

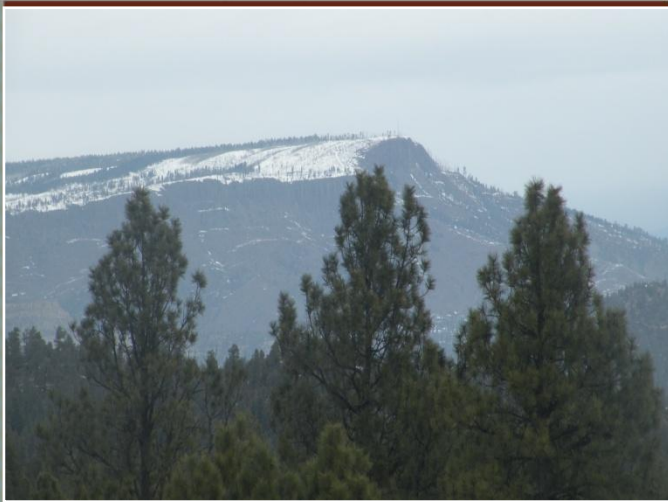
# JICARILLA APACHE NATION



## Oil & Gas Indian Preference Contracting and Employment Ordinance

### DEPARTMENT OF LABOR

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**CHAPTER 1: OIL & GAS INDIAN PREFERENCE CONTRACTING & EMPLOYMENT ORDINANCE**

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## CHAPTER 1: OIL AND GAS INDIAN PREFERENCE CONTRACTING AND EMPLOYMENT ORDINANCE

### § 1 PURPOSE.

The purpose of this Chapter is:

- A. To promote employment preferences for qualified Indian individuals;
- B. To promote contracting preferences for qualified, Indian-owned and controlled oil and gas businesses that seek contracts with the Jicarilla Apache Nation or are otherwise subject to the Jicarilla Apache Nation's jurisdiction;
- C. To ensure that the Nation's laws maximize employment opportunities for qualified Indian individuals and contracting opportunities for qualified, Indian-owned and controlled oil and gas businesses that operate within the Jicarilla Apache Nation's jurisdiction.

### § 2 DEFINITIONS.

The following definitions apply to the terms used in this Chapter only:

- A. *Certified Oil & Gas Business* means any entity that operates in the oil and gas industry that is currently certified by the Jicarilla Apache Nation's Department of Labor as being eligible for the Indian Preference in accordance with this Chapter.
- B. *Nation* means the Jicarilla Apache Nation.
- C. *Non Performance* means an oil and gas business's failure to adhere, in whole or in part, to a term or condition of an existing oil and gas contract.
- D. *Oil & Gas Activity* means an activity conducted by an individual or business within the exterior boundaries of the Jicarilla Apache Reservation that constitutes or materially assists (a) the exploration for development, production, treatment, processing, refining, transportation or sale of oil, natural gas or other hydrocarbon minerals; (b) the manufacture of any product using oil natural gas, natural gas liquids, hydrocarbon products or other hydrocarbons as a raw material or component; (c) any activity authorized by a lease issued under the Indian Mineral Leasing Act of 1938, 25 U.S.C. §§ 396a-396g or by a contract entered into by the Nation under the Indian Minerals development Act of 1982, 25 U.S.C. §§ 2101-2108.
- E. *Oil & Gas Administration* means the Oil and Gas Administration of the Nation or its successor.
- F. *Oil & Gas Contract* means any verbal or written agreement related to oil and gas activity. If it is a verbal agreement, there must be documentation evidencing

- (1) the existence of a verbal agreement between an entity and (a) the Nation; or (b) an enterprise of the Nation; or (c) an oil and gas lessee; or (d) an oil and gas operator; or (e) an oil and gas contractor; or (f) an agency of a state or federal government;
- (2) that the contract is a primary or subcontract;
- (3) that the activities are occurring within the exterior boundaries of the Jicarilla Apache Reservation or on land that is subject to the jurisdiction of the Nation.

G. *Oil & Gas Lessee* means any person or business that holds the rights to engage in oil and gas activity pursuant to a lease issued under the Indian Mineral Leasing Act of 1938, U.S.C. §§ 396a-396g, or subject to a development contract issued or approved pursuant to the Indian Minerals Development Act of 1982, 25 U.S.C. §§ 2101-2108.

H. *Oil & Gas Permit Holder* means a person or business possessing an oil and gas operating permit issued under the Jicarilla Apache Nation Code, Title 18.

I. *Owned and Controlled* means ownership of a business demonstrated by entitlement to at least fifty-one percent (51%) of the profits or losses of the business; the power to direct or cause the direction of the business's management and day-to-day operations; and the power to make major policy, management, and operating decisions.

J. *Reservation* means land located within the exterior boundaries of the Jicarilla Apache Nation Reservation.

K. *Unsafe Performance* means an oil and gas business's failure to abide by the minimum safety standards of performance of oil and gas activity or allows unsafe conditions to exist that are inconsistent with the laws and regulations of the Nation and any other applicable federal laws and regulations in performance of an oil and gas contract.

L. *Work Permit* means documentation issued by the Department of Labor authorizing the holder to be on the Jicarilla Apache Reservation to perform work associated with an oil and gas business.

### **§ 3 APPLICATION OF THIS CHAPTER TO ALL OIL AND GAS PERMIT HOLDERS.**

A. **Application to Oil and Gas Contracts.** This Chapter's contracting provisions apply to all oil and gas contracts that are awarded or administered by the Nation, and oil and gas permit holders, *including* contracts for services related to oil and gas activity, regardless of the amount of the contract, but excluding state or federal governments.

B. **Application to Oil and Gas Permit Holders.** This Chapter's employment preference provisions apply to any oil and gas permit holder as defined in the Jicarilla Apache Code, Title 23. This Chapter does not apply to direct employment by the Nation or to direct employment by state or federal governments, or any subdivisions thereof.

#### § 4 IMPLEMENTATION OF THIS CHAPTER.

A. **Implementation of this Chapter.**

- (1) The Department of Labor is authorized to determine compliance with this Chapter and to determine the eligibility of businesses applying for Indian preference certification under this Chapter.
- (2) All oil and gas permit holders, including oil and gas lessees, oil and gas operators, and oil and gas contractors must promptly report to the Department of Labor all prospective oil and gas contracts to be awarded so future employment needs and opportunities are known.

B. **Federal Indian Preference Implementation.** This Chapter establishes Indian Preferences to the fullest extent allowed by federal law.

C. **Notice to Oil & Gas Industry.**

- (1) Upon enactment of this amended Chapter, the Executive Director, with the assistance of the Nation's Oil and Gas Administration, will provide a copy of this amended Chapter to each oil and gas lessee; gas operator; and oil and gas contractor currently conducting oil and gas activity on the Reservation.
- (2) Each entity currently conducting oil and gas activity on the Reservation must submit a written report to the Executive Director within sixty (60) days detailing all existing contracts, regardless of whether such contracts be for goods or services. The written report must include:
  - (a) The contractor's name, the contract amount, and the contract's expiration date;
  - (b) A description of the type, size and duration of any contract it anticipates being awarded for services on the Reservation related to oil and gas activity in the upcoming twelve (12) months;
  - (c) A description of the technical qualifications and other requirements anticipated for the upcoming oil and gas contracts;
  - (d) A list of all individuals that have a valid oil and gas operating permit.

## § 5 CIVIL JURISDICTION.

Every oil and gas permit holder who enters into an oil and gas contract, agreement, or lease and/or who conducts oil and gas activities on the Reservation thereby subjects itself to the Nation's jurisdiction and the Nation's Court. Any term or provision of an oil and gas contract attempting to remove jurisdiction from the Nation is null and void of any legal effect.

## § 6 COMPLIANCE MANDATORY.

A. **Compliance is Mandatory.** Compliance with the provisions of this Chapter is mandatory. No waivers of any kind are permitted.

B. **Responsibility of Permit Holders, Primary Contractors, and Principals.** Oil and gas permit holders, contractors, and principals are responsible for compliance with this Chapter, and are also responsible for compliance with this Chapter by their subcontractors, brokers, agents, employees, and subsidiaries. All are subject to the Nation's jurisdiction and the Nation's Court, and are responsible for any sanctions and penalties provided in this Chapter in the event of violation.

C. **Discretionary Power of the Department of Labor.** The Department of Labor and the Oil & Gas Administration may exercise their discretion to forego the imposition of sanctions and penalties for failure to comply with the Jicarilla Apache Code (Title 18 and Title 23) with a showing of an emergency circumstance. An emergency circumstance contemplates a situation where an imminent threat to health, safety, or welfare exists; or where an oil spill, well fire, pipeline fire, hazardous chemical spill, pipeline break, etc. were to occur.

## § 7 FEES.

A. **Certified Indian Business Fees.** The following certification and re-certification fees apply:

- (1) A fee of One Hundred and Fifty dollars (\$150.00) shall be imposed upon each applicant for certification of Indian preference eligibility and is due at the time of application;
- (2) A fee of One Hundred Dollars (\$100.00) shall be imposed upon each certified oil and gas business for annual Indian preference eligibility re-certification and is due each year on the anniversary date of the original certification.

B. **Oil and Gas Contract Administration Fee.** The following contract administration fees apply:

- (1) Each oil and gas permit holder must pay a Five Hundred Dollar (\$500) Contract Administration Fee, which is due on an annual basis.
- (2) Certification, re-certification, or contract administration fees do not apply to the Nation, its enterprises, agencies, departments or any of their contracts.
- (3) Applications, re-certifications, and bids will not be considered until all fees are paid.
- (4) In lieu of paying the administration fee, a permit holder may hire a member of the Jicarilla Apache Nation for the contract term in accordance with this ordinance. This exception applies only to “new” hires, not existing employees.
- (5) Failure to submit the oil and gas contract administration fee within the time required pursuant to this Chapter may result in penalties.
- (6) The Nation’s Indian Preference Administration Fund shall be established by the Legislative Council. All fees and civil penalties collected pursuant to this Chapter will be deposited into this fund. The purpose of the fund is to provide funding for the Department of Labor to implement, monitor and enforce this Ordinance, as well as assist in providing training for temporary employees under the 060 General Employment Program or other departments.

## **§ 8 WORK PERMITS.**

- A. **Work Permit Fee.** The work permit fee will be established by the Department of Labor and is required for all individuals conducting oil and gas activity on the Reservation.
- B. **Work Permit Proceeds.** All proceeds will be deposited in the Nation’s Indian Preference Administration Fund.
- C. **Work Permit Requirement.** No oil and gas permit holder may begin performing an oil and gas contract or oil and gas activity on the Reservation until all individuals, including owners, chief executive officers, managers, employees, contractors, and sub-contractors who will be providing goods and services on the Reservation have obtained work permits from the Department of Labor. Work permits are required for all oil and gas permit holders and for any other employer as defined in Jicarilla Apache Nation Code, Title 23.
- D. **Work Permits for Individuals.** The following persons must have a work permit:
  - (1) All individuals working on the Reservation as an oil and gas permit holder;
  - (2) All employees of an oil and gas permit holder;

(3) The work permit will identify the employee by name, the employment classification; and the company they are employed by.

E. **Contents of Work Permit.** The work permit shall identify the individual; the individual's employment classification; and the individual's current employer.

F. **Failure to Possess a Work Permit.** Consequences for failure to possess a work permit are as follows:

(1) Any person employed by a covered oil and gas permit holder who does not have a valid work permit will be removed from the job site and removed from the Reservation. A person removed for failing to have a valid work permit will be subject to penalties under this Title and Title 18 of the Oil and Gas Ordinance.

(2) Oil and gas permit holders shall be held responsible for employees, contractors, and sub-contractors not possessing valid work permits and will be subject to any penalties under this Title and Title 18 of the Oil and Gas Ordinance.

(3) An oil and gas permit holder's work permit shall be automatically suspended if an employee of the oil and gas permit holder is working on the Reservation and fails to have a valid work permit.

(4) An individual cannot be denied employment for failure to have a work permit. However, an oil and gas permit holder may make employment contingent on the potential employee obtaining a work permit.

G. **Violation of Other Provisions of Ordinance.** Oil and gas permit holders, and/or their employees, who are determined by the Department of Labor to be in violation of any provision of this Ordinance, automatically forfeit their work permits.

H. **Violation of Jicarilla Apache Nation Laws.** All work permit holders must agree to abide by all the laws of the Jicarilla Apache Nation. Work permit holders failing to abide by the laws of the Nation shall forfeit their work permit.

## **§ 9 INDIAN PREFERENCE CERTIFICATION FOR OIL AND GAS BUSINESSES.**

A. **Certification.** The following provisions regarding certification apply:

(1) Only the Department of Labor can certify an oil and gas business as eligible for Indian preference pursuant to this Chapter. An oil and gas business can be certified as a 100% Jicarilla Apache-Owned Business or an Indian-Owned Business. To obtain Indian Preference Certification, an oil and gas business must be to demonstrate that fifty-one (51%) of the business is owned by a member of a federally-recognized Indian Tribe and

that profits are shared according to the ownership percentage. Indian-owned business fronts or businesses seeking to gain certified status by use of tribal members who have little or no interest in the business are prohibited.

- (2) Any oil and gas business that seeks Indian preference to provide goods or services to the Nation pursuant to this Chapter must be certified as eligible for Indian preference by the Department of Labor. Applications for certification may be obtained from the Department of Labor. All supporting documentation must be submitted in writing.
- (3) Certified oil and gas businesses must report any change that may affect their eligibility for Indian preference, including changes in financial, organizational, or operational status, or composition, ownership, location of principal place of business, personnel, management, or control. The certified oil and gas business must submit a detailed and accurately written report within the first thirty (30) days after the change has occurred, describing the change and listing the date that it occurred.
- (4) In order to be re-certified, each certified oil and gas business must submit annually, on or before the anniversary date of its original certification, the re-certification fee, a current federal income tax return, and a verified written statement that the certified oil and gas business has fully complied with the Jicarilla Apache Nation Code, Title 23.
- (5) All information submitted for certification and re-certification is confidential and will not be disclosed except as necessary in a formal proceeding pursuant to this Chapter.
- (6) The Executive Director will maintain a current list of all certified oil and gas businesses which must include the relevant, qualified field(s) of work supported by proper documentation of certification, licensure, or training for which each oil and gas permit holder is seeking to contract.
- (7) A Jicarilla Apache certified oil and gas business may subcontract with another Jicarilla Apache certified oil and gas business and maintain Jicarilla Apache certified status. However, a Jicarilla Apache certified business subcontracting with a non-certified oil and gas business in preparing a bid will result in “non-certified” status and the bid will be treated as a non-Indian Business bid. If the Jicarilla Apache certified business subcontracts with an Indian-certified business, the bid will be treated as an Indian certified business. If an Indian certified business subcontracts with a Jicarilla Apache certified business, the bid will be treated as an Indian certified business.

**B. Falsifying or Concealing Information.** Any person who omits, falsifies, or otherwise misrepresents information about any determination authorized or required by this Chapter is

subject to sanctions and penalties under this Chapter and any other applicable laws of the Nation including possible exclusion under the Jicarilla Apache Nation Code.

C. **Revocation of Certification.** If the certification of a certified Indian business is later reviewed and it is determined by the Department of Labor that certification was not appropriate, certification will be revoked. The business may be subject to penalties and fines depending on the reasons for the revocation of certification.

## **§ 10 PROCEDURES FOR AWARDING CONTRACTS.**

The following contract award provisions are applicable to oil and gas activity:

A. **List of Certified Oil and Gas Businesses.** After the standard minimum technical qualifications necessary for providing oil and gas services have been established, the Department of Labor will maintain a list of all certified oil and gas businesses that must be used by oil and gas permit holders.

B. **Notice of Availability of Certified Oil and Gas Business.** The oil and gas permit holder must contact the Executive Director to determine if a certified oil and gas business is available to provide the needed services before awarding any contract for oil and gas activity on the Reservation.

C. **Oil and Gas Contracts.** All contracts for services related to oil and gas activity must be awarded in accordance with this ordinance. All oil and gas contracts must be in writing and must provide 1) both parties' contracting information; 2) a description of the nature and scope of the services offered; 3) the contract term; and 4) the contract price.

D. **Right of First Refusal.** If a certified oil and gas business is qualified and available to perform the contract or a portion thereof, such certified business must be give the first right to accept or refuse the contract. If the certified business refuses the contract then other certified businesses must be contacted to perform the contract, followed by non-certified businesses.

E. **Multiple Available Certified Businesses.** If there are multiple certified oil and gas businesses that are qualified and available to perform the contract, the contract will be awarded to the lowest bidder.

F. **When No Certified Businesses Are Available.** If the oil and gas permit holder determines that none of the certified businesses in the relevant field are qualified, the permit holder will provide a written description of the oil and gas contracts technical qualifications and other requirements to the Executive Director, who will review the qualifications and may challenge anything that serves as a barrier to certified oil and gas businesses such as technical or other requirements that are not necessary to perform the contract. If, after review, the Executive

Director determines that a barrier to certified oil and gas businesses does not exist and verifies that no certified businesses are available, then non-certified businesses may be considered.

**G. Indian Preference Reporting to Department of Labor.** The oil and gas permit holder seeking to have work performed on the Jicarilla Reservation by a contractor must submit documentation that either: 1) a certified business was contacted and used; or 2) a certified business was contacted but refused; or 3) a certified business was contacted but was unavailable; or 4) no certified business was qualified to perform the contract. Failure to submit reports or submitting false or misleading reports subject the oil and gas permit holder to penalties of law and possible exclusion.

**H. Reporting of Oil and Gas Contracts.** Each month the oil and gas permit holder will provide the Executive Director with a list of every contract the oil and gas permit holder used to conduct activity within the Nation. The list shall be verified as true and correct under penalty of law. The Executive Director, at his discretion, may request copies of the contracts to verify the list. Failure to submit reports or submitting false or misleading reports will subject the oil and gas permit holder to penalties and possible exclusion.

**I. Revised Scope of Work.** If the oil and gas permit holder determines that there are certified oil and gas businesses that are qualified, but they lack the resources to perform all the work required under the proposed oil and gas contract, the permit holder will make a good faith effort to divide the scope of work into smaller components so that qualified and available businesses can perform that portion of the work for which they have adequate resources.

**J. Failure to Utilize Available Certified Businesses.** If an oil and gas permit holder fails to utilize an available certified oil and gas business, the permit holder is not in compliance with this Chapter and will be subject to penalties and sanctions.

## **§ 11 TRIBAL EMPLOYMENT.**

**A. Skills Bank.** The Department of Labor will maintain a skills bank that identifies members of the Jicarilla Apache Nation, regardless of residence, and members of any other Indian Nations, living on the Reservation, who desire employment, their current employment status; preferred area of employment; training; experience; education; and availability. Information in the skills bank will be used to locate and notify all local Indian individuals residing within the community of Dulce who qualify for the positions available.

**B. Job Qualifications and Personnel Requirements.** An oil and gas permit holder may not require any job qualifications that serve as barriers to the employment of Indians unless the qualification is a business necessity. The burden is on the oil and gas permit holder to demonstrate that a job qualification found by the Department of Labor to be a barrier to Indian employment is a business necessity. If the Oil and Gas Permit Holder fails to meet this burden,

the job qualification must be eliminated. Oil and gas permit holders shall also make reasonable accommodation for the religious beliefs of Indian employees.

C. **Non-availability of Qualified Tribal Member.** If neither the oil and gas permit holder nor the Department of Labor can locate a qualified member of the Jicarilla Apache Nation, the oil and gas permit holder will make a good faith effort to locate and hire a member of another Indian tribe.

D. **Cultural Awareness.** All contracting entities and employees must complete a minimum of 2 hours cultural awareness training.

E. **Notice of Employment Vacancies.** All oil and gas permit holders who have vacant employment positions in their oil and gas business whose job duty is on the Reservation must provide the Department of Labor notice of the vacant position.

F. **Indian Preference Reporting.** The oil and gas permit holder seeking to employ full-time or temporary employees must submit documentation to the Department of Labor that either 1) an Indian worker was contacted and accepted an offer of employment; or 2) an Indian worker was contacted and declined an offer of employment; or 3) no Indian worker was qualified to satisfy the contract. Failure to submit reports or submitting false or misleading reports will subject the oil and gas permit holder to penalties of law and possible exclusion.

G. **Monthly Reporting.** Each month the oil and gas permit holder will provide the Executive Director with a list of every job vacancy, both full-time and temporary, that was available on the Reservation. The list must be verified under penalty of perjury as true and correct. Failure to submit reports, or submitting false or misleading reports, will subject the oil and gas permit holder to penalties and possible exclusion.

H. **Hiring and Penalties for Noncompliance.** The oil and gas permit holder must utilize the Department of Labor's skills bank to hire both full-time and temporary employees. A qualified, enrolled Jicarilla Apache tribal member must be hired before an Indian from another tribe or before a non-Indian. An oil and gas permit holder who fills a vacant employment position, either full-time or temporary, in its oil and gas business contrary to this Chapter will be subject to penalties and sanctions.

I. **Layoff or Reduction in Force.** In the event of a layoff or reduction in force, an oil and gas permit holder must release employees in the following order: 1) employees who are non-Indian; 2) employees who are Indians from tribes other than the Jicarilla Apache Nation; and 3) employees who are members of the Jicarilla Apache Nation. If the non-Indian employee and Indian employee are both equally qualified, the oil and gas permit holder must retain the Indian employee and release the non-Indian employee.

J. **Promotions.** The oil and gas permit holder will give members of the Jicarilla Apache Nation preferential consideration for all promotion opportunities located on the Reservation and will encourage members of the Jicarilla Apache Nation to seek such opportunities. For all promotions involving on-Reservation positions that are filled by non-Indians or Indians from tribes other than the Jicarilla Apache Nation, the oil and gas permit holder will file a report with the Department of Labor stating which members of the Jicarilla Apache Nation, if any, applied for the position; the reasons why they were not offered the position; and what efforts were made to inform members of the Jicarilla Apache Nation or Indians from other tribes of the opportunity.

## § 12 PROHIBITED ACTS.

A. **Bid Shopping.** Any person who solicits or communicates information about a competitor's bid before or after bid opening so as to intentionally or unintentionally underbid the competitor will be subject to penalties, sanctions, and/or exclusion from the Reservation.

B. **Bribery.** Any person who gives or offers any money, property, service or anything of value to a tribal official with intent to influence another in the discharge of his duties or conduct, and any tribal official who accepts, solicits, or attempts to solicit any bribe as above described, will be subject to penalties, sanctions and/or possible exclusion from the Reservation.

C. **Illegal Aliens.** The hiring, employing, or use of illegal aliens to work on the Reservation is prohibited. An oil and gas permit holder engaging in the hiring, employing and/or use of illegal aliens will be subject to penalties, sanctions and/or exclusion from the Reservation.

D. **Labor Organization and Freedom of Association.** An oil and gas permit holder will be subject to penalties, sanctions, and/or exclusion from the Reservation for requiring, as a condition of employment or continuation of employment, an employee to:

- (1) Resign or refrain from voluntary membership in, voluntary affiliation with, or voluntary financial support of, a labor organization;
- (2) Become or remain a member of a labor organization;
- (3) Pay dues, fees, or charges of any kind or of any amount to a labor organization;
- (4) Pay to a third party, in lieu of such payments, any amount equivalent to, or a pro-rata portion of dues, fees, or charges regularly required of member of a labor organization;
- (5) Travel to a site off the Reservation to be processed by a union hiring hall;

E. **Voidable Nature of Agreements with Labor Organizations.** Any agreement between a labor organization and an oil and gas permit holder that violates the rights guaranteed by this Chapter will have no legal effect on the Reservation or in the Nation's Courts.

F. **Retaliation.** An oil and gas permit holder shall not punish, terminate, harass, or otherwise retaliate against any employee or other person who has exercised his or her rights under this Chapter or has assisted another to do so. An oil and gas permit holder who engages in conduct described in this paragraph will be subject to penalties, sanctions and/or exclusion from the Reservation.

G. **Harassment or Abuse of Department of Labor Employees.** An oil and gas permit holder shall not harass or abuse an employee of the Department of Labor who is carrying out official duties under this Chapter. Oil and gas permit holders are responsible for the actions of their employees and their contractors with respect to this Paragraph. An oil and gas permit holder who engages in conduct described in this paragraph will be subject to penalties, sanctions and/or exclusion from the Reservation.

### **§ 13 MONITORING INDIAN PREFERENCE IN EMPLOYMENT.**

A. **Submission of Mandatory Reports.** Each oil and gas permit holder is responsible for submitting reports pursuant to this Chapter.

B. **Submission of Additional Reports.** At the discretion and request of the Executive Director, the oil and gas permit holder must submit a written report to the Department of Labor within sixty (60) days of such request. Each report must include:

- (1) The number of employees employed by the permit holder;
- (2) The name and position of each employee who has worked on Reservation during the current and immediately preceding calendar month;
- (3) Copies of all work permits of current employees and those employed in the immediate preceding calendar month;
- (4) A listing of all current contracts the permit holder has with business being conducted on the Reservation until that date of request for the calendar year;

Based on the information provided, the Executive Director will determine compliance with this Ordinance.

C. **Failure to Submit Reports.** Failure to comply with the reporting requirements outlined in Paragraph (A) or Paragraph (B), above, will subject the oil and gas permit holders to penalties, sanctions, and/or exclusion from the Reservation.

### **§ 14 AUTHORITY AND RESPONSIBILITIES OF EXECUTIVE DIRECTOR.**

The authority and duties of the Executive Director include the following:

- (1) The Executive Director will monitor compliance with the certification, contracting, and employment provisions of this Chapter and will initiate an investigation and hearing, when necessary, to determine if a violation of the provision has occurred.
- (2) The Executive Director has the authority to issue citations to anyone failing to comply with this Chapter.
- (3) The Executive Director may seek assistance from the Nation's law enforcement agencies and Tribal Officials to enforce the work permit requirement. The Jicarilla Apache Nation law enforcement agencies and Tribal Officials have the authority to issue citations for failure to possess a work permit.

#### **§ 15 FILING A COMPLAINT OF NON-COMPLIANCE.**

- A. **Filing a Complaint.** Any person injured by non-compliance with any provision of this Chapter must file a complaint with the Executive Director who will conduct an investigation and hearing, if necessary, to determine if a violation has occurred.
- B. **Complaint Must be in Writing.** All complaints must in writing and must be signed and dated by the person filing the complaint on a form provided by the Department of Labor.
- C. **Unpaid Invoices.** Unpaid invoices are not grounds for filing a complaint pursuant to this Chapter.

#### **§ 16 DISMISSAL OF A COMPLAINT.**

The Executive Director, in his or her discretion, may dismiss an unsubstantiated complaint. If a Hearing Officer has been appointed, he or she may dismiss an unsubstantiated complaint.

#### **§ 17 MEDIATION.**

- A. **Mediation.** At the discretion of the Executive Director, or an appointed Hearing Officer, or upon request from any party, mediation may be utilized to resolve a dispute. If parties agree to mediation, the Executive Director or Hearing Officer will serve as mediator.
- B. **Notice of Mediation.** If the Executive Director, or appointed Hearing Officer, has decided to use mediation, then a notice of mediation with the time and place shall be issued to all parties. If the dispute is settled through mediation, no further Department of Labor action will be necessary other than documenting the mediation settlement plan.
- C. **Unsuccessful Mediation.** If the parties are unable to settle their dispute, then the Executive Director or appointed Hearing Officer will conduct a hearing pursuant to this Chapter.

## § 18 CITATION.

A. **Contents of a Citation.** A citation is a formal notice to an individual that a violation of this Chapter has been alleged. The citation shall include the individual's name; address; date of birth; date, time, and place of the incident; date of issuance of citation; citation number; and name of the Official issuing the citation. The citation should briefly state the alleged violation and the facts supporting the alleged violation.

B. **Issuance of a Citation.**

- (1) The Executive Director; law enforcement employees; and Tribal Officials who have been asked to assist the Department of Labor, may issue a citation to individuals and/or oil and gas permit holders who are believed to be in violation of a provision of this Chapter.
- (2) A Hearing Officer may issue a citation if he has been appointed by the Executive Director to investigate a complaint and finds that a violation of this Chapter has occurred.

C. **Discretionary Suspension of Work Permit.** The issuer of a citation may, at his or her discretion, temporarily suspend a work permit of an oil and gas permit holder if he or she believes a violation of this Chapter has occurred.

D. **Contesting the Citation.**

- (1) An individual or oil and gas permit holder may contest the citation by taking a copy of the citation to the Department of Labor, and requesting a hearing.
- (2) An individual or an oil and gas permit holder has ten (10) days to contest a citation. Failure to submit a request for a hearing within ten (10) days will constitute an admission to the allegations in the citation and subject the individual or permit holder to sanctions, penalties and possible exclusion.

E. **Paying the Fine.** An individual or oil and gas permit holder may choose to pay the fine assessed in the citation. The fine must be paid in full, by money order; cashier's check; or company check to the Department of Labor. If an amount has not been provided on the citation, the individual or oil and gas permit holder must notify the Department of Labor of the citation and the Department of Labor will then assess the fine.

F. **Bond; Cease and Desist Order.**

- (1) A written notice may require an alleged violator to cease and desist the conduct that constitutes the alleged violation.

(2) A written notice may require an alleged violator to post a bond with the Department of Labor if there is a written finding that the following conditions exist:

(a) The alleged violator has previously failed to comply with an order of the Executive Director or an appointed Hearing Officer or has engaged in conduct demonstrating a blatant disregard for the Nation's authority and requirements such that the Executive Director or appointed Hearing Officer has good reason to believe that the alleged violator will not comply with the orders of the Hearing Officer or Executive Director; or

(b) The alleged violator has no permanent place of business on the Jicarilla Apache Nation; and

(c) The amount of the sanctions exceeds, or is likely to exceed, One Thousand Dollars (\$1,000.00); and

(d) The business in which the alleged violator is engaged will be substantially completed within sixty (60) days so that it may be difficult to locate the property of the alleged violator for attachment if the alleged violator fails to pay any sanction imposed.

(3) The bond shall be in an amount sufficient to cover civil penalties that may be assessed against the entity pending a hearing.

**G. Order of Attachment.** The Executive Director, or an appointed Hearing Officer, may petition the Nation's Court for an order of attachment of an alleged violator's property found on the Reservation when it finds that any one or more of the conditions stated below exists:

(1) An alleged violator has refused or failed to post a bond after being ordered to do so by the Executive Director or Hearing Officer; or

(2) The Executive Director or Hearing Officer has good reason to believe that the alleged violator will remove itself or its property from the Nation before the Executive Director or Hearing Officer can complete efforts to require the alleged violator to post bond; or

(3) The alleged violator has demonstrated through his or her conduct blatant disregard to the requirements and orders of the Executive Director, the appointed Hearing Officer; or the Nation's Court.

## § 19 FORMAL HEARING PROCEDURE.

The following procedures govern hearings conducted pursuant to this Chapter:

- A. **Purpose of Rules.** It is the purpose of these rules to ensure that all facts are fairly developed during the hearing and that the issues of law and legal argument are presented to the Hearing Officer in writing and in such a manner as to aid in the proper and speedy resolution of all complaints and alleged violations.
- B. **Counsel.** The Hearing Officer and all parties involved in the complaint or alleged violation are permitted to have counsel (attorney or non-attorney) present during all stages of the administrative hearing proceedings. However, parties must be physically present during the actual proceedings. The responsibility for payment, if any, to counsel will be the sole responsibility of the party on whose behalf counsel will appear.
- C. **Submission of Documents.** All documents pertaining to the complaint or alleged violation must be submitted to the Hearing Officer within five (5) business days after the request for hearing has been filed with the Hearing Officer.
- D. **Witnesses.** Parties are responsible for securing the attendance at the hearing of any person they wish to serve as a witness. Parties must submit a witness list to the Hearing Officer within five (5) business days after the request for hearing. Failure to submit a witness list may result in the exclusion of the party's witnesses.
- E. **Examination of Witnesses.** Examination of parties and witnesses appearing before the Hearing Officer will be conducted informally; will be subject to the control of the Hearing Officer; and be done in such a manner to afford all parties a reasonable opportunity to ask questions and to develop all facts necessary for a well-informed decision by the Hearing Officer.
- F. **Legal issues.** All legal arguments, if any, must be received by the Hearing Officer no less than five (5) business days prior to the scheduled hearing. No additional briefing is permitted except at the Hearing Officer's request. To the extent that any additional legal arguments are raised during the hearing, the Hearing Officer may request that such arguments be submitted in writing and may set the time limit for such additional briefing. No legal arguments shall be heard during any hearing unless requested by the Hearing Officer. It is recognized that some issues may be combined factual and legal issues. The Hearing Officer shall have the discretion to determine whether the presentation being made by a party to a proceeding constitutes a legal argument or a factual presentation.

The discretion exercised by the Hearing Officer shall be final and not subject to review or appeal.

- G. **Order of Presentation.** Witnesses whose testimony supports the complaint or allegation of violation will be presented first. Witnesses whose testimony opposes the complaint or allegation of violation will follow. After the presentation of each witness, the Hearing Officer may question the witness. Additional questioning is limited to that deemed necessary by the Hearing Officer and will be conducted by the Hearing Officer.
- H. **Conduct of Participants.** Participants, attorneys, and other attendees appearing before a Hearing Officer pursuant to these rules shall conduct themselves with proper decorum and will respect others appearing before the Hearing Officer. If a participant or attendee fails to observe proper decorum or fails to show respect for others, the Hearing Officer may exclude the offending person from further participation and attendance. If the complainant or alleged violator is excluded because of misconduct, the hearing will proceed to a final resolution despite the person's absence. Exclusion of a party, or counsel for a party, for reasons of misconduct is not grounds for re-hearing.
- I. **Open Hearings.** Hearings are open to the public. The Hearing Officer is responsible for maintaining order and directing the manner in which the proceedings are conducted. The Hearing Officer may, at the request of a participant or at his or her own discretion, issue appropriate orders to protect any matter deemed to be inappropriate for public disclosure, including closing the hearing to the public if necessary.
- J. **Record of Proceedings.** The Hearing Officer shall keep a record of all hearings. The manner of compiling and preserving the record is within the Hearing Officer's discretion. No recording such as audio recording or court reporting transcription is allowed unless it is specifically requested by the Hearing Officer.
- K. **Delays or Continuances.** Request for delays or continuances must be made prior to the hearing and will be granted only in extreme circumstances when, in the interest of fairness, the Hearing Officer decides it is appropriate.
- L. **Additional Materials.** After receiving all testimony and evidence, the Hearing Officer will inform all participants of time limits to submit additional material, if requested.
- M. **Findings and Conclusions.** The Hearing Officer will issue a final decision within ten (10) business days after the hearing, or, if additional material is requested, within ten (10) business days after the receipt of the additional material. The final decision will include

written findings, conclusions, and sanctions, if any. The Hearing Officer will send a copy of the final decision to each party by certified mail, or return receipt requested.

N. **Distribution of Rules.** These rules must also be available to any interested person upon request at the Department of Labor.

O. **Decision Not Appealable.** The Hearing Officer's decision is final and may not be appealed to any court.

## § 20 PENALTIES AND SANCTIONS.

A. **Penalties.** After conducting a hearing and making a determination that a violation of this Chapter has occurred, the Hearing Officer may impose any and all of the following penalties:

(1) **Employment Violation.** For a first violation of an employment provision of this Chapter by an oil and gas permit holder, a penalty not to exceed Two Thousand Five Hundred Dollars (\$2,500.00) may be imposed. For a subsequent violation, a penalty not to exceed Five Thousand Dollars (\$5,000.00) may be imposed. In the case of a recurring violation, each day of the violation constitutes a separate violation. Failure to pay a penalty by the date required will subject the offender to an additional penalty of Two Hundred Dollars (\$200.00) for each day the offender fails to comply.

(2) **Contracting Violation.** For a first violation of the contracting provisions of this Chapter, a penalty of up to ten percent (10%) of the dollar amount of the contract may be imposed. For a subsequent violation, a penalty of up to twenty percent (20%) of the dollar amount of the contract may be imposed. Failure to pay a penalty by the date required will subject the offender to an additional penalty of Three Hundred Dollars (\$300.00) for each day the offender fails to comply.

(3) **Failure to have a Valid Work Permit.** For failure to have a work permit pursuant to provisions set forth in this Chapter, a penalty not to exceed Five Hundred Dollars (\$500.00) may be imposed.

(4) **Obtaining a Contract by False or Misleading Information.** For obtaining a contract by providing false or misleading information related to entitlement to Indian preference, a penalty equal to the contract amount may be imposed.

(5) **Failure to Submit a Report.** Failure to submit a report within the required time frame pursuant to any reporting provision set forth in this Chapter, a penalty not to exceed Five Hundred Dollars (\$500.00) shall be imposed.

(6) **Employment of Illegal aliens.** The employment of an illegal alien by an oil and gas permit holder will be subject to a penalty of Ten Thousand Dollars (\$10,000.00) for each illegal alien.

(7) **Imposition of Penalties.** When penalties are imposed against an oil and gas permit holder, they may also be imposed, at the discretion of the Hearing Officer, against the title holder of the lease, the holder of the operating rights, and/or the contract operator.

