyers – at great additional expense. After the redrafted MOU was presented to the JAN's lawyers, the JAN's governing council passed a resolution authorizing its lawyers to negotiate and conclude an agreement with Sagebrush to resolve all of the outstanding issues, including resolving ownership of the working interests/operating rights in the Leases/wells,[6] and allow Sagebrush to reopen and operate the relevant tracts/depths in the Leases/wells and reestablish production for the benefit of all parties. However, the lawyers for the JAN indicated to Madison/Sagebrush that they were going to redraft the proposed MOU and would have a new draft for Madison/Sagebrush's review in short order.

The JAN's promised draft of the agreement between the JAN and Sagebrush was not forthcoming, however, and in September of 2008 – at the end of the 2008 drilling season and after many additional requests -- Madison/Sagebrush was finally offered another opportunity to talk with the JAN's governing council to try to expedite the process. Again, this meeting (in Albuquerque, New Mexico) was offered on short notice. Nevertheless representatives of Madison/Sagebrush made the trip at significant expense. Despite the fact that Madison/Sagebrush had been promised the JAN's draft of the MOU in advance of the Albuquerque meeting (with the goal of making the discussions more productive), this did not happen. Once at the meeting, the representatives of Madison/Sagebrush were offered very little time to talk with the JAN's governing council, and were told that the JAN's draft of the proposed agreement was not yet completed, but would be finished in the near term. In other words, there was no opportunity for meaningful communication with the JAN's governing council or its lawyers, and the meeting was essentially useless. Despite this, Madison/Sagebrush continued to request to be provided with the promised new version of the agreement from the JAN's lawyers and to ask what could be done to expedite the process.

Finally, in November of 2008, Madison/Sagebrush received a copy of the version of the agreement prepared by the JAN's lawyers; but this draft of the agreement (clearly denominated as a draft) still contained many blanks and made numerous cross-references to exhibits that were

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[5] This interim agreement was to be denominated as a memorandum of understanding ("MOU") between the parties. The use of an MOU approach represented a real investment risk for Sagebrush, but was a no-risk proposition for the JAN. After execution of the MOU, Sagebrush would have invested large amounts of capital to reopen the Leases and rework the existing wells. However, if at any point the JAN was not satisfied with the negotiations for a final agreement between the parties, it could simply shut down the Leases/wells once again, without contractual recourse by Sagebrush.

[6] The JAN resolution identified Platinum as the holder of the working interests/operating rights in the relevant tracts/depths in the Leases/wells.

critical to the agreement's meaning. Despite many requests by Madison/Sagebrush, these exhibits were never provided, and so, the draft of the agreement prepared by the JAN's lawyers could not be reviewed, evaluated or further negotiated, and was in effect useless. The Jan's version of the agreement did, however, cite Platinum as the holder of the working interests/operating rights in the relevant tracts/depths in the Leases/wells.

Madison/Sagebrush subsequently decided that Sagebrush would acquire Platinum as a means of cutting through and resolving the outstanding title issues with respect to ownership of the working interests/operating rights in the relevant tracts/depths in the Leases/wells, issues that after more than a year of trying (at enormous cost) seemed incapable of resolution with the JAN. Based on its independent research and contentions by the JAN and its lawyers, Madison/Sagebrush's thought was that once it owned Platinum – the entity that the JAN's lawyers agreed held the working interest/operating rights in the relevant tracts/depths in the Leases/wells – any defaults under the Leases would be fairly easy to resolve and there would be no need to continue the torturous process of trying to establish an acceptable process of getting ownership out of Platinum and into Sagebrush. To this end, in February of 2009, Sagebrush acquired Platinum. Platinum then applied for a permit to conduct oil and gas operations on the relevant tracts/depths in the Leases/wells. As part of its application for operating permits for the Leases/wells, Platinum paid the required application fees and demonstrated that the bond that had been posted previously was in full force and effect. The JAN did not respond to Platinum's permit application.

Rather than making a resolution of the remaining issues between Madison/Sagebrush and the JAN easier, however, Sagebrush's acquisition of Platinum seems to have made the JAN's lawyers very angry, and from that point forward they refused to discuss the outstanding issues with Platinum, Sagebrush or their lawyers. After spending nearly a month trying to explain to the JAN's lawyers that Sagebrush's acquisition of Platinum should make the resolution of the situation easier for everyone, and asking that negotiations of the remaining issues resume immediately so that they could be resolved before commencement of the 2009 drilling season (and being rebuffed), Platinum, as the owner of the working interests/operating rights in the relevant tracts/depths in the Leases/wells took the only remaining course of action open to it – it filed for Chapter 11 bankruptcy, asking the court to authorize Platinum's formal assumption of Lease Nos. 71 and 363, and to determine that either (i) no defaults exist with respect to Lease Nos. 71 and 363 or (ii) if any defaults exist, the requirements to cure such defaults and an opportunity to cure them.

Since Platinum's bankruptcy case was filed in March of 2009, lawyers for the JAN and constituent agencies of the DOI (including the BIA and the MMS) have tried to thwart Platinum's effort to assume the Leases and cure the existing defaults, if any. In fact, lawyers for the JAN have gone so far as to deny that Platinum holds the working interests/operating rights in the relevant tracts/depths in the Leases/ wells – a position that defies logic since prior to Sagebrush's acquisition of Platinum (and even in the early stages of the Platinum bankruptcy

case), the JAN and its lawyers had taken the position that Platinum held those interests. Almost a year after Platinum filed its Chapter 11 bankruptcy action, another drilling season (2009) has been lost; and given the slow process of the Platinum bankruptcy litigation, the 2010 drilling season is now in jeopardy. The Leases/wells have been shut down since the late fall of 2007 – meaning that costs to restart operations continue to escalate and the JAN and Sagebrush/Platinum have already been deprived of what would have been a significant income stream for more than two years, and there is no end in sight.

REQUEST FOR ADMINISTRATIVE INTERVENTION/ADMINISTRATIVE MEDIATION OF ISSUES

We are hereby requesting that the Department of the Interior, exercising its authority as the trustee of the tribal lands that are subject to the Leases and its authority as the department in the executive branch of the United States government empowered to issue oil and gas leases on tribal lands and regulate the operation of such leases, involve itself in the current conflict and conduct meetings with the JAN, the BIA, the MMS, the BLM and Sagebrush and Platinum with the goals of confirming ownership of the working interests/operating rights in the relevant tracts/depths in the Leases/wells in Platinum, and of identifying and resolving all issues between and among the parties so that Lease Nos. 71 and 363 can be reopened, production can be reestablished, and operations can be conducted in accordance with all applicable statutes and regulations.

We would appreciate hearing from you at your earliest opportunity.

Very truly yours,

M. Julia Hook
Of Counsel

MJH:jll

cc: Ms. Constance L. Rogers
Deputy Solicitor for Energy and Mineral Resources
United States Department of the Interior
1849 "C" Street, N.W.
Washington, D.C. 20240

Roger G. Jones, Esq.
Bradley Arant Boult Cummings LLP
1600 Division Street, Suite 700
Nashville, Tennessee 37203

LESSEE'S COPY

Jicarilla Tribal

CONTRACT NO. 363

Form 5-157
(July 1954)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

OIL AND GAS MINING LEASE—TRIBAL INDIAN LANDS

THIS INDENTURE OF LEASE, made and entered into in quintuplicate this 18th day of April, 1966, by and between The Jicarilla Apache Tribe of the Jicarilla Indian Reservation

of Dulce, State of New Mexico, for and on behalf of the Jicarilla Apache Tribe of Indians, lessor, and

Pan American Petroleum Corporation
Security Life Building

of Denver, State of Colorado 80202, lessee, WITNESSETH:

1. Lessor, in consideration of a cash bonus of $ 5,147.20, paid to the payee designated by the Area Director, receipt of which is hereby acknowledged and in consideration of rents and royalties to be paid, and the covenants to be observed as herein set forth, does hereby grant and lease to the lessee the exclusive right and privilege to drill for, mine, extract, remove, and dispose of all the oil and natural gas deposits including helium gas, carbon dioxide gas, and sulphur gas in or under the following-described tracts of land situated in the county of Rio Arriba, State of New Mexico, and more particularly described as follows:

Tract No. 6 - T. 24 N., R. 4 W., N.M.P.M. (Unsurveyed)
Sections 13, 15, 21 and 22 All

Tract No. 6 is unsurveyed and the tract will be described as shown when surveyed.

containing 2,560.00 acres more or less, together with the right to construct and maintain thereupon all works, buildings, plants, waterways, roads, telegraph and telephone lines, pipe lines, reservoirs, tanks, pumping stations, or other structures necessary to the full enjoyment hereof for the term of 10 years from and after the approval hereof by the Secretary of the Interior and as much longer thereafter as oil and/or gas is produced in paying quantities from said land.

2. The term "oil and gas supervisor" as employed herein shall refer to such officer or officers as the Secretary of the Interior may designate to supervise oil and gas operations on Indian lands. The term "superintendent" as used herein shall refer to the superintendent or other official in charge of the Indian Agency having jurisdiction over the lands leased. Helium gas, carbon dioxide gas, sulphur gas, and all other natural gases are included under the term "gas" as used in this lease.

3. In consideration of the foregoing, the lessee hereby agrees:

(a) *Bond.*—To furnish such bond as may be required by the regulations of the Secretary of the Interior, with satisfactory surety, or United States bonds as surety therefor, conditioned upon compliance with the terms of this lease.

(b) *Wells.*—(1) To drill and produce all wells necessary to offset or protect the leased land from drainage or in lieu thereof, to compensate the lessor in full each month for the estimated loss of royalty through drainage: *Provided*, That during the period of supervision by the Secretary of the Interior, the necessity for offset wells shall be determined by the oil and gas supervisor and payment in lieu of drilling and production shall be with the consent of, and in an amount determined

(1)

JAN00571

EXHIBIT
B

by the Secretary of the Interior; (2) at the election of the lessee to drill and produce other wells: *Provided*, That the right to drill and produce such other wells shall be subject to any system of well spacing or production allotments authorized and approved under applicable law or regulations, approved by the Secretary of the Interior and affecting the field or area in which the leased lands are situated; and (3) if the lessee elects not to drill and produce such other wells for any period the Secretary of the Interior may, within 10 days after due notice in writing, either require the drilling and production of such wells to the number necessary, in his opinion, to insure reasonable diligence in the development and operation of the property, or may in lieu of such additional diligent drilling and production require the payment on and after the first anniversary date of this lease of not to exceed $1 per acre per annum, which sum shall be in addition to any rental or royalty hereinafter specified.

(c) **Rental and royalty.**—To pay, beginning with the date of approval of the lease by the Secretary of the Interior or his duly authorized representative, a rental of $1.25 per acre per annum in advance during the continuance hereof, the rental so paid for any one year to be credited on the royalty for that year, together with a royalty of 16⅔ percent of the value or amount of all oil, gas, and/or natural gasoline, and/or all other hydrocarbon substances produced and saved from the land leased herein, save and except oil, and/or gas used by the lessee for development and operation purposes on said lease, which oil or gas shall be royalty free. During the period of supervision, "value" for the purposes hereof may, in the discretion of the Secretary, be calculated on the basis of the highest price paid or offered (whether calculated on the basis of short or actual volume) at the time of production for the major portion of the oil of the same gravity, and gas, and/or natural gasoline, and/or all other hydrocarbon substances produced and sold from the field where the leased lands are situated, and the actual volume of the marketable product less the content of foreign substances as determined by the oil and gas supervisor. The actual amount realized by the lessee from the sale of said products may, in the discretion of the Secretary, be deemed mere evidence of, or conclusive evidence of such value. When paid in value, such royalties shall be due and payable monthly on the last day of the calendar month following the calendar month in which produced; when royalty on oil produced is paid in kind, such royalty oil shall be delivered in tanks provided by the lessee on the premises where produced without cost to the lessor unless otherwise agreed to by the parties thereto, at such time as may be required by the lessor: *Provided*, That the lessee shall not be required to hold such royalty oil in storage longer than 30 days after the end of the calendar month in which said oil is produced: *And provided further*, That the lessee shall be in no manner responsible or held liable for loss or destruction of such oil in storage caused by acts of God. All rental and royalty payments, except as provided in section 4 (c) shall be made by check or draft drawn on a solvent bank, open for the transaction of business on the day the check or draft is issued, to the payee designated by the Area Director. All such rental and royalty payments shall be mailed to the oil and gas supervisor for transmittal to the payee designated by the Area Director. It is understood that in determining the value for royalty purposes of products, such as natural gasoline, that are derived from treatment of gas, a reasonable allowance for the cost of manufacture shall be made, such allowance to be two-thirds of the value of the marketable product unless otherwise determined by the Secretary of the Interior on application of the lessee or on his own initiative, and that royalty will be computed on the value of gas or casinghead gas, or on the products thereof (such as residue gas, natural gasoline, propane, butane, etc.), whichever is the greater.

(d) **Monthly statements.**—To furnish to the oil and gas supervisor monthly statements in detail in such form as may be prescribed by the Secretary of the Interior, showing the amount, quality, and value of all oil, gas, natural gasoline, or other hydrocarbon substances produced and saved during the preceding calendar month as a basis upon which to compute, for the treasurer of said tribe or the superintendent, the royalty due the lessor. The leased premises and all wells, producing operations, improvements, machinery, and fixtures thereon and connected therewith and all books and accounts of the lessee shall be open at all times for the inspection of any duly authorized representative of the Secretary of the Interior.

(e) **Log of well.**—To keep a log in the form prescribed by the Secretary of the Interior of all the wells drilled by the lessee showing the strata and character of the formations passed through by the drill, which log or a copy thereof shall be furnished to the oil and gas supervisor.

(f) **Diligence, prevention of waste.**—To exercise reasonable diligence in drilling and operating wells for oil and gas on the lands covered hereby, while such products can be secured in paying quantities; to carry on all operations hereunder in a good and workmanlike manner in accordance with approved methods and practice, having due regard for the prevention of waste of oil or gas developed on the land, or the entrance of water through wells drilled by the lessee to the productive sands or oil or gas-bearing strata to the destruction or injury of the oil or gas deposits, the preservation and conservation of the property for future productive operations, and to the health and safety of workmen and employees; to plug securely all wells before abandoning the same and to effectually shut off all water from the oil or gas-bearing strata; not to drill any well within 200 feet of any house or barn now on the premises without the lessor's written consent; to carry out at the expense of the lessee all reasonable orders and requirements of the oil and gas supervisor relative to prevention of waste, and preservation of the property and the health and safety of workmen; to bury all pipe lines crossing tillable lands below plow depth unless other arrangements therefor are made with the superintendent; to pay the lessor all damages to crops, buildings, and other improvements of the lessor occasioned by the lessee's operations: *Provided*, That the lessee shall not be held responsible for delays or casualties occasioned by causes beyond the lessee's control.

(g) **Regulations.**—To abide by and conform to any and all regulations of the Secretary of the Interior now or hereafter in force relative to such leases, including 30 CFR 221: *Provided*, That no regulation hereafter approved shall effect a change in rate of royalty or annual rental herein specified without the written consent of the parties to this lease.

(h) **Assignment of lease.**—Not to assign this lease or any interest therein by an operating agreement or otherwise nor to sublet any portion of the leased premises before restrictions are removed, except with the approval of the Secretary of the Interior. If this lease is divided by the assignment of an entire interest in any part of it, each part shall be considered a separate lease under all the terms and conditions of the original lease.

JAN00572

4. The lessor expressly reserves:

(a) Disposition of surface.—The right to lease, sell, or otherwise dispose of the surface of the lands embraced within this lease under existing law or laws hereafter enacted, such disposition to be subject at all times to the right of the lessee herein to the use of so much of said surface as is necessary in the extraction and removal of the oil and gas from the land herein described.

(b) Use of gas.—The right to use sufficient gas free of charge for any school or other buildings belonging to the tribe on said lands by making connection at its own expense with the well or wells thereon, the use of such gas to be at the lessor's risk at all times.

(c) Royalty in kind.—The right to elect on 30 days' written notice to take lessor's royalty in kind.

5. Surrender and termination.—The lessee shall have the right at any time during the term hereof to surrender and terminate this lease or any part thereof upon the payment of the sum of one dollar and all rentals, royalties, and other obligations due and payable to the lessor; and in the event restrictions have not been removed, upon a showing satisfactory to the Secretary of the Interior that full provision has been made for conservation and protection of the property and the proper abandonment of all wells drilled on the portion of the lease surrendered, the lease to continue in full force and effect as to the lands not so surrendered. If this lease has been recorded lessee shall file a recorded release with his application to the superintendent for termination of this lease.

6. Cancellation and forfeiture.—When, in the opinion of the Secretary of the Interior and the Tribal Council, there has been a violation of any of the terms and conditions of this lease, the Secretary of the Interior shall have the right at any time after 30 days' notice to the lessee, specifying the terms and conditions violated, and after a hearing, if the lessee shall so request within 30 days of receipt of notice, to declare this lease null and void, and the lessor shall then be entitled and authorized to take immediate possession of the land: *Provided*, That after restrictions are removed the lessor shall have and be entitled to any available remedy in law or equity for breach of this contract by the lessee.

7. Removal of buildings, improvements, and equipment.—Lessee shall be the owner of and shall have the right to remove from the leased premises, within 90 days after termination of this lease, any and all buildings, structures, casing, material, and/or equipment placed thereon for the purpose of development and operation hereunder, save and except casing in wells and other material, equipment, and structures necessary for the continued operation of wells producing or capable of being produced in paying quantities as determined by the Secretary of the Interior, on said leased land at the time of surrender of this lease or termination thereof; and except as otherwise provided herein, all casing in wells, material, structures, and equipment shall be and become the property of the lessor.

8. Drilling and producing restrictions.—It is covenanted and agreed that the Secretary of the Interior may impose restrictions as to time or times for the drilling of wells and as to the production from any well or wells drilled when in his judgment such action may be necessary or proper for the protection of the natural resources of the leased land and the interests of the Indian lessor, and in the exercise of his judgment the Secretary may take into consideration, among other things, Federal laws, State laws, or regulations by competent Federal or State authorities or lawful agreements among operators regulating either drilling or production, or both.

9. Unit operation.—The parties hereto agree to subscribe to and abide by any agreement for the cooperative or unit development of the field or area, affecting the leased lands, or any pool thereof, if and when collectively adopted by a majority operating interest therein and approved by the Secretary of the Interior, during the period of supervision.

10. Conservation.—The lessee in consideration of the rights herein granted agrees to abide by the provisions of any act of Congress, or any order or regulation prescribed pursuant thereto, relating to the conservation, production, or marketing of oil, gas, or other hydrocarbon substances.

11. Heirs and successors in interest.—It is further covenanted and agreed that each obligation hereunder shall extend to and be binding upon, and every benefit hereof shall inure to, the heirs, executors, administrators, successors of, or assigns of the respective parties hereto.

12. No lease, assignment thereof, or interest therein, will be approved to any employee or employees of the United States Government whether connected with the Indian Service or otherwise and no employee of the Interior Department shall be permitted to acquire any interest in any mineral lease covering restricted Indian lands by ownership of stock in corporations having such leases or in any other manner.

13. The attached Special Stipulations in one page and the Forest and Land Protection Stipulations in one page are hereby made a part of this lease.

5

IN WITNESS WHEREOF, the said parties have hereunto subscribed their names and affixed their seals on the day and year first above mentioned:

THE JICARILLA APACHE TRIBE OF THE JICARILLA RESERVATION, NEW MEXICO

Charlie Vigil [SEAL]
Chairman, Jicarilla Tribal Council

ATTEST:
Lucy Martinez [SEAL]
Secretary, Jicarilla Tribal Council

Two witnesses to execution by lessor:

Tom Hadley
P. O. Dulce, New Mexico

Frutoso M. Gonzales
P. O. Dulce, New Mexico

PAN AMERICAN PETROLEUM CORPORATION

By: J. Yancey [SEAL]
Its Attorney in Fact

Title:

Two witnesses to execution by lessee:

H. E. Bohn
P. O. Denver, Colorado

Enid V. Fowling
P. O. Security Life Bldg, Denver, Colorado

Attest: T. J. Files
T. J. FILES
Assistant Secretary

ACKNOWLEDGMENT OF LESSOR

STATE OF New Mexico }
COUNTY OF Rio Arriba } ss:

Before me, a notary public, on this 18th day of April 19 66, personally appeared Charlie Vigil, Chairman of the Jicarilla Apache Tribal Council to me known to be the identical person who executed the within and foregoing lease, and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth.

My commission expires 4-21-69

Notary Public

APPROVED:

DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
MAY 18 1966
, 19

/S/ MELVIN HELANDER
ASSISTANT Area Director.

U.S. GOVERNMENT PRINTING OFFICE : 1966—O-743-232

JAN00574

FOREST AND LAND PROTECTION STIPULATIONS

The land embraced in this lease issued under the Act of May 11, 1938 (52 Stat. 347,) as amended, being within the Jicarilla Indian Reservation, the lessee hereby agrees:

(1) Protection of Property. To conduct all operations authorized by this lease with due regard for good land management; to avoid unnecessary damage to vegetation, timber, crops or other cover, and to improvements (such as roads, bridges, cattle-guards, fences, telephone lines, etc.); whenever practicable, to control soil erosion resulting from the operation; to prevent pollution of soil and water resources; and whenever required by the Superintendent or his authorized representative, to fence all sump holes or other excavation made by lessee.

(2) Reimbursement for Damage. To pay the lessor or his tenant, as the case may be, for any and all damage to or distruction of property caused by lessee's operation hereunder; to save and hold the lessor harmless from all damage or claims for damage to persons or property resulting from the lessee's operations under this lease; to hold lessor, the leased land and all materials, tools, machinery appliances, structures, improvements, and equipment of whatsoever kind or nature, placed in or upon the leased land by the lessee or at his direction, harmless from all claims or liens of third parties by reasons of any act of commission or omission on the part of the lessee; and where the surface of the leased land is owned by other than the lessor, to pay such owner, or his tenant, as the case may be, for damage or injury to livestock, crops, trees, pipelines, buildings and other improvements on the leased land.

(3) Roads. Lessee may use existing Reservation roads and share in the maintenance of such roads used, and lessee shall have the privilege of constructing and maintaining at its own expense any additional roads to obtain access to its leasehold operations; Provided, that prior to construction, definite location of such new access road is approved by the Superintendent or his authorized representative. No part of any such road or roads shall inure to the benefit of the public and the public shall obtain no rights thereon, but upon termination of this lease for any cause whatsoever or if at any time it shall become unnecessary for lessee to use any such road for conducting the operations authorized under this lease, the right to use said road or roads shall thereupon cease and all the rights shall revest in lessor in accordance with law. The lessee shall hold the lessor harmless and indemnify them against any and all loss or damage that might result from the construction or maintenance by lessee of said roads in a negligent manner.

(4) Water. Water for use in drilling operations shall not be obtained from Indian water wells, tanks, springs, stock water reservoirs and lakes on the Jicarilla Indian Reservation without prior permission from the Superintendent or his authorized representative. Lessee shall have the right at his own expense, to drill and equip water wells on leased premises and agrees on termination of drilling operations on leasehold, to leave all water producing wells intact and properly cased. If any of said wells shall produce water surplus to the needs of the lessee said water shall be made available to members of the lessor.

(5) Timber. Not to cut or destroy timber owned by the lessor without first obtaining permission from the Superintendent or his authorized representative, and to pay for all merchantable timber cut or destroyed at rates prescribed by such officer.

(6) Fire Prevention and Supression. (a) To do all in his power to prevent and suppress forest, brush, or grass fires on the leased land and in its vicinity, and to require his employees, contractors, subcontractors, and employees of contractors or subcontractors to do likewise. Unless prevented by circumstances over which he has no control, the lessee shall place his employees, contractors, subcontractors, and employees of contractors and subcontractors employed on the leased land at the disposal of any authorized forest officer for the purpose of fighting forest, brush, or grass fires, with the understanding that payment for such services shall be made at rates to be determined by the authorized officer, which rates shall not be less than the current rates of pay prevailing in the vicinity for services of a similar character: Provided, that if the lessee, his employees, contractors, subcontractors, or employees of contractors or subcontractors, caused or could have prevented the origin or spread of the said fire or fires, no payment shall be made for services so rendered.

(b) The lessee shall build or construct fire lines or do such clearing around its well locations as the Superintendent or his authorized representative decides is necessary for forest, brush, and grass fire prevention, and shall maintain such fire tools at such locations as are deemed necessary by such officer.

(7) Location of Camp Site. If lessee shall construct any camp on the land within the Jicarilla Indian Reservation, such camp shall be located at the place approved by the Superintendent or his authorized representative, and such officer shall have authority to require that such camp be kept in a neat and sanitary condition, and upon removal of camp, all rubbish shall be removed or buried.

The foregoing stipulations are hereby acknowledged and made a part of oil and gas lease Contract No. 363

dated APR 18 1966

Lessor: C. V. (Initial)

Lessee: PAN AMERICAN PETROLEUM CORPORATION

By: [signature]

Title: Its Attorney in Fact

3

JAN00575

SPECIAL STIPULATIONS

1. The acreage herein stated is for the sole purpose of computing the annual rental. If a survey of the land is made acceptable to the Commissioner of Indian Affairs or his authorized representative, thereafter, the rental shall be computed on the acreage as shown by the survey. No refund or additional payment of past rental shall be required to be made because of the difference in the acreage stated and that shown by the survey. Neither shall such a difference in acreage be grounds for any adjustment of the bonus. Prior to the Commencement of the drilling of a well the lessee shall have the leased premises surveyed by a registered land surveyor, boundaries posted with substantial monuments, and a tie established with the nearest United States Public Land Survey. Certified copies of the survey plats must be filed in duplicate with the Superintendent, and in duplicate with the Supervisor, U. S. Geological Survey. Failure to comply with this provision will render the lease subject to cancellation in the discretion of the Commissioner of Indian Affairs. Permission to drill will not be granted by the Supervisor prior to receipt of certified copy of survey plat. (If lands are already surveyed the foregoing requirement does not apply.)

2. If so required by the Commissioner or his authorized representative, the lessee shall condition under the direction of the Supervisor of the U. S. Geological Survey, any well drilled, which do not produce oil or gas in paying quantities as determined by said Supervisor, but which are capable of producing water satisfactory for domestic, agricultural or livestock use by the lessor. Adjustment of cost for conditioning of the wells and for value of casing and equipment left in or on the well will be made in said cases where it is determined that the well will produce water satisfactory as aforesaid.

3. Jicarilla Apache grazing rights to the surface of any lands so leased shall be protected, and Jicarilla Apache rights respecting the use of water shall be unimpaired.

4. Jicarilla Apaches shall be employed in such mining, drilling, exploration and development operations to the fullest extent that their qualifications and the law permits, and every reasonable effort will be made to train Jicarilla Apaches in the skills and abilities required in such operation to the end that they may be employed in such skilled positions as they become qualified therefore.

5. The lessee shall furnish to the Jicarilla Indian Agency; Attention: Branch of Real Property Management, Dulce, New Mexico; copies of all reports made to the U. S. Geological Survey as required by Sections 221.58 and 221.59, Title 30, C. F. R. at the time such reports are required to be made to the U. S. Geological Survey.

6. Lessee will be required to execute Forest and Land Protection Stipulations as a part of this lease. Copy attached.

The foregoing special stipulations are hereby acknowledged and made a part of Jicarilla Tribal Oil and Gas lease Contract No. 363 executed on APR 18 1966, 19____, covering tribal land Tract No. Six.

Lessee PAN AMERICAN PETROLEUM CORPORATION

Lessor C. V. (Initial)

By: [signature]

Title: Its Attorney in Fact

JAN00576

UNITED STATES

DEPARTMENT OF THE INTERIOR

BUREAU OF INDIAN AFFAIRS

OIL AND GAS MINING LEASE—TRIBAL INDIAN LANDS

MAR 20 1951

4232

Washington, D.C.

JAN00045

(b) Wells.—(1) To drill and produce all wells necessary to offset or protect the leased land from drainage by wells on adjoining lands not the property of the lessor, or in lieu thereof, to compensate the lessor in full each month for the estimated loss of royalty through drainage: *Provided*, That during the period of supervision by the Secretary of the Interior, the necessity for offset wells shall be determined by the oil and gas supervisor and payment in lieu of drilling and production shall be with the consent of, and in an amount determined by the Secretary of the Interior; (2) at the election of the lessee to drill and produce other wells: *Provided*, That the right to drill and produce such other wells shall be subject to any system of well spacing or production allotments authorized and approved under applicable law or regulations, approved by the Secretary of the Interior and affecting the field or area in which the leased lands are situated; and (3) if the lessee elects not to drill and produce such other wells for any period the Secretary of the Interior may, within 10 days after due notice in writing, either require the drilling and production of such wells to the number necessary, in his opinion, to insure reasonable diligence in the development and operation of the property, or may in lieu of such additional diligent drilling and production require the payment on and after the first anniversary date of this lease of not to exceed $1 per acre per annum, which sum shall be in addition to any rental or royalty hereinafter specified.

(c) Rental and royalty.—To pay, beginning with the date of approval of the lease by the Secretary of the Interior or his duly authorized representative, a rental of $1.25 per acre per annum in advance during the continuance hereof, the rental so paid for any one year to be credited on the royalty for that year, together with a royalty of 12½ percent of the value or amount of all oil, gas, and/or natural gasoline, and/or all other hydrocarbon substances produced and saved from the land leased herein, save and except oil, and/or gas used by the lessee for development and operation purposes on said lease, which oil or gas shall be royalty free. During the period of supervision, "value" for the purposes hereof may, in the discretion of the Secretary, be calculated on the basis of the highest price paid or offered (whether calculated on the basis of short or actual volume) at the time of production for the major portion of the oil of the same gravity, and gas, and/or natural gasoline, and/or all other hydrocarbon substances produced and sold from the field where the leased lands are situated, and the actual volume of the marketable product less the content of foreign substances as determined by the oil and gas supervisor. The actual amount realized by the lessee from the sale of said products may, in the discretion of the Secretary, be deemed mere evidence of or conclusive evidence of such value. When paid in value, such royalties shall be due and payable monthly on the last day of the calendar month following the calendar month in which produced. When royalty on oil produced is paid in kind, such royalty oil shall be delivered in tanks provided by the lessee on the premises where produced without cost to the lessor unless otherwise agreed to by the parties thereto, at such time as may be required by the lessor: *Provided*, That the lessee shall not be required to hold such royalty oil in storage longer than 30 days after the end of the calendar month in which said oil is produced: *And provided further*, That the lessee shall be in no manner responsible or held liable for loss or destruction of such oil in storage caused by acts of God. All rental and royalty payments, except as provided in section 4 (c) shall be made by check or draft drawn on a solvent bank, open for the transaction of business on the day the check or draft is issued, to the order of the treasurer of said tribe* or the superintendent. All such rental and royalty payments shall be mailed to the oil and gas supervisor for transmittal to the treasurer of said tribe or to the superintendent. It is understood that in determining the value for royalty purposes of products, such as natural gasoline, that are derived from treatment of gas, a reasonable allowance for the cost of manufacture shall be made, such allowance to be two-thirds of the value of the marketable product unless otherwise determined by the Secretary of the Interior on application of the lessee or on his own initiative, and that royalty will be computed on the value of gas or casinghead gas, or on the products thereof (such as residue gas, natural gasoline, propane, butane, etc.), whichever is the greater.

(d) Monthly statements.—To furnish to the oil and gas supervisor monthly statements in detail in such form as may be prescribed by the Secretary of the Interior, showing the amount, quality, and value of all oil, gas, natural gasoline, or other hydrocarbon substances produced and saved during the preceding calendar month as a basis upon which to compute, for the treasurer of said tribe or the superintendent, the royalty due the lessor. The leased premises and all wells, producing operations, improvements, machinery, and fixtures thereon and connected therewith and all books and accounts of the lessee shall be open at all times for the inspection of any duly authorized representative of the Secretary of the Interior.

(e) Log of well.—To keep a log in the form prescribed by the Secretary of the Interior of all the wells drilled by the lessee showing the strata and character of the formations passed through by the drill, which log or a copy thereof shall be furnished to the oil and gas supervisor.

(f) Diligence, prevention of waste.—To exercise reasonable diligence in drilling and operating wells for oil and gas on the lands covered hereby, while such products can be secured in paying quantities; to carry on all operations hereunder in a good and workmanlike manner in accordance with approved methods and practice, having due regard for the prevention of waste of oil or gas developed on the land, or the entrance of water through wells drilled by the lessee to the productive sands or oil or gas-bearing strata to the destruction or injury of the oil or gas deposits, the preservation and conservation of the property for future productive operations, and to the health and safety of workmen and employees; to plug securely all wells before abandoning the same and to effectually shut off all water from the oil or gas-bearing strata; not to drill any well within 200 feet of any house or barn now on the premises without the lessor's written consent; to carry out at the expense of the lessee all reasonable orders and requirements of the oil and gas supervisor relative to prevention of waste, and preservation of the property and the health and safety of workmen; to bury all pipe lines crossing tillable lands below plow depth unless other arrangements therefor are made with the superintendent; to pay the lessor all damages to crops, buildings, and other improvements of the lessor occasioned by the lessee's operations: *Provided*, That the lessee shall not be held responsible for delays or casualties occasioned by causes beyond the lessee's control.

(g) Regulations.—To abide by and conform to any and all regulations of the Secretary of the Interior now or hereafter in force relative to such leases: *Provided*, That no regulation hereafter approved shall effect a change in rate of royalty or annual rental herein specified without the written consent of the parties to this lease. 3

*All payments under this lease shall be made to the superintendent where the tribe affected is not organized under the act of June 18, 1934 (48 Stat. 984).

10—9612

JAN00046

(h) Assignment of lease.—Not to assign this lease or any interest therein by an operating agreement or otherwise nor to sublet any portion of the leased premises before restrictions are removed, except with the approval of the Secretary of the Interior. If this lease is divided by the assignment of an entire interest in any part of it, each part shall be considered a separate lease under all the terms and conditions of the original lease.

4. The lessor expressly reserves:

(a) Disposition of surface.—The right to lease, sell, or otherwise dispose of the surface of the lands embraced within this lease under existing law or laws hereafter enacted, such disposition to be subject at all times to the right of the lessee herein to the use of so much of said surface as is necessary in the extraction and removal of the oil and gas from the land herein described.

(b) Use of gas.—The right to use sufficient gas free of charge for any school or other buildings belonging to the tribe on said lands by making connection at its own expense with the well or wells thereon, the use of such gas to be at the lessor's risk at all times.

(c) Royalty in kind.—The right to elect on 30 days' written notice to take lessor's royalty in kind.

5. Surrender and termination.—The lessee shall have the right at any time during the term hereof to surrender and terminate this lease or any part thereof upon the payment of the sum of one dollar and all rentals, royalties, and other obligations due and payable to the lessor; and in the event restrictions have not been removed, upon a showing satisfactory to the Secretary of the Interior that full provision has been made for conservation and protection of the property and the proper abandonment of all wells drilled on the portion of the lease surrendered, the lease to continue in full force and effect as to the lands not so surrendered. If this lease has been recorded lessee shall file a recorded release with his application to the superintendent for termination of this lease.

6. Cancelation and forfeiture.—When, in the opinion of the Secretary of the Interior and the Tribal Council, there has been a violation of any of the terms and conditions of this lease, the Secretary of the Interior shall have the right at any time after 30 days notice to the lessee, specifying the terms and conditions violated, and after a hearing, if the lessee shall so request within 30 days of receipt of notice, to declare this lease null and void, and the lessor shall then be entitled and authorized to take immediate possession of the land: *Provided*, That after restrictions are removed the lessor shall have and be entitled to any available remedy in law or equity for breach of this contract by the lessee.

7. Removal of buildings, improvements, and equipment.—Lessee shall be the owner of and shall have the right to remove from the leased premises, within 90 days after termination of this lease, any and all buildings, structures, casing, material, and/or equipment placed thereon for the purpose of development and operation hereunder, save and except casing in wells and other material, equipment, and structures necessary for the continued operation of wells producing or capable of being produced in paying quantities as determined by the Secretary of the Interior, on said leased land at the time of surrender of this lease or termination thereof; and except as otherwise provided herein, all casing in wells, material, structures, and equipment shall be and become the property of the lessor.

8. Drilling and producing restrictions.—It is covenanted and agreed that the Secretary of the Interior may impose restrictions as to time of times for the drilling of wells and as to the production from any well or wells drilled when in his judgment such action may be necessary or proper for the protection of the natural resources of the leased land and the interests of the Indian lessor, and in the exercise of his judgment the Secretary may take into consideration, among other things, Federal laws, State laws, or regulations by competent Federal or State authorities of lawful agreements among operators regulating either drilling or production, or both.

9. Unit operation.—The parties hereto agree to subscribe to and abide by any agreement for the cooperative or unit development of the field or area affecting the leased lands, or any part thereof, if and when collectively adopted by a majority operating interest therein and approved by the Secretary of the Interior, during the period of supervision.

10. Helium—public emergency.—It is covenanted and agreed that helium gas, carbon dioxide gas, and all other natural gases are included under the term "gas" as used in this lease, and in the event gas is discovered containing helium the United States Government shall have the right to purchase, at reasonable prices, all or any part of the production and to regulate the amount and manner of production; and in time of war or other public emergency, the United States Government shall have the option to purchase all or any part of the products produced under this lease.

11. Conservation.—The lessee in consideration of the rights herein granted agrees to abide by the provisions of any act of Congress or any order or regulation prescribed pursuant thereto, relating to the conservation, production, or marketing of oil, gas, or other hydrocarbon substances.

12. Heirs and successors in interest.—It is further covenanted and agreed that each obligation hereunder shall extend to and be binding upon, and every benefit hereof shall inure to, the heirs, executors, administrators, successors of, or assigns of the respective parties hereto.

13. No lease, assignment thereof, or interest therein, will be approved to any employee or employees of the United States Government, whether connected with the Indian Service or otherwise, and no employee of the Interior Department shall be permitted to acquire any interest in any mineral lease covering restricted Indian lands by ownership of stock in corporations having such leases or in any other manner.

JAN00047

The attached Special Stipulations in one page and the Forest and Land Protection Stipulations in two pages are hereby made a part of this lease.

DEPARTMENT OF THE INTERIOR

Washington, D. C.,

Sgd. H. W. Critchfield

Acting Commissioner of Indian Affairs

DULCE, NEW MEXICO

Lee Vicenti, Chairman of the Jicarilla Apache Tribal Council

Henry Vasquez, Secretary

Jicarilla Apache Tribal Council

ACKNOWLEDGMENT OF LESSOR

Before me a notary public on this 14th day of March 1951 personally appeared Lee Vicenti, Chairman of the Jicarilla Apache Tribal Council

Notary Public

My commission expires

JAN00048

Jicarilla Tribal Lands

FOREST AND LAND PROTECTION
STIPULATION

The lands embraced in this lease, issued under the Act of May 11, 1938 (52 Stat. 347), as amended, being within the Jicarilla Indian Reservation, the lessee hereby agrees:

(1) Protection of Property. To conduct all operations authorized by this lease with due regard to preventing damage to vegetation, timber, soil, crops, roads and improvements, and preventing water and soil pollution and also to restore the land whereever disturbed by necessary operations to its original condition at the completion of operations as determined by the Superintendent or his authorized representative. Unless otherwise authorized by the Superintendent or his authorized representative, lessee shall not drill any well within 200 feet of any building standing on the leased lands, and whenever required in writing by the Superintendent or his authorized representative, to fence all sump holes and other excavations made by lessee.

(2) Reimbursement for Damage. To reimburse the lessor for any and all damage to or destruction of property of the lessor caused by lessee's operations hereunder and not authorized by this lease; to save and hold the lessor harmless from all damages or claims for damage to persons or property resulting from lessee's operations under this lease; to hold lessor, the leased land and all materials, tools machinery, appliances, structures, improvements, and equipment of whatsoever kind or nature , placed in or upon the leased land by the lessee or at his direction, harmless from all claims or liens of third parties by reason of any act of commission or ommission on the part of lessee; and where the surface of the leased land is owned by other than the lessor, to pay such owner, or his tenant, as the case may be, for damage or injury to livestock, crops, trees, pipe lines, buildings, and other improvements on the leased land.

(3) Construction and location of Roads. All roads constructed by the lessee to obtain access to his lease or for other purposes will only be permitted when authorized in writing by the Superintendent or his authorized representative, and all due precautions will be taken to keep such roads from developing into washes and resultant loss of soil. Be it further understood that if requested by the Superintendent or his authorized representative, such roads will be restored to their original vegetated condition insofar as possible.

(4) Use of Timber on Lands. Not to cut or destroy timber owned by the lessor without first obtaining permission from the Superintendent or his authorized representative, and to pay for all such timber cut or destroyed at current local stumpage rates prescribed by such officer.

(5) Fire Prevention and Suppression. (a) To do all in his power to prevent and suppress forest, brush, or grass fires on the leased land and in its

(over)

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vicinity, and to require his employees, contractors, subcontractors, and employees of contractors or subcontractors to do likewise. Unless prevented by circumstances over which he has no control, the lessee shall place his employees, contractors, subcontractors, and employees of contractors and subcontractors employed on the leased land at the disposal of any authorized officer of the Department of the Interior for the purpose of fighting forest, brush, or grass fires, with the understanding that payment for such services shall be made at rates to be determined by the officer in charge, which rates shall not be less than the current rates of pay prevailing in the vicinity for services of a similar character; Provided, that if the lessee, his employees, contractors, subcontractors, or employees of contractors or subcontractors caused or could have prevented the origin or spread of the said fire or fires, no payment shall be made for services so rendered.

(b) During periods of serious fire danger to forest, brush, or grass, as may be specified by the Superintendent, or his authorized representative, the lessee shall prohibit smoking and the building of camp and lunch fires by his employees, contractors, subcontractors, and employees of contractors or subcontractors within the leased area except at established camps, and shall enforce this prohibition by all means within his power; Provided, that the Superintendent of his authorized representative may designate safe places where, after all inflammable material has been cleared away, camp fires may be built for the purpose of heating lunches and where, at the option of the lessee, smoking may be permitted.

(c) The lessee shall not burn rubbish, trash, or other inflammable material except with the consent of the Superintendent or his authorized representative and shall not use explosives in such manner as to scatter inflammable materials on the surface of the land during the forest, brush, or grass fire season, except as authorized to do so on areas approved by such officer.

(d) The lessee shall build or construct such fire lines or do such clearing as the Superintendent or his authorized representative decides is necessary for forest, brush, and grass fire prevention and shall maintain such fire tools at his headquarters on the leased land as are deemed necessary by such officer.

(e) If lessee shall construct any camp on the land, within the Jicarilla Indian Reservation, such camp shall be located at the place approved by the Superintendent or his authorized representative, and such officer shall have authority to require that such camp be kept in a neat and sanitary condition.

(6) The foregoing stipulations are hereby made a part of Oil and Gas Lease executed MAR 14 1951 covering Tract No. 136

Lessee: LYNES & SLUSKY

Lessor: L.V

By Louis Slusky

Title Partners

JAN00050

Jicarilla Tribal L Oil & Gas Lease

SPECIAL STIPULATIONS

The land embraced in this lease issued under the Act of May 11, 1938 (52 Stat. 347) and applicable regulations (25 CFR, Part 186), being within the Jicarilla Indian Reservation, the lessee hereby agrees to the following stipulations:

A. The lessee shall complete the drilling of a well within five years after approval of the lease to thoroughly test the Dakota Sandstone formation, unless oil or gas in paying quantities is found at a lesser depth, or the lessee shall at any time, establish to the satisfaction of the Supervisor that further drilling of said well would not be warranted or practicable, provided, however, that the lessee shall not in any event be required to drill in excess of 6,500 feet. The failure to comply with the drilling requirements will subject the lease to cancellation.

B. If so required by the Superintendent, the lessee shall condition under the direction of the Supervisor any well drilled which do not produce oil or gas in paying quantities as determined by said Supervisor, but are capable of producing water satisfactory for domestic, agricultural, or livestock use, in such manner as to make the best and largest quantity of water available for use by the lessors. Adjustments of costs for conditioning of the well and for value of casing and equipment left in or on the well will be made in said cases where it is determined that the well will produce water satisfactorily as aforesaid.

C. The lessee shall employ available Jicarilla labor in all positions for which they are qualified, including truck driving, and shall protect the Indian grazing rights to the surface of the lands.

D. The lessee will be required to execute a Forest and Land Protection Stipulations as part of the lease.

E. On unsurveyed tracts, the lessee shall be required to have the leasehold surveyed by a registered land surveyor or professional engineer, boundaries posted with substantial monuments, and a tie established with the nearest land survey corner, within six months after approval of the lease. Certified copies in duplicates of the survey plats to be filed with the Superintendent, Jicarilla Indian Agency, Dulce, New Mexico, and with the Supervisor, U. S. Geological Survey, P.O. Box 997, Roswell, New Mexico.

The foregoing stipulations are hereby made a part of oil and gas lease executed MAR 14 1957 covering Tract No. 136.

Lessee: LYNES & SLUSKY

By: Louis Slusky

Title: Partners

Lessor: L. V

JAN00051

Jicarilla Apache Nation Lease Data Sheet

Serial Number 071 — **Data As Of Date** 2/18/2008

Effective Date	Term	Status	County	State	Royalty
3/14/1951	10	HBP	Rio Arriba	NM	12.50%

Original Lessee	Lease Record Title	Total Acres
Lynes & Slusky	BP America Production Company	1,920.00

Township	Range	Section	Legal Description	FKA	Acres
23 N	4 W	3	All		640.00
23 N	4 W	9	All		640.00
23 N	4 W	10	All		640.00

Lease Notes:

1 Unsurveyed, acreage not verified

Tract Number 071-01 — **Data As Of Date** 2/18/2008

Type	Depth Restrictions	Tract Acres
Oil/Gas	Surface to Base of PC	160.00

Township	Range	Section	Legal Description	FKA	Acres
23 N	4 W	9	NW		160.00

Interest Owner	Record Title Interest	Operating Rights	ORRI Interest
Apache Corp		100.00%	
BP America Production Company	100.00%		

Tract Notes

There are multiple unapproved Assignments of 100% Operating Rights from Apache Corporation into successively MHW to Whittier to Rio Chama to Elm Ridge. Elm Ridge Assignment has provided the necessary ratification by RT owner and the Assignment of Operating Rights is being processed and approval is pending.

Tract Number 071-02 — **Data As Of Date** 2/16/2008

Type	Depth Restrictions	Tract Acres
Oil/Gas	Surface to Base of PC	480.00

Township	Range	Section	Legal Description	FKA	Acres
23 N	4 W	9	NE		160.00
23 N	4 W	10	S2		320.00

Interest Owner	Record Title Interest	Operating Rights	ORRI Interest
BP America Production Company	100.00%		
John E Schalk		100.00%	

Tract Notes

The subsequent assignments from John E. Schalk to Billco then to Sonoma were not approved although the Assignment into Sonoma was filed with JAN. There is now a pending assignment from Rio Chama into Elm Ridge that has been recommended for approval.

EXHIBIT

Blumberg No. 5208

Jicarilla Apache Nation Lease Data Sheet

Tract Number 071-03 **Data As Of Date** 2/19/2008

Type	Depth Restrictions	Tract Acres
Oil/Gas	Surface to Base of DK	1,280.00

Township	Range	Section	Legal Description	FKA	Acres
23 N	4 W	3	ALL		640.00
23 N	4 W	9	S2		320.00
23 N	4 W	10	N2		320.00

Interest Owner	Record Title Interest	Operating Rights	ORRI Interest
BP America Production Company	100.00%		
Chace Oil Co Inc		100.00%	

Tract Notes

Under the terms of the bankruptcy Platinum's interest was also confirmed by the Bankruptcy Court. This Assignment of Operating Rights has not been submitted or approved by the JAN or BIA.

Unapproved Assignment of 100% Operating Rights from Chace into Golden Oil Company.Subsequently Golden Oil Company and McKay-Lotspiech (successor to Chace Oil Company) entered into a Settlement Agreement 3/17/2005, affirmed by the Bankruptcy Court that "from and after the effective date" gives MLG and their successor Platinum Oil LLC the right to Operate and the ownership of any interests that were claimed by Golden Oil Company (including the wells on these leases). There has never been an approval of interests from Chace to Golden. There is no pending Assignment or evidence of name change or merger going from Chace to Platinum to Star Acquisition the current operator of wells on this lease. Chace Oil Company, Inc. remains the last entity approved as having Operating Rights on this lease. An assignment of interests in this lease is unnecessary and no such Assignment from Golden to Chace or a successor entity since the time of the Agreement providing for the ownership and operation on this lease.

Star Acquisitions was assigned the Operating Rights held by MLG and Platinum. This Assignment has not been presented to or approved by the JAN and the BIA.

Tract Number 071-04 **Data As Of Date** 2/18/2008

Type	Depth Restrictions	Tract Acres
Oil/Gas	Base of PC to Base of DK	640.00

Township	Range	Section	Legal Description	FKA	Acres
23 N	4 W	9	N2		320.00
23 N	4 W	10	S2		320.00

Interest Owner	Record Title Interest	Operating Rights	ORRI Interest
BP America Production Company	100.00%		
Chace Oil Co Inc		100.00%	

Tract Notes

Star Acquisitions was assigned the Operating Rights held by MLG and Platinum. This Assignment has not been presented or approved by the JAN and the BIA.

Unapproved Assignment of 100% Operating Rights from Chace into Golden Oil Company.Subsequently Golden Oil Company and McKay-Lotspiech (successor to Chace Oil Company) entered into a Settlement Agreement 3/17/2005, affirmed by the Bankruptcy Court that "from and after the effective date" gives MLG and their successor Platinum Oil LLC the right to Operate and the ownership of any interests that were claimed by Golden Oil Company (including the wells on these leases). There has never been an approval of interests from Chace to Golden. There is no pending Assignment or evidence of name change or merger going from Chace to Platinum to Star Acquisition the current operator of wells on this lease. Chace Oil Company, Inc. remains the last entity approved as having Operating Rights on this lease. An assignment of interests in this lease is unnecessary and no such Assignment from Golden to Chace or a successor entity since the time of the Agreement providing for the ownership and operation on this lease.

Under the terms of the bankruptcy Platinum's interest was also confirmed by the Bankruptcy Court. This Assignment of Operating Rights has not been submitted or approved by the JAN or BIA.

Jicarilla Apache Nation Lease Data Sheet

Tract Number 071-05 **Data As Of Date** 2/18/2008

Type	Depth Restrictions	Tract Acres
Oil/Gas	Base of DK to All Depths	160.00

Township	Range	Section	Legal Description	FKA	Acres
23 N	4 W	3	SE		160.00

Interest Owner	Record Title Interest	Operating Rights	ORRI Interest
BP America Production Company	100.00%		
Chace Oil Co Inc		100.00%	

Tract Notes

Under the terms of the bankruptcy Platinum's interest was also confirmed by the Bankruptcy Court. This Assignment of Operating Rights has not been submitted or approved by the JAN or BIA.

MLG and Platinum conveyed their Operating Rights to Star Acquisitions. This Assignment has not been presented to or approved by the JAN or the BIA.

Unapproved Assignment of 100% Operating Rights from Chace into Golden Oil Company.Subsequently Golden Oil Company and McKay-Lotspiech (successor to Chace Oil Compay) entered into a Settlement Agreement 3/17/2005, affirmed by the Bankruptcy Court that "from and after the effective date" gives MLG and their successor Platinum Oil LLC the right to Operate and the ownership of any interests that were claimed by Golden Oil Company (including the wells on these leases). There has never been an approval of interests from Chace to Golden. There is no pending Assignment or evidence of name change or merger going from Chace to Platinum to Star Acquisition the current operator of wells on this lease. Chace Oil Company, Inc. remains the last entity approved as having Operating Rights on this lease. An assignment of interests in this lease is unnecessary and no such Assignment from Golden to Chace or a successor entity since the time of the Agreement providing for the ownership and operation on this lease.

Tract Number 071-06 **Data As Of Date** 2/18/2008

Type	Depth Restrictions	Tract Acres
Oil/Gas	Below DK to All Depths	1,760.00

Township	Range	Section	Legal Description	FKA	Acres
23 N	4 W	3	N2,SW		480.00
23 N	4 W	9	ALL		640.00
23 N	4 W	10	ALL		640.00

Interest Owner	Record Title Interest	Operating Rights	ORRI Interest
BP America Production Company	100.00%	100.00%	

Jicarilla Apache Nation Lease Data Sheet

Wells Associated With Lease 071

APINumber	Well Name	Status	Frm	Location	Operator
30-039-05104	JICARILLA 001	P		G-10-23N-4W	M M GARRETT
30-039-05135	JICARILLA 71 001	A	PC	P-3-23N-4W	STAR ACQUISITION VII, LLC
30-039-08088	CINCO DIABLOS 002	P		D-9-23N-4W	JOHN E SCHALK
30-039-20004	CINCO DIABLOS PC 004	A	PC	B-9-23N-4W	ELM RIDGE EXPLORATION COMPANY L
30-039-20011	CINCO DIABLOS PC 005	A	PC	L-10-23N-4W	ELM RIDGE EXPLORATION COMPANY L
30-039-20061	CINCO DIABLOS PC 007	P	PC	O-10-23N-4W	ELM RIDGE EXPLORATION COMPANY L
30-039-20086	CINCO DIABLOS 008	P		E-10-23N-4W	JOHN E SCHALK
30-039-20180	CINCO DIABLOS 002Y	P		C-9-23N-4W	ELM RIDGE EXPLORATION COMPANY L
30-039-20528	JICARILLA 71 005	A	PC	I-9-23N-4W	STAR ACQUISITION VII, LLC
30-039-20550	JICARILLA 71 004	P		K-9-23N-4W	CHACE OIL CO INC
30-039-20556	JICARILLA 71 002	A	PC-BA	K-3-23N-4W	STAR ACQUISITION VII, LLC
30-039-20559	JICARILLA 71 003	A	GL-DK	E-3-23N-4W	STAR ACQUISITION VII, LLC
30-039-22826	JICARILLA 71 006	A	GL-DK	B-3-23N-4W	STAR ACQUISITION VII, LLC
30-039-22956	JICARILLA 71 007	A	GL-DK	I-3-23N-4W	STAR ACQUISITION VII, LLC
30-039-23022	JICARILLA 71 010	A	GL-DK	A-3-23N-4W	STAR ACQUISITION VII, LLC
30-039-23023	JICARILLA 71 008	A	GL-DK	K-3-23N-4W	STAR ACQUISITION VII, LLC
30-039-23024	JICARILLA 71 009	A	GL-DK	A-10-23N-4W	STAR ACQUISITION VII, LLC
30-039-23108	JICARILLA 71 011	A	GL-DK	P-3-23N-4W	STAR ACQUISITION VII, LLC
30-039-23200	JIC TRIBAL CONT 71 015	P		H-3-23N-4W	CHACE OIL CO INC
30-039-23201	JICARILLA 71 019	A	GL-DK	O-3-23N-4W	STAR ACQUISITION VII, LLC
30-039-23204	JICARILLA 71 020	A	GL-DK	B-10-23N-4W	STAR ACQUISITION VII, LLC
30-039-23215	JICARILLA 71 014	A	GL-DK	H-10-23N-4W	STAR ACQUISITION VII, LLC
30-039-23218	JICARILLA 71 012	A	GL-DK	C-10-23N-4W	STAR ACQUISITION VII, LLC
30-039-23219	JIC TRIBAL CONT 71 017	P		D-3-23N-4W	CHACE OIL CO INC
30-039-23220	JICARILLA 71 018	A	GL-DK	F-3-23N-4W	STAR ACQUISITION VII, LLC
30-039-23221	JICARILLA 71 016	A	GL-DK	N-3-23N-4W	STAR ACQUISITION VII, LLC
30-039-23273	JICARILLA 71 021	A	GL-DK	J-10-23N-4W	STAR ACQUISITION VII, LLC
30-039-23389	JICARILLA 71 030	A	GL-DK	D-10-23N-4W	STAR ACQUISITION VII, LLC
30-039-23416	JICARILLA 71 025	A	GL-DK	A-9-23N-4W	STAR ACQUISITION VII, LLC
30-039-23417	JICARILLA 71 026	A	GL-DK	I-9-23N-4W	STAR ACQUISITION VII, LLC
30-039-23418	JICARILLA 71 023	A	GL-DK	F-10-23N-4W	STAR ACQUISITION VII, LLC
30-039-23419	JICARILLA 71 022	A	GL-DK	I-10-23N-4W	STAR ACQUISITION VII, LLC
30-039-23420	JICARILLA 71 024	A	GL-DK	K-10-23N-4W	STAR ACQUISITION VII, LLC
30-039-23421	JICARILLA 71 029	A	GL-DK	L-10-23N-4W	STAR ACQUISITION VII, LLC
30-039-23422	JICARILLA 71 027	A	GL-DK	N-10-23N-4W	STAR ACQUISITION VII, LLC
30-039-23488	JICARILLA 71 017Y	A	GL-DK	D-3-23N-4W	STAR ACQUISITION VII, LLC
30-039-23535	JICARILLA 71 035	A	GL-DK	P-10-23N-4W	STAR ACQUISITION VII, LLC
30-039-23543	JICARILLA 71 040	A	GL-DK	C-9-23N-4W	STAR ACQUISITION VII, LLC
30-039-23545	JICARILLA 71 036	A	GL-DK	K-9-23N-4W	STAR ACQUISITION VII, LLC
30-039-23546	JICARILLA 71 034	A	GL-DK	M-10-23N-4W	STAR ACQUISITION VII, LLC
30-039-23547	JICARILLA 71 039	A	GL-DK	O-9-23N-4W	STAR ACQUISITION VII, LLC
30-039-23733	JICARILLA 71 042	A	GL-DK	E-9-23N-4W	STAR ACQUISITION VII, LLC

Jicarilla Apache Nation Lease Data Sheet

Serial Number 363 — **Data As Of Date** 6/2/2008

Effective Date	Term	Status	County	State	Royalty
4/18/1966	10	HBP	Rio Arriba	NM	16.67%

Original Lessee	Lease Record Title	Total Acres
Pan American Petroleum Corp	EnerVest Energy Institution Fund IX, LP	2,560.00
	EnerVest Energy Institution Fund IX-WI, LP	

Township	Range	Section	Legal Description	FKA	Acres
24 N	4 W	15	ALL		640.00
24 N	4 W	16	ALL		640.00
24 N	4 W	21	ALL		640.00
24 N	4 W	22	ALL		640.00

Lease Notes:

Apache designated EnerVest Operating LLC as operator for this lease Jan 31, 2005 for those tracts where EnerVest Institutional Funds IX LP & IX-LP-WI have operating rights.

Unless the ORRI is held by the Nation ORRIs are not shown at this time. The BIA does not have the authority to approve ORRIs although in some instances the BIA has provided that approval. The JAN may use evidence of the total burdens on the lease by considering the ORRIs, Production Payments or other burdens that may effect a decision of whether approval of RT or OpRts will be granted.

Tract Number 363-01 — **Data As Of Date** 6/2/2008

Type	Depth Restrictions	Tract Acres
Oil/Gas	Surface to Base of DK	320.00

Township	Range	Section	Legal Description	FKA	Acres
24 N	4 W	21	S2		320.00

Interest Owner	Record Title Interest	Operating Rights	ORRI Interest
Chace Oil Co Inc		100.00%	
EnerVest Energy Institution Fund IX, LP	77.53%		
EnerVest Energy Institution Fund IX-WI, LP	22.47%		

Tract Notes

Unapproved Assignment of 100% Operating Rights from Chace Into Golden Oil Company.Subsequently Golden Oil Company and McKay-Lotspiech (successor to Chace Oil Compay) entered into a Settlement Agreement 3/17/2005, affirmed by the Bankruptcy Court that "from and after the effective date" gives MLG and their successor Platinum Oil LLC the right to Operate and the ownership of any interests that were claimed by Golden Oil Company (including the wells on these leases). There has never been an approval of interests from Chace to Golden. There is no pending Assignment or evidence of name change or merger going from Chace to Platinum to Star Acquisition the current operator of wells on this lease. Chace Oil Company, Inc. remains the last entity approved as having Operating Rights on this lease. An assignment of interests in this lease is unnecessary and no such Assignment from Golden to Chace or a successor entity since the time of the Agreement providing for the ownership and operation on this lease. However, an Assignment of Interest from Chace to Platinum and an Assignment of Operating Rights from Platinum and MLG (successor to Chace) to Star Acquisition. There are no pending Assignments of any of these Operating Rights. The Bankruptcy order does not operate to grant approved Operating Rights as required by the BIA and the JAN.

Under the terms of the Farmout Agreement between Amoco and Chace Oil Company dated 3/13/1973, Amoco had the option of converting its overriding royalty interest into a 25% Operating Rights interest at payout. A Conveyance of 25% Operating Rights from Chace to Amoco dated 1/31/1979 is recorded in Rio Arriba County, NM (Bk 86, Pg 760). This Conveyance was never approved by JAN or BIA. There have been subsequent transfers of this interest out of Amoco.

The Assignment from Amoco to MW(Apache Corporation) of 5/22/2003 that included all of the Record Title and Operating Rights of Amoco is not approved by the BIA. However, if the transfer of Operating Rights from Chace to Amoco per the terms of the farmout is given effect then Apache became a 25% Operating Rights Owner in this Tract.

Jicarilla Apache Nation Lease Data Sheet

MW Petorleum Corporation (Apache Corporation by merger of 9/1/1998) attempted to assign this interest to Scythian, Ltd. This assignment was not approved by the BIA but Scythian, Ltd.'s interest was recognized by the Bankruptcy Court referenced below.

Tract Number 363-02 **Data As Of Date** 2/15/2008

Type	Depth Restrictions	Tract Acres
Oil/Gas	Surface to Base of PC	160.00

Township	Range	Section	Legal Description	FKA	Acres
24 N	4 W	16	SE		160.00

Interest Owner	Record Title Interest	Operating Rights	ORRI Interest
EnerVest Energy Institution Fund IX, LP	77.53%		
EnerVest Energy Institution Fund IX-WI, LP	22.47%		
Jack A Cole		87.50%	
Jack A. Cole & Babara J. Cole Revocable Tru		12.50%	

Tract Notes

1 Assignments from Jack A. Cole and Jack A. Cole & Barbara J. Cole Revocable Trust are currently pending approval.

Tract Number 363-03 **Data As Of Date** 2/15/2008

Type	Depth Restrictions	Tract Acres
Oil/Gas	Surface to Base of CH	160.00

Township	Range	Section	Legal Description	FKA	Acres
24 N	4 W	21	NE		160.00

Interest Owner	Record Title Interest	Operating Rights	ORRI Interest
EnerVest Energy Institution Fund IX, LP	77.53%		
EnerVest Energy Institution Fund IX-WI, LP	22.47%		
Jack A Cole		87.50%	
Jack A. Cole & Babara J. Cole Revocable Tru		12.50%	

Tract Notes

2 While there have been several intervening unapproved assignments it appears that Jack Cole and the Cole Trust intended to convey all of their operating rights. The assignment of Oil and Gas Operating rights approved for Elm Ridge only includes the interest from the surface to the base of the PC. This leaves operating rights from base of the PC to the base of the Chakra in Jack Cole and the Cole Trust. A corrective assignment of the remain interest should be submitted to JAN and BIA for approval.

3 Assignments from Jack A. Cole and Jack A. Cole & Barbara J. Cole Revocable Trust are currently pending approval.

1 Same Note as Lease 363 ,Tract 2, note 1

Jicarilla Apache Nation Lease Data Sheet

Tract Number 363-04 **Data As Of Date** 2/15/2008

Type	Depth Restrictions	Tract Acres
Oil/Gas	Base of PC to Base of MV	160.00

Township	Range	Section	Legal Description	FKA	Acres
24N	4W	15	NW		160.00

Interest Owner	Record Title Interest	Operating Rights	ORRI Interest
EnerVest Energy Institution Fund IX, LP	77.53%		
EnerVest Energy Institution Fund IX-WI, LP	22.47%		
Robert L Bayless Producers, LLC		100.00%	

Tract Notes

2 There is a pending Assignment of Operating Rights from Robert L. Bayless to Elm Ridge.

1 The Assignment between Amoco and Bayless allowed Amoco to convert their overriding royalty to Op Rts. But, there is no Assignment from Bayless to Amoco.

