

APACHE CORP
Form S-4/A
June 29, 2010

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As filed with the Securities and Exchange Commission on June 29, 2010

Registration No. 333-166964

UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Amendment No. 1
to
Form S-4
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

APACHE CORPORATION
(Exact Name of Registrant as Specified in its Charter)

Delaware
*(State or other jurisdiction of
Incorporation or Organization)*

1311
*(Primary Standard Industrial
Classification Code Number)*

41-0747868
*(I.R.S. Employer
Identification Number)*

One Post Oak Central
2000 Post Oak Boulevard, Suite 100
Houston, Texas 77056-4400
(713) 296-6000
*(Address, including zip code, and telephone number,
including area code, of registrant's principal executive offices)*

P. Anthony Lannie
Executive Vice President and General Counsel
Apache Corporation
One Post Oak Central
2000 Post Oak Boulevard, Suite 100
Houston, Texas 77056-4400
(713) 296-6000
*(Name, address, including zip code, and telephone number,
including area code, of agent for service)*

Copies To:

**John B. Clutterbuck
Tim C. Langenkamp
Andrews Kurth LLP
600 Travis, Suite 4200
Houston, Texas 77002
(713) 220-4200**

**Teresa G. Bushman
Senior Vice President, General
Counsel,
and Secretary
Mariner Energy, Inc.
One BriarLake Plaza
2000 West Sam Houston Parkway
South,
Suite 2000
Houston, Texas 77042
(713) 954-5505**

**Kelly B. Rose
M. Breen Haire
Baker Botts L.L.P.
One Shell Plaza
910 Louisiana Street
Houston, Texas 77002-4995
(713) 229-1234**

Approximate date of commencement of proposed sale of the securities to the public: As soon as practicable after the effectiveness of this registration statement and the satisfaction or waiver of all other conditions to the closing of the merger described herein.

If the securities being registered on this form are being offered in connection with the formation of a holding company and there is compliance with General Instruction G, check the following box.

If this form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of large accelerated filer, accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act.

Large accelerated filer Accelerated filer Non-accelerated filer Smaller reporting company
(Do not check if a smaller reporting company)

The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment that specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933, or until the Registration Statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.

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The information in this proxy statement/prospectus is not complete and may be changed. A registration statement relating to these securities has been filed with the Securities and Exchange Commission. These securities may not be sold nor may offers to buy be accepted prior to the time the registration statement becomes effective. This proxy statement/prospectus shall not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of these securities in any jurisdiction in which such offer, solicitation or sale would be unlawful.

PRELIMINARY SUBJECT TO COMPLETION, DATED JUNE 29, 2010

PROPOSED MERGER YOUR VOTE IS VERY IMPORTANT

Dear Stockholders of Mariner Energy, Inc.:

On April 14, 2010, Mariner Energy, Inc. and Apache Corporation entered into a merger agreement that provides for Mariner to merge with and into a wholly owned subsidiary of Apache. The Mariner board of directors has determined that the merger and the merger agreement are advisable and in the best interests of Mariner and its stockholders and has approved the merger agreement and the merger.

Under the merger agreement, Mariner stockholders may elect to receive consideration consisting of cash, shares of Apache common stock or a combination of both in exchange for their shares of Mariner common stock, subject to a proration feature. Mariner stockholders electing to receive a mix of cash and stock consideration and non-electing stockholders will receive \$7.80 in cash and 0.17043 shares of Apache common stock in exchange for each share of Mariner common stock. Subject to proration, Mariner stockholders electing to receive all cash will receive \$26.00 in cash per Mariner share and Mariner stockholders electing to receive only Apache common stock will receive 0.24347 shares of Apache common stock in exchange for each share of Mariner common stock.

The total amount of cash and shares of Apache common stock that will be paid and issued, respectively, pursuant to the merger agreement is fixed, and an election to receive stock consideration or cash consideration is subject to a proration feature. As a result, if Mariner stockholders elect, in the aggregate, to receive cash in an amount greater than the aggregate cash consideration payable under the merger agreement, then those holders electing to receive all cash consideration will be prorated down (in accordance with their respective shares for which the cash consideration was elected) and will receive Apache stock as a portion of the overall consideration they receive for their shares. On the other hand, if Mariner stockholders elect, in the aggregate, to receive stock in an amount greater than the aggregate number of shares issuable under the merger agreement, then those holders electing to receive all stock consideration will be prorated down (in accordance with their respective shares for which the stock consideration was elected) and will receive cash as a portion of the overall consideration they receive for their shares.

Immediately following completion of the merger, it is expected that Mariner stockholders will own approximately 5% of the outstanding shares of Apache common stock, based on the number of shares of Mariner and Apache common stock outstanding as of May 31, 2010.

Apache's common stock is listed on the New York Stock Exchange, the Chicago Stock Exchange and the NASDAQ National Market under the symbol APA.

Mariner's common stock is listed on the New York Stock Exchange under the symbol ME.