B. **Sanctions.** After conducting a hearing and making a determination that a violation of this Chapter has occurred, the Hearing Officer may in addition to the penalties, impose any and all of the following sanctions, in addition to penalties assessed:

(1) **Suspension or Termination of Business Activity.** Suspension or termination of a violator's authorization to engage in business activity on the Reservation. If no bond or order of attachment is sought pursuant to this Chapter, the violator will be given a reasonable time to remove their equipment and other property from the Reservation.

(2) **Compliance with Provisions.** Require the violator, within a time limit set by the Hearing Officer, to make changes in its performance, procedures, or policies so as to come into compliance with provisions of this Chapter. Such changes may include, but are not limited to, submitting reports more frequently to the Department of Labor and limiting the duration for work permits.

(3) **Exclusion from the Reservation.** In accordance with all applicable laws of the Jicarilla Apache Nation, remove or exclude the violator indefinitely in accordance with the Jicarilla Apache Nation Code, Title 2, Chapter 10.

(4) **Imposition of Sanctions.** When sanctions are imposed against an oil and gas permit holder, they may also be imposed, at the discretion of the Hearing Officer, upon the title holder of the lease, the holder of operating rights, and/or the contract operator.

(5) **Factors to Consider When Imposing Sanctions.** When imposing sanctions pursuant to this Chapter, the Department of Labor shall consider such factors as whether the violation was intentional; whether the violator acted swiftly to resolve the violation; and whether the violator had previously been cited for other violations.

C. **Civil remedy.** An individual or Indian-owned business may pursue a civil cause of action in the Jicarilla Apache Nation Court for violations of this ordinance where an individual or Indian-owned business suffered damages.

**§ 21 SOVEREIGN IMMUNITY.**

Any challenge to the manner in which this Chapter is implemented or enforced may be brought only to the Nation's Court and only as provided by this Chapter. Nothing in this Chapter should be construed as a waiver of the Jicarilla Apache Nation's sovereign immunity.

**§ 22 SEVERABILITY.**

If any provision of this Chapter is held invalid, the remainder of this Chapter will not be affected.

**§ 23 EFFECTIVE DATE**

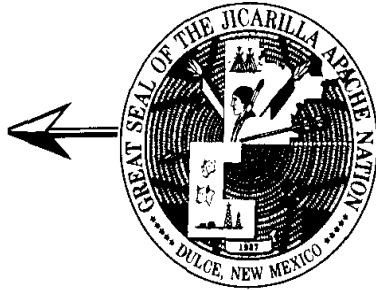
This amended Chapter is effective from the date it is approved by the Secretary of the Interior.

**§ 24 EFFECT OF OTHER LAWS.**

This amended Chapter, as of the date of its enactment, supersedes any provision in any ordinance, resolution, rule, or regulation of the Nation that prescribes the manner in which Indian preference will be applied in contracting or employment within the Nation, except that the Jicarilla Apache Nation Personnel Code is not affected in any way. This Chapter does not eliminate penalties provided in any other ordinance, resolution, rule, or regulation of the Nation for failure to provide Indian preference in employment and contracting with the Nation.

**§ 25 EFFECT OF TITLE 18.**

This amended Chapter, as of the date of its enactment, prescribes the manner in which Indian preference will be applied in contracting employment within the Nation and directly applies to Title 18, Chapter 1, Section 6 (C), JANC § 18-1-6.



## THE JICARILLA APACHE NATION

P.O. BOX 507 • DULCE, NEW MEXICO • 87528-0507

### ORDINANCE OF THE LEGISLATIVE COUNCIL

#### GOVERNMENT/DEPARTMENT OF LABOR

**RE: Amendment of the Indian Preference Ordinance, Jicarilla Apache Nation Code ("JANC"), Title 23 (revision of Chapter 1)**

**Ordinance No. 2010-O-373-08**

**WHEREAS**, Article XI of the Revised Constitution of the Jicarilla Apache Nation ("Revised Constitution") vests the inherent powers of the Jicarilla Apache Nation ("Nation"), including those conferred by Section 16 of the Act of June 18, 1934 (48 Stat. 984), as amended, in the Legislative Council; and

**WHEREAS**, Article XI of the Revised Constitution authorizes the Legislative Council to enact ordinances to promote peace, safety, property, health and general welfare of the people of the Reservation and to provide for the enforcement of Tribal Ordinances on the Reservation; and

**WHEREAS**, the Council has appointed the Department of Labor to make to make recommendations to the Council regarding measures to improve the Indian Preference Ordinance for individual tribal members, individual Indians and Indian owned businesses; and

**WHEREAS**, the Department of Labor has recommended that certain revisions be made to the Nation's Indian Preference Ordinance, JANC, Title 23, by revising Chapter 1 as shown below;

**WHEREAS**, the Legislative Council finds that it is in the best interest of the Nation to adopt the recommended changes;

**NOW, THEREFORE, BE IT RESOLVED**, that JANC, Title 23, Chapter 6 is hereby revised and the task to revise Chapter 2 is hereby authorized. For purposes of enforcement, Chapter 2 of Title 23 will remain in effect until it had been revised.

President

#### CERTIFICATION

The foregoing Resolution was enacted by the Legislative Council of the Jicarilla Apache Nation on the 5<sup>th</sup> day of August, 2010, by a vote of 8 for, 0 against, 0 abstaining, at a duly called meeting at which a quorum of the Legislative Council was present.

ATTEST:

Secretary of the Nation





**JICARILLA APACHE NATION  
DEPARTMENT OF LABOR**