Tract Number 363-05 **Data As Of Date** 2/15/2008

Type	Depth Restrictions	Tract Acres
Oil/Gas	Surface to Base of DK	1,280.00

Township	Range	Section	Legal Description	FKA	Acres
24N	4W	15	W2,SE		480.00
24N	4W	21	NW		160.00
24N	4W	22	ALL		640.00

Interest Owner	Record Title Interest	Operating Rights	ORRI Interest
Apache Corp		33.33%	
EnerVest Energy Institution Fund IX, LP	77.53%		
EnerVest Energy Institution Fund IX-WI, LP	22.47%		
Robert L Bayless Producers, LLC		66.67%	

Tract Notes

1 The is a pending Assignment of Operating Rights from Robert L. Bayless to Elm Ridge of 100% of his interest.

Tract Number 363-06 **Data As Of Date** 2/15/2008

Type	Depth Restrictions	Tract Acres
Oil/Gas	Base of PC to Base of DK	160.00

Township	Range	Section	Legal Description	FKA	Acres
24N	4W	16	SE		160.00

Interest Owner	Record Title Interest	Operating Rights	ORRI Interest
Apache Corp		33.33%	
EnerVest Energy Institution Fund IX, LP	77.53%		
EnerVest Energy Institution Fund IX-WI, LP	22.47%		
Robert L Bayless Producers, LLC		66.67%	

Tract Notes

1 There is a pending Assignment of Operating Rights of 100% from Robert L. Bayless to Elm Ridge.

Jicarilla Apache Nation Lease Data Sheet

Tract Number 363-07 **Data As Of Date** 2/15/2008

Type	Depth Restrictions	Tract Acres
Oil/Gas	Base of CH to Base of DK	160.00

Township	Range	Section	Legal Description	FKA	Acres
24N	4W	21	NE		160.00

Interest Owner	Record Title Interest	Operating Rights	ORRI Interest
Apache Corp		33.33%	
EnerVest Energy Institution Fund IX, LP	77.53%		
EnerVest Energy Institution Fund IX-WI, LP	22.47%		
Robert L Bayless Producers, LLC		66.67%	

Tract Notes

1 There is a pending Assignment of Operating Rights from Robert L. Bayless to Elm Ridge for 100% of his interest.

Tract Number 363-08 **Data As Of Date** 2/15/2008

Type	Depth Restrictions	Tract Acres
Oil/Gas	Base of MV to Base of DK	160.00

Township	Range	Section	Legal Description	FKA	Acres
24N	4W	16	NW		160.00

Interest Owner	Record Title Interest	Operating Rights	ORRI Interest
Elm Ridge Exploration Company L.L.C.		100.00%	
EnerVest Energy Institution Fund IX, LP	77.53%		
EnerVest Energy Institution Fund IX-WI, LP	22.47%		

Tract Notes

1 Same note as Lease 363, Tract 4, note 1

Tract Number 363-09 **Data As Of Date** 2/15/2008

Type	Depth Restrictions	Tract Acres
Oil/Gas	Base of DK to All Depths	2,560.00

Township	Range	Section	Legal Description	FKA	Acres
24N	4W	15	All		640.00
24N	4W	16	All		640.00
24N	4W	21	All		640.00
24N	4W	22	All		640.00

Interest Owner	Record Title Interest	Operating Rights	ORRI Interest
Apache Corp		100.00%	
EnerVest Energy Institution Fund IX, LP	77.53%		
EnerVest Energy Institution Fund IX-WI, LP	22.47%		

Jicarilla Apache Nation Lease Data Sheet

Tract Number 383-10 **Data As Of Date** 2/15/2008

Type	Depth Restrictions	Tract Acres
Oil/Gas	Surface to Base of DK	160.00

Township	Range	Section	Legal Description	FKA	Acres
24 N	4 W	15	NE		160.00

Interest Owner	Record Title Interest	Operating Rights	ORRI Interest
Apache Corp		100.00%	
EnerVest Energy Institution Fund IX, LP	77.53%		
EnerVest Energy Institution Fund IX-WI, LP	22.47%		

Tract Number 383-11 **Data As Of Date** 2/15/2008

Type	Depth Restrictions	Tract Acres
Oil/Gas	Surface to Base of DK	160.00

Township	Range	Section	Legal Description	FKA	Acres
24 N	4 W	16	SW		160.00

Interest Owner	Record Title Interest	Operating Rights	ORRI Interest
EnerVest Energy Institution Fund IX, LP	22.47%		
EnerVest Energy Institution Fund IX, LP	77.53%		
Robert L Bayless Producers, LLC		100.00%	

Tract Notes

1 There is a pending Assignment of Operating Rights from Robert L. Bayless to Elm Ridge for 100% of his interest.

2 There is an Unapproved Assignment from W.B. Martin & Assoc., Inc to Elm Ridge of 100% Op Rts. No Assignment into W.B. Martin & Assoc., Inc.

Tract Number 383-12 **Data As Of Date** 2/15/2008

Type	Depth Restrictions	Tract Acres
Oil/Gas	Surface to Base of PC	160.00

Township	Range	Section	Legal Description	FKA	Acres
24 N	4 W	16	NW		160.00

Interest Owner	Record Title Interest	Operating Rights	ORRI Interest
Elm Ridge Exploration Company L.L.C.		99.00%	
EnerVest Energy Institution Fund IX, LP	77.53%		
EnerVest Energy Institution Fund IX-WI, LP	22.47%		
Robert L Bayless Producers, LLC		1.00%	

Tract Notes

1 There is a pending Assignment of Operating Rights from Robert L. Bayless to Elm Ridge for 100% of his interest.

Jicarilla Apache Nation Lease Data Sheet

Tract Number 363-13 **Data As Of Date** 2/15/2008

Type	Depth Restrictions	Tract Acres
Oil/Gas	Surface to Base of PC	160.00

Township	Range	Section	Legal Description	FKA	Acres
24 N	4 W	16	NE		160.00

Interest Owner	Record Title Interest	Operating Rights	ORRI Interest
Apache Corp		33.33%	
Elm Ridge Exploration Company L.L.C.		66.00%	
EnerVest Energy Institution Fund IX, LP	77.53%		
EnerVest Energy Institution Fund IX-WI, LP	22.47%		
Robert L Bayless Producers, LLC		0.67%	

Tract Notes

1 There is a pending Assignment of Operating Rights from Robert L. Bayless to Elm Ridge for 100% of his interest.

Tract Number 363-14 **Data As Of Date** 2/15/2008

Type	Depth Restrictions	Tract Acres
Oil/Gas	Base of PC to Base of DK	160.00

Township	Range	Section	Legal Description	FKA	Acres
24 N	4 W	16	NE		160.00

Interest Owner	Record Title Interest	Operating Rights	ORRI Interest
Apache Corp		33.33%	
EnerVest Energy Institution Fund IX, LP	77.53%		
EnerVest Energy Institution Fund IX-WI, LP	22.47%		
Robert L Bayless Producers, LLC		66.67%	

Tract Notes

1 There is a pending Assignment of Operating Rights from Robert L. Bayless to Elm Ridge for 100% of his interest.

Jicarilla Apache Nation Lease Data Sheet

Wells Associated With Lease 363

APINumber	Well Name	Status	Frm	Location	Operator
30-039-05428	JICARILLA APACHE G 001	P		P-16-24N-4W	AMERADA PETROLEUM C
30-039-20598	JICARILLA 363 001	A	GL-DK	O-21-24N-4W	STAR ACQUISITION VII, LLC
30-039-21152	BURRO CANYON 001	A	PC	O-16-24N-4W	ELM RIDGE EXPLORATION COMPANY L
30-039-21166	BURRO CANYON 002	A	PC	H-21-24N-4W	ELM RIDGE EXPLORATION COMPANY L
30-039-21192	BURRO CANYON 004	P		D-22-24N-4W	JACK A COLE
30-039-21194	BURRO CANYON 003	P		M-22-24N-4W	JACK A COLE
30-039-21824	JICARILLA 363 002	A	GL-DK	N-21-24N-4W	STAR ACQUISITION VII, LLC
30-039-22307	JICARILLA TRIBAL 363 A 001	A	GL-DK	A-15-24N-4W	ENERVEST OPERATING L.L.C.
30-039-23038	JICARILLA 363 B 004	A	PC	C-16-24N-4W	ELM RIDGE EXPLORATION COMPANY L
30-039-23113	JICARILLA 363 B 005	P	PC	B-16-24N-4W	ELM RIDGE EXPLORATION COMPANY L
30-039-23541	MARTIN WHITTAKER 055	A	GL-DK	E-16-24N-4W	ELM RIDGE EXPLORATION COMPANY L

100.007.119.010

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Fax: (505) 884-3424
E-mail:pdomenici@dolan-domenici.com

December 23, 2004

Ms. Eugenia Otole, Permits Clerk
Jicarilla Apache Nation
Oil & Gas Administration
Hawks Drive
Dulce, NM 87528

RE: Operating Permit Application

Dear Ms. Otole:

Pursuant to a recent court order, we have been appointed a new operator for a portion of the Golden Oil Company lease. We will be operating the Section 71 and 363 leases. In this regard, please find the following items:

1. Completed Operating Permit Application package for 2005 - 2006
2. Operating Permit payment fee of $200.00
3. Requisite Certificates of Insurance
4. Certificate of Organization
5. Operating Agreement
6. Federal I.D. Number
7. New Mexico CRS Number
8. New Mexico Department of Labor Number

Your attention in this matter is greatly appreciated.

Sincerely,

Pete V. Domenici, Jr., Esq.

RMF}srr; 1391.01
encls

CC: Naomi Barnes

EXHIBIT
Bunting No. 5208
D