Mariner is holding a special meeting of stockholders on [], 2010 to consider and vote to approve and adopt the merger agreement, as it may be amended from time to time. Your vote is very important. The merger cannot be

completed unless the holders of a majority of the outstanding shares of Mariner common stock vote for the approval and adoption of the merger agreement at the special meeting. **Please note that a failure to vote your shares is the equivalent of a vote AGAINST the approval and adoption of the merger agreement.**

The Mariner board of directors unanimously recommends that Mariner stockholders vote FOR the approval and adoption of the merger agreement.

Your vote is important. Whether or not you expect to attend the Mariner special meeting in person, we urge you to submit your proxy as promptly as possible through one of the delivery methods described in the accompanying proxy statement/prospectus.

In addition, we urge you to read carefully the accompanying proxy statement/prospectus (and the documents incorporated by reference into the accompanying proxy statement/prospectus), which includes important information about the merger agreement, the proposed merger, Mariner, Apache and the special meeting. The obligations of Apache and Mariner to complete the merger are subject to the satisfaction or waiver of several conditions set forth in the merger agreement. **Please pay particular attention to the section titled Risk Factors in the accompanying proxy statement/prospectus.**

On behalf of the Mariner board of directors, thank you for your continued support.

Sincerely,

Scott D. Josey
Chairman of the Board, Chief Executive Officer and President

Neither the Securities and Exchange Commission, which is referred to as the SEC, nor any state securities commission has approved or disapproved of the merger or the securities to be issued under this proxy statement/prospectus or has passed upon the adequacy or accuracy of the disclosure in this proxy statement/prospectus. Any representation to the contrary is a criminal offense.

This proxy statement/prospectus is dated [], 2010, and is first being mailed to Mariner stockholders on or about [], 2010.

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**One BriarLake Plaza
2000 West Sam Houston Parkway South, Suite 2000
Houston, Texas 77042
(713) 954-5500**

NOTICE OF SPECIAL MEETING OF STOCKHOLDERS

To the Stockholders of Mariner Energy, Inc.:

Notice is hereby given that a special meeting of stockholders of Mariner Energy, Inc., a Delaware corporation, which is referred to as Mariner, will be held on [], 2010 at [], local time, at Mariner's principal executive offices located at One BriarLake Plaza, 2000 West Sam Houston Parkway South, Suite 2000, Houston, Texas 77042, for the following purposes:

1. to consider and vote on the proposal to approve and adopt the Agreement and Plan of Merger, dated April 14, 2010 (referred to as the merger agreement), by and among Apache Corporation, which is referred to as Apache, ZMZ Acquisitions LLC, a Delaware limited liability company and a wholly owned subsidiary of Apache, and Mariner, as it may be amended from time to time (a copy of the merger agreement is attached as Annex A to the proxy statement/prospectus accompanying this notice);
2. to consider and vote on any proposal to adjourn the special meeting to a later date or dates if necessary to solicit additional proxies if there are insufficient votes to approve and adopt the merger agreement at the time of the special meeting; and
3. to transact any other business that may properly come before the special meeting or any adjournment or postponement of the special meeting.

These items of business, including the merger agreement and the proposed merger, are described in detail in the accompanying proxy statement/prospectus. **The Mariner board of directors has determined that the merger agreement and the transactions contemplated by the merger agreement, including the merger, are advisable and in the best interests of Mariner and its stockholders and unanimously recommends that Mariner stockholders vote FOR the proposal to approve and adopt the merger agreement and FOR any proposal to adjourn the special meeting if necessary to solicit additional proxies in favor of approval and adoption.** In considering the recommendation of Mariner's board of directors, stockholders of Mariner should be aware that members of Mariner's board of directors and its executive officers have agreements and arrangements that provide them with interests in the merger that may be different from, or in addition to, those of Mariner stockholders. See "The Merger - Interests of the Mariner Directors and Executive Officers in the Merger."

Only stockholders of record as of the close of business on [], 2010 are entitled to notice of the Mariner special meeting and to vote at the Mariner special meeting or at any adjournment or postponement thereof. A list of stockholders entitled to vote at the special meeting will be available in our principal executive offices located at One BriarLake Plaza, 2000 West Sam Houston Parkway South, Suite 2000, Houston, Texas 77042, during regular business hours for a period of no less than ten days before the special meeting and at the place of the special meeting during the meeting.

Approval and adoption of the merger agreement by the Mariner stockholders is a condition to the merger and requires the affirmative vote of holders of a majority of the shares of Mariner common stock outstanding and entitled to vote thereon. Therefore, your vote is very important. **Your failure to vote your shares will have the same effect as a vote AGAINST the approval and adoption of the merger agreement.**

By Order of the Board of Directors of
Mariner Energy, Inc.

Teresa G. Bushman,
Senior Vice President, General Counsel, and Secretary
Houston, Texas
[], 2010

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YOUR VOTE IS IMPORTANT!

WHETHER OR NOT YOU EXPECT TO ATTEND THE MARINER SPECIAL MEETING IN PERSON, WE URGE YOU TO SUBMIT YOUR PROXY AS PROMPTLY AS POSSIBLE (1) THROUGH THE INTERNET, (2) BY TELEPHONE OR (3) BY MARKING, SIGNING AND DATING THE ENCLOSED PROXY CARD AND RETURNING IT IN THE POSTAGE-PAID ENVELOPE PROVIