

7.12 Unitization Agreements

7.12.1 Authority

In accordance with Title 18, Ch 10, §1 (S), as amended, Operating Requirements, *“The OGA may promulgate and enforce rules, regulations, and orders, including but not limited to the following, with regard to oil and gas operating requirements: (S) To review and approve unitization agreements;”*

7.12.2 Purpose

The regulations in this part prescribes the procedures to be followed and requirements to be met by the owners of any right, title or interest in the Jicarilla Apache Nation’s oil and gas leases or MDA’s who wish to unitize with each other, or jointly or separately with others, in collectively adopting and operating under a unitization plan for the development of any oil or gas pool, field, or like area, or any part thereof.

7.12.3 Application Requirements

Formal application for the creation of a unit shall be filed with the JOGA for approval by the Director on an approved JOGA Unit Application Form. The application for the creation of a Unit shall have a unique name that will identify the unit for so long as the Agreement remains in effect and only under extraordinary circumstances will a unit name change be allowed after initial approval is granted.

Applications for creation of a unit shall contain a statement of facts showing:

1. That creation of such a unit will promote the conservation of oil and gas and allow for better utilization of reservoir energy.
2. That under the proposed unitization operation, the Nation will receive its fair share of the recoverable oil and gas in place under its lands in the proposed unitization area.
3. That creation of this unit is in the best interest of the Nation.

Information to be Furnished with the Application:

1. Identify the tracts and acreage that is proposed for creation of the unit and that will ultimately be expected to be committed to the unit. Such application shall be accompanied by maps and /or diagrams on a scale of not less than 2 inches to 1 mile, outlining the area sought to be designated as a unit, as prescribed in this section. The Federal, State, Indian and privately-owned land should be indicated by distinctive symbols or colors. Federal and Indian oil and gas leases and lease applications should be identified by lease serial numbers.

This data will be considered by the JOGA and the applicant will be informed of the decision reached. The designation of an area, pursuant to an application filed under this section, shall not create an exclusive right to submit a Unitization Agreement for such area, nor preclude the inclusion of such area or any party thereof in another unit area.

2. Complete geological and engineering data (hereafter referred to as Technical Data) shall be presented with the application and the information offered for the Director's action must be clear and understandable. Such Technical Data shall be kept confidential by the Applicant and the Nation for a period of six months or until the unit and Unitization Agreement is approved, whichever comes first. If for any reason such proposed unit or Unitization Agreement is not approved, then at the request of the applicant, the Technical Data shall be returned.
3. Specifically, the application will include the following:
 - a. Structure map – A map of the horizon that has a bearing on the objective reserves.
 - b. Isopach map – A map of the thickness and areal distribution of objective horizon(s), if data is available. In cases of sparse data, a schematic with increased emphasis upon cross sections is acceptable.
 - c. Cross sections – Sparseness of data may render cross sections meaningless. In such cases, a “nearest typical log” with tops and zone(s) of interest is suggested. Where data are adequate, panel cross sections will help clarify the unit area and expedite consideration. Zig-zag cross sections seldom clarify the geology of an area, and simple, well-chosen sections crossing the unit area would be appropriate.
 - d. Designation of unit area; depth of test well. An application for creation of unit area shall ultimately be subject to a development agreement, specifically a Unitization Agreement, as prescribed in the BLM Model Unitization Agreement. The application for creation of the unit shall delineate the depth of the first Test Well with all technical specifications of the drilling and completion of the Test Well and shall be filed by the applicant with the JOGA.
4. Estimates of fresh water volumes needed for unitization operations over time including source locations, which include location, depths, and water quality from any water wells.

Where to file Unit Application

The application for designation of a proposed unit area and determination of the required depth of test well(s) shall be filed in duplicate to both the JOGA and the BLM. A like number of counterparts shall be filed of any geologic data and any other information submitted in support of such application.

7.12.4 Development Plans

A development plan will be submitted to the Director who will review and approve the plan in writing prior to the commencement of oil and gas development activity within the unit area as outlined in JANC Title 18 – Oil and Gas, Ch. 6: Oil and Gas Development Plans.

7.12.5 Unitization Agreement and Parties to the Unitization Agreement

The owners of any right, title, or interest in the oil and gas deposits to be unitized are regarded as proper parties to be included in the proposed Unitization Agreement. All such parties must be invited to join the Agreement. If any party fails or refuses to join the agreement, the proponent of the unit and the Agreement, at the time it is filed for approval, must submit evidence of reasonable effort made to obtain joinder of such party and, when requested, the reasons for such nonjoinders. The address of each signatory party to the Agreement should be inserted below the signature. Each signature should be attested by at least one witness if not notarized. The signing parties may execute any number of counterparts of the Agreement with the same force and effect as if all parties signed the same document or may execute a ratification or consent in a separate instrument with like force and effect.

7.12.7 Assignments

No assignments of acreage under lease within any unitized area will be approved by the Director unless the assignment is subject to the provisions of the Unitization Agreement covering the area within which the acreage sought to be assigned lies, or unless the Director and all parties to the Unitization Agreement agree, in writing, that such acreage is not needed for proper unitization operations.

7.12.8 Royalty, taxes, and participation

The Unitization Agreement submitted by the unitization proponent for approval shall provide for payment to the Nation of an agreed upon royalty that would be attributable to unleased Nation lands in a participating area of the unitization if said lands were leased and committed to the unitization agreement. The value of production subject to royalty payments shall be determined by and all Nation taxes will be paid according to JANC Title 11 – Taxation. Participation by the Nation in a unit area will be determined on a case-by-case basis and approved by resolution of the Nation's Legislative Council.

7.12.9 Qualification of Unit Operator

A Unit Operator must qualify as to citizenship in the same manner as those holding interests in Nation oil and gas leases/MDA's under 43 CFR Part 3100, Subpart 3102. The Unit Operator may be an owner of a working interest in the unit area or such other party as may be selected by the owners of working interests. The Unit Operator shall execute an acceptance of the duties and obligations imposed by the Agreement. No designation of or change in a unitization operator will become effective until approved by the Director, and no such approval will be granted unless the successor Unit Operator is deemed qualified to fulfill the duties and obligations prescribed in the agreement.

7.12.10 Executed agreements

Where a duly executed agreement is submitted for final approval, a minimum of four signed counterparts should be filed with both the JOGA and the BLM. The number of counterparts to be filed for supplementing, modifying, or amending an existing Agreement, including change of unitization operator, designation of new unitization operator, establishment or revision of a participating area, and termination shall be prescribed by the Director.

7.12.11 Approval of executed Agreement

A Unitization Agreement shall be approved by the Director upon a determination that such Agreement is necessary or advisable in the Nation's best interest and is for the purpose of more properly conserving natural resources. Such approval shall be incorporated in a Certification-Determination document appended to the Agreement and the Unitization Agreement shall not be deemed effective until the Director has executed the Certification-Determination document, is then approved by a resolution of the Nation's Legislative Council, and subsequently approved by the Secretary of the Interior and the BLM's Authorized Officer. No such Agreement shall be approved unless the parties' signatory to the Agreement hold sufficient interests in the unit area to provide reasonably effective control of operations.

The Nation's best interest requirement of an approved Unitization Agreement for unproven areas shall be satisfied only if the unitization operator commences actual drilling operations and thereafter diligently prosecutes such operations in accordance with the terms of said Agreement. If an application is received for voluntary termination of a Unitization Agreement for an unproven area during its fixed term or such an Agreement automatically expires at the end of its fixed term without the Nation's interest requirement having been satisfied, the approval of that Agreement by the Director and lease segregations and extensions shall be invalid, and no lease/MDA shall be eligible for extensions.

Approval of an Agreement containing Indian lands must be approved by the BLM's Authorized Officer (43 CFR § 3181.4 (b)), following prior approval by the Director, the Nation's Legislative Council, and the BIA (25 CFR § 211.28 (a)).

Any modification of an approved Agreement containing Indian lands must be approved by the BLM's Authorized Officer (43 CFR § 3181.4 (b)), following prior approval by the Director, the Nation's Legislative Council, and the BIA (25 CFR § 211.28 (a)).

Any party adversely affected by an instruction, order, or decision issued under this part may appeal the decision of the Director as outlined in JANC Title 18 – Oil and Gas, Ch. 6: Oil and Gas Development Plans, §1 (H) Appeal of Director Action.