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MATTHEW J. NEUBERT  
DIRECTOR

SECURITIES DIVISION  
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Phoenix, AZ 85007  
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ARIZONA CORPORATION COMMISSION

August 15, 2016

Wallace W. Kunzman, Jr.  
Kunzman & Bollinger, Inc.  
5100 N. Brookline, Suite 600  
Oklahoma City, Oklahoma 73112

Re: Request for Interpretive Guidance or No-Action Letter Request on Behalf of Atlas Resources Series 28-2010 L.L., Atlas resources Public #18-2009(B) L.P., and Atlas Resources Public #18-2009(C) L.P.  
Securities Division File No. NA-401

Dear Mr. Kunzman:

On the basis of the facts set forth in your July 14, 2017 correspondence and subsequent follow-up communications, the Securities Division will not recommend enforcement action in connection with the proposed spin-off transactions.

Our no-action position should not be relied on for any other set of facts or by any other person. Please also note that this position applies only to the registration requirements of the Securities Act of Arizona ("Act"); the antifraud provisions of the Act continue to be applicable.

We have attached a photocopy of your correspondence containing the facts upon which this position is based.

Very truly yours,

A handwritten signature in black ink, appearing to read "Matthew J. Neubert", with a horizontal line extending to the right.

MATTHEW J. NEUBERT  
Director of Securities

Attachment

KUNZMAN & BOLLINGER, INC.  
ATTORNEYS-AT-LAW  
5100 N. BROOKLINE, SUITE 600  
OKLAHOMA CITY, OKLAHOMA 73112  
Telephone (405) 942-3501  
Fax (405) 942-3527

July 14, 2017

UPS

Ms. Susan Baker Toth  
Arizona Corporation Commission  
Securities Division  
1300 West Washington Street, Third Floor  
Phoenix, Arizona 85007

RE: Atlas Resources Series 28-2010 L.P., Atlas Resources Public #18-2009 (B) L.P.  
Atlas Resources Public #18-2009 (C) L.P. (collectively, the "Funds")  
Request for Interpretive Guidance or No Action Request

Dear Ms. Baker Toth:

Pursuant to Section 44-1826 of the Arizona Securities Act, we respectfully request, on behalf of our client, that the Arizona Securities Division issue an interpretive opinion or assurance that no action would be taken if the Funds separately engaged in a distribution of units from a limited partnership to its unitholders in connection with a spin-off as described below (the "Spin-Off"). This request references one transaction for clarity, but each of the above-referenced entities will separately engage in the Spin-Off transaction as described in Part I, below.

We believe that the Spin-Off transaction should be exempt from registration in the State of Arizona in reliance upon transactional exemptions under Sections 44-1801(15), 44-1801(21),<sup>1</sup> 44-

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Arizona Corp. Commission  
Securities Division

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<sup>1</sup> Sections 44-1801(15) and (21) of the Arizona Securities Act provide that:

15. "Offer to sell" or "offer for sale" means an attempt or offer to dispose of, or solicitation of an order or offer to buy, a security or interest in a security for value or any sale or offer for sale of a warrant or right to subscribe to another security of the same issuer or of another issuer. Any sale or offer for sale of a security which gives the holder thereof a present or future right or privilege to convert such security into another security of the same issuer or of another issuer, shall be deemed an offer to sell the security to be acquired pursuant to such right or privilege, but the existence thereof shall not be construed as affecting the registration or exemption under this chapter of the security to which it attaches.

21. "Sale" or "sell" means a sale or any other disposition of a security or interest in a security for value, and includes a contract to make such sale or disposition. A security given or delivered with, or as a bonus on account of, a purchase of securities or other thing shall be conclusively presumed to constitute a part of the subject of the purchase and to have been sold for value.

1844(5)<sup>2</sup> or 44-1844(6)<sup>3</sup> of the Arizona Securities Act, or R14-4-101(A)<sup>4</sup> of the Arizona Administrative Code.

**I.**  
**Background and Proposed Transaction**

Our client has provided us with, and has authorized us to make on its behalf, the factual representations set forth below regarding the proposed Spin-Off transaction.

- Each of the above-referenced entities is a limited partnership that is a public reporting company (the "Parent"). It will create a new limited partnership (the "Subsidiary") that is a wholly-owned subsidiary of the Parent. The Parent owns all of the units of the Subsidiary.
- The Parent is engaging in the Spin-Off transaction because of constraints in the existing limited partnership agreements.
- The Parent transfers certain oil and gas assets to the Subsidiary.

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<sup>2</sup> Section 44-1844(5) of the Arizona Securities Act provides that:

The distribution by a corporation of capital stock or other securities to its stockholders or other security holders as a stock dividend or other distribution out of retained earnings.

<sup>3</sup> Section 44-1844(6) of the Arizona Securities Act provides that:

Any transaction or series of transactions incident to a statutory or judicially approved reorganization, merger, triangular merger, consolidation, or sale of assets, incident to a vote by securities holders pursuant to the articles of incorporation, the applicable corporate statute or other controlling statute, a partnership agreement or the controlling agreement among securities holders.

<sup>4</sup> Rule 14-4-101(A) of the Arizona Administrative Act provides that:

An offering of securities within or from Arizona that is exclusively to bona fide employees or existing security holders of the issuer or a subsidiary of the issuer, or if the issuer is a subsidiary, is exclusively to the bona fide employees or existing security holders of the issuer and/or its parent, is added to the class of transactions exempt under A. R. S. §44-1844. An issuer relying on this Section shall comply with all of the following conditions:

1. The aggregate amount of all offerings made by an issuer under this exemption within or from Arizona shall not exceed \$500,000.
2. The issuer shall pay no commission or remuneration of any kind, other than transfer agent's fees, directly or indirectly, to any person in connection with the distribution or sale of such securities.
3. At least 10 business days before the offering is made, the issuer shall file with the Commission a verified statement of the details and purposes of the offering and the financial condition of the issuer. The issuer shall not make any material change in the details of the offering without the Commission's consent.
4. The issuer shall obtain Commission approval of any subscription contract calling for deferred payments.
5. An issuer that is not domiciled in Arizona or is not incorporated under the laws of this State shall file a consent to service (Uniform Form U-2) with the verified statement prescribed in subsection (3) above.

- The Subsidiary becomes a public reporting company by filing a Form 10 under the Securities Exchange Act of 1934. Drafts of the Form 10s, which have not been filed and are subject to change, are enclosed with this letter. This means that the Subsidiary will be required to file Form 10-K on an annual basis, Form 10-Q quarterly and Form 8-K.
- The Parent then distributes all of the units of the Subsidiary to the unitholders of the Parent on a pro rata basis for no consideration.
- Upon completion of the distribution:
  - all of the unitholders of the Parent will also be unitholders of the Subsidiary; and
  - both the Parent and the Subsidiary are public reporting companies.

Pursuant to Staff Legal Bulletin No. 4 (issued September 16, 1997), a copy of which is enclosed for your convenience, the Division of Corporate Finance of the Securities and Exchange Commission (the "SEC") has advised that the distribution of units to the parent's unitholders does not have to be registered under the Securities Act of 1933 (the "Securities Act") so long as the following criteria is met:

- the parent unitholders do not provide consideration for the spun-off shares (thus, there is no sale under SEC rules);
- the spin-off is pro-rata to the parent shareholders;
- the parent provides adequate information about the spin-off and the subsidiary to its shareholders and to the trading markets;
- the parent has a valid business purpose for the spin-off; and
- if the parent spins-off "restricted securities" it has held those securities for at least two years.

Further, SEC counsel has advised us that the Spin-Off meets the above referenced criteria.

## II. Legal Analysis

### A. *The Spin-Off Transaction Is Not a Sale.*

First, we do not believe the proposed Spin-Off is a sale under Sections 44-1801(15) and (21) of the Arizona Securities Act. Section 44-1801(21) defines a sale as "a sale or any other disposition of a security or interest in a security *for value*, and includes a contract to make such sale or disposition" and Section 44-1801(15) defines an offer as "an attempt or offer to dispose of, or solicitation of an order or offer to buy, a security or interest in a security *for value* or any sale or offer for sale of a warrant or right to subscribe to another security of the same issuer or of another issuer." (Emphases added.)

Here, the Spin-Off transaction will be a pro rata distribution of units, for which no monetary value or consideration is received by the Funds in exchange for the unitholders' receipt of units. No component of the Spin-Off transaction involves a disposition, or an offer for a disposition, of a security for value. There will be no consideration provided, or sacrifice of any right or privilege, in exchange for the rights or shares that unitholders will receive. Thus, the Spin-Off is not an offer or a sale under the Arizona Securities Act and registration is not required.

In this regard, the Washington Division of Securities has previously issued interpretative opinions related to this issue. *See* Summit Energy Inc., File Number: E-11429 (issued on December 16, 1987). The Securities Administrator of the Washington Securities Division announced that it would take no action to assert any violation of the registration sections of the Securities Act of Washington for a distribution of common stock on a pro rata basis for no consideration in connection with a spin-off of a subsidiary's securities, similar to the Spin-Off transaction proposed in this request.

Based on the above, we request assurance that the Arizona Securities Division agrees with our interpretation and would take no action if the parties engage in the proposed Spin-Off transaction in reliance upon the Sections 44-1801(15) and (21) exemptions.

**B.**  
***Stock Dividend***

Second, we believe the Spin-Off transaction is exempt under Section 44-1844(5) of the Arizona Securities Act, which exempts:

[t]he distribution by a corporation of capital stock or other securities to its stockholders or other security holders as a stock dividend or other distribution out of retained earnings.

While the contemplated transaction is a distribution to unitholders, the entities party to the Spin-Off are limited partnerships, not corporations. However, we do not find a compelling reason why the Section 44-1844(5) exemption should not apply to other entities, such as a limited partnership.

Importantly, the drafters of the 2002 Uniform Securities Act ("USA"), which is endorsed by the North American Securities Administrators Association, agreed. The stock dividend exemption in the 2002 USA provides the following transaction is exempt:

"[a] stock dividend or equivalent entity distribution, whether the corporation or equivalent equity distribution is the issuer or not . . . ."

As of the date of this letter, a total of 20 jurisdictions have adopted the 2002 USA and thus apply the stock dividend exemption to other entities, including a limited partnership. This group of jurisdictions includes Georgia, Hawaii, Idaho, Indiana, Iowa, Kansas, Maine, Michigan, Minnesota, Mississippi, Montana, New Mexico, Oklahoma, Puerto Rico, South Carolina, South Dakota, Vermont, U.S. Virgin Islands, and Wisconsin.

As discussed throughout this letter, we do not believe this Spin-Off transaction presents risk to investors. In this regard:

- nothing of value will be given by investors, including any outstanding shares in the Parent owned by the investors; and
- after the transaction, investors will own the same interest in the Subsidiary as they own in the Parent.

The Washington Division of Securities has previously issued interpretative opinions related to this issue. *See* Tejas Gas Corporation, File No. E-12647 (issued on November 1, 1988). The Securities Administrator of the Washington Securities Division announced that it will not take action to assert any violation of the registration sections of the Securities Act of Washington for a stock dividend distribution involving a spin-off of a subsidiary's securities, similar to the Spin-Off transaction proposed in this request.

Based on the above, we request assurance that the Arizona Securities Division would take no action if the parties engage in the proposed Spin-Off transaction in reliance upon the Section 44-1844(5) exemption.

**C.**  
***Incident to Reorganization***

Finally, we believe Section 44-1844(6) of the Arizona Securities Act should apply to the Spin-Off transactions. Section 44-1844(6) exempts:

Any transaction or series of transactions incident to a statutory or judicially approved reorganization, merger, triangular merger, consolidation, or sale of assets, incident to a vote by securities holders pursuant to the articles of incorporation, the applicable corporate statute or other controlling statute, a partnership agreement or the controlling agreement among securities holders.

We have been unable to locate a definition of reorganization in the Arizona Securities Act or any related interpretive guidance. Further, the definition of reorganization can have many meanings depending on the context. However, one definition of a reorganization is a "reorganization in which the corporation transfers some or all of its assets to another corporation that is controlled by the transferor or its shareholders, and then the stock of the transferee corporation is distributed." This definition is consistent with the Section 44-1844(6) exemption, although it is not statutory or judicially approved, and there are no policy considerations that should prohibit application of this definition of reorganization. Further, there are no policy considerations that should prohibit this definition of reorganization from applying to a limited partnership.

As we discussed by telephone on July 10, 2017, we were advised of the potential applicability of the Section 44-1844(6) exemption for the Spin-Off transaction. Although the Section 44-1844(6) exemption is subject to a vote by securities holders, we believe this is unnecessary given that nothing of value will be given by investors (including any outstanding shares in the Parent owned by investors), and, after the transaction, investors will own the same interest in the Subsidiary as they own in the Parent.

**Kunzman & Bollinger, Inc.**

Arizona Securities Division

July 14, 2017

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Based on the above, we request assurance that the Arizona Securities Division would take no action if the parties engage in the proposed Spin-Off transaction in reliance upon the Section 44-1844(6) exemption.

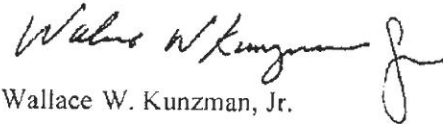
### **III. Exemption Request**

We respectfully request an interpretive opinion stating that the above-described transaction meets the transactional exemption(s) described above. If the Arizona Securities Division cannot provide such a no action letter, we are requesting an exemption pursuant to your authority to grant exemptions consistent with the public interest or necessary for the protection of investors as set forth in Section 44.1845A of the Arizona Securities Act.<sup>5</sup> We believe this transaction is not the type of transaction that requires registration nor presents harm to the investors. Instead, the Parent's unitholders will receive units in the Subsidiary for no additional consideration. Further, the unitholders will receive units in the Subsidiary on a pro rata basis. The unitholders will receive significant information regarding the transaction through the Subsidiary's Form 10 filing.

Based on the above summary, please advise whether this transaction is exempt from registration. If you have any questions, please contact the undersigned or James Linhardt.

Very truly yours,

KUNZMAN & BOLLINGER, INC.



Wallace W. Kunzman, Jr.

Enclosures

cc: Mr. Elvin Farr

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<sup>5</sup> Section 44.1845 of the Arizona Securities Act provides in relevant part that:

The commission may by its rules, and subject to the terms and conditions prescribed in those rules, add any class of securities or transactions to the securities or transactions exempted as provided by sections 44-1843, 44-1843.01 and 44-1844, if it finds that registration of such securities under this chapter is not necessary in the public interest and for the protection of investors by reason of the special characteristics of the securities or transactions, the small amount involved or the limited character of the offering.