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For purposes of this description, a "United States person" means any one of the following:

- an individual who is a citizen or resident of the United States;
- a corporation (including any entity treated as a corporation for U.S. federal income tax purposes) organized in or under the laws of the United States or of any political subdivision of the United States;
- an estate that is subject to United States federal income taxation without regard to the source of its income; or
- a trust, if a United States court has primary supervision over its administration and one or more United States persons have the authority to control all substantial decisions of the trust, or the trust has made a valid election to be treated as a United States person.

If a partnership (including any entity treated as a partnership or other pass through entity for United States federal income tax purposes) is a holder of Units, the United States federal income tax treatment of a partner in the partnership generally will depend on the status of the partner and the activities of the partnership. Partners and partnerships should consult their tax advisors as to the particular federal income tax consequences applicable to them.

#### **REQUIRED NOTICE**

**TO ENSURE COMPLIANCE WITH INTERNAL REVENUE SERVICE CIRCULAR 230, UNITHOLDERS ARE HEREBY NOTIFIED THAT: (A) ANY DISCUSSION OF FEDERAL TAX ISSUES IN THIS PLAN IS NOT INTENDED OR WRITTEN TO BE RELIED UPON, AND CANNOT BE RELIED UPON BY UNITHOLDERS, FOR THE PURPOSE OF AVOIDING PENALTIES THAT MAY BE IMPOSED ON UNITHOLDERS UNDER THE INTERNAL REVENUE CODE; (B) SUCH DISCUSSION IS WRITTEN IN CONNECTION WITH THE PROMOTION OR MARKETING OF THE TRANSACTIONS OR MATTERS ADDRESSED HEREIN; AND (C) EACH UNITHOLDER SHOULD SEEK ADVICE BASED ON ITS PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.**

#### **Our Classification as a Foreign Corporation**

Although we are organized as an unincorporated open-end investment trust under Canadian law, we should be classified as a foreign corporation for United States federal income tax purposes under current Treasury regulations. Accordingly, our Units should be treated as shares of stock of a foreign corporation for United States federal tax purposes. The discussion below reflects this classification and employs terminology consistent with this classification, including references to "dividends" and "earnings and profits".

#### **Amount Capable of Inclusion in Income**

For United States federal income tax purposes, a United States unitholder who is a participant in the Plan will be treated as receiving a distribution equal to the sum of (i) the fair market value as of the distribution payment date of Units acquired pursuant to the Plan, and (ii) any Canadian taxes which we withhold with respect to the distribution. The amount treated as a distribution will be capable of inclusion in the United States unitholder's income as a taxable dividend to the extent of Penn West's current and accumulated earnings and profits, as determined for United States federal income tax purposes. These dividends will not be eligible for the dividends received deduction, which is generally allowed to United States corporate shareholders on dividends received from a domestic corporation. Any portion of the distribution in excess of Penn West's earnings and profits will first be treated as a tax-free return of capital to the extent of the United States unitholder's tax basis in its Units and will be applied against and reduce



that basis on a dollar-for-dollar basis (thereby increasing the amount of gain and decreasing the amount of loss recognized on a subsequent disposition of the Units). To the extent that the distribution exceeds the United States unitholder's tax basis, the excess will constitute gain from a sale or exchange of the Units. A United States unitholder will generally recognize gain or loss upon the sale or exchange of our Units equal to the difference (if any) between the amount the United States unitholder realizes on the sale or exchange and its adjusted tax basis in our Units. Subject to the passive foreign investment company rules discussed below, any gain or loss will be capital gain or loss and will be long-term capital gain or loss if the United States unitholder's holding period for the Units is more than one year at the time of the sale or exchange.

For taxable years beginning on or before January 1, 2011, a dividend paid by us generally will be taxed at the preferential tax rates applicable to long-term capital gains if (a) we are a "qualified foreign corporation" (as defined below), (b) the United States unitholder receiving such dividend is an individual, estate or trust, and (c) such dividend is paid on our Units that have been held by such United States unitholder for at least 61 days during the 121-day period beginning 60 days before the "ex-dividend date."

We will generally be a "qualified foreign corporation" under Section 1(h)(11) of the Code (a "QFC") if (a) we are eligible for the benefits of the Canada-U.S. Tax Treaty, or (b) our Units are readily tradable on an established securities market in the U.S. However, even if we satisfy one or more of such requirements, we will not be treated as a QFC if we are a "passive foreign investment company" (as defined below) for the taxable year during which we pay a dividend or for the preceding taxable year.

As discussed below, we do not believe that we were a "passive foreign investment company" for the taxable year ended December 31, 2006, and based on current business plans and financial projections, we do not expect that we will be a "passive foreign investment company" for the taxable year ending December 31, 2007. (See "Passive Foreign Investment Company Considerations" below). Accordingly, we expect to be a QFC for the taxable year ending December 31, 2007.

If we are not a QFC, a dividend paid by us to a United States unitholder, including a United States unitholder that is an individual, estate or trust, generally will be taxed at ordinary income tax rates (and not at the preferential tax rates applicable to long-term capital gains). The dividend rules are complex, and each United States unitholder should consult its own tax advisor regarding the dividend rules.

### **Foreign Currency Gains**

Taxable dividends with respect to our Units that are paid in Canadian dollars will be included in the gross income of a United States unitholder as translated into U.S. dollars calculated by reference to the exchange rate in effect on the day the dividend is received by the unitholder regardless of whether the Canadian dollars are converted into U.S. dollars at that time. A United States unitholder who receives a payment in Canadian dollars and converts Canadian dollars into U.S. dollars at a conversion rate other than the rate in effect on the day of the distribution may have a foreign currency exchange gain or loss that would be treated as United States source ordinary income or loss. United States unitholders are urged to consult their own tax advisors concerning the United States tax consequences of acquiring, holding and disposing of Canadian dollars.

In the case of a cash basis United States unitholder who receives Canadian dollars, or another foreign currency, in connection with a sale, exchange or other disposition of our Units, the amount realized will be based on the U.S. dollar value of the foreign currency received with respect to the Units as determined on the settlement date of the sale or exchange. An accrual basis United States unitholder may elect the same treatment required of cash basis taxpayers with respect to a sale or exchange of Units, provided that the election is applied consistently from year to year. This election may not be changed without the consent of the IRS. If an accrual basis United States unitholder does not elect to be treated as a cash basis taxpayer, that United States unitholder may have a foreign currency gain or loss for United States federal income tax purposes equal to the difference between the U.S. dollar value of the currency received on the date of the sale or exchange of the Units and the date of payment. This currency gain or loss would be treated as ordinary income or loss and would be in addition to gain or loss, if any, recognized by that United States unitholder on the sale, exchange or other disposition of the Units.



### **Basis and Holding Period**

The tax basis of Units received by a United States unitholder pursuant to the Plan will equal the fair market value as of the distribution payment date of those Units, and the holding period for those Units will begin on the day after the distribution payment date.

### **Passive Foreign Investment Company Considerations**

Special, generally unfavorable, rules apply to the ownership and disposition of the stock of a passive foreign investment company ("PFIC"). In the absence of any qualified electing fund ("QEF") or mark to market election, if Penn West were to be treated as a PFIC for any year during which a United States unitholder held Units, the United States unitholder would be taxed under generally unfavorable rules that apply if a shareholder recognizes a gain on the sale or other disposition of PFIC stock or receives certain distributions with respect to the stock. Among the consequences would be a loss of favorable capital gains rates and the imposition of an interest charge. We do not believe that Penn West has been a PFIC during the prior taxable year and, based on our current operations and projections, do not believe that Penn West is or will become a PFIC during the taxable year ended December 31, 2007. We note, however, that passive foreign investment company status is fundamentally factual in nature, generally cannot be determined until the close of the taxable year in question and is determined annually. Consequently, we can provide no assurance that we will not be a passive foreign investment company for either the current taxable year or for any subsequent taxable year. United States unitholders are urged to consult their own tax advisors regarding our possible classification as a passive foreign investment company and the consequences if that classification were to occur, and the availability of the QEF election or mark to market election.

### **Foreign Tax Credits**

Regardless of whether the distribution to a United States unitholder under the Plan is subject to tax under the passive foreign investment company rules or as described in "Amount Capable of Inclusion in Income", any tax withheld by Canadian taxing authorities with respect to the distribution under the Plan may, subject to a number of complex limitations, be claimed as a foreign tax credit against a United States unitholder's United States federal income tax liability or may be claimed as a deduction for United States federal income tax purposes. The limitation on foreign taxes eligible for credit is calculated separately with respect to specific classes of income. For this purpose, dividends the trust distributes with respect to Units will generally be "passive category income" for purposes of computing the foreign tax credit allowable to a United States unitholder. Because of the complexity of those limitations, each United States unitholder should consult its own tax advisor with respect to the amount of foreign taxes that may be claimed as a credit.

### **United States Information Reporting and Backup Withholding**

Dividends on our Units paid within the United States or through some U.S.-related financial intermediaries are subject to information reporting and may be subject to backup withholding, currently at a 28% rate, unless the holder is a corporation or other exempt recipient or provides a taxpayer identification number and certifies that no loss of exemption from backup withholding has occurred. Information reporting requirements and backup withholding may also apply to the cash proceeds of a sale of our Units.

Backup withholding is not an additional tax. Amounts withheld under the backup withholding rules may be credited against a United States unitholder's U.S. tax liability, and a United States unitholder may obtain a refund of any excess amounts withheld under the backup withholding rules by filing the appropriate claim for refund with the IRS.

### **INTERPRETATION**

Any issues of interpretation arising in connection with the Plan or its application shall be conclusively determined by the Corporation.



## NOTICES

All notices or other documents required to be given to Participants under the Plan, including certificates for Units and cheques, shall be mailed to Participants at the addresses shown on the records of the Agent.

Notices to the Agent shall be sent to:

CIBC Mellon Trust Company  
600, 333 – 7 Avenue S.W.  
Calgary, Alberta  
T2P 2Z1  
Attention: Dividend Reinvestment Services  
Facsimile: (403) 264-2100

Notices to Penn West Energy Trust shall be sent to:

Penn West Petroleum Ltd.  
200, 207 – 9<sup>th</sup> Avenue S.W.  
Calgary, Alberta  
T2P 1K3  
Attention: Investor Relations  
Facsimile: (403) 777-2699

## EFFECTIVE DATE OF THE PLAN

The effective date of the Plan (excluding the amendments contemplated by this amended and restated Plan) is December 8, 2005.

The effective date of the amendments contemplated by this amended and restated Plan is July 30, 2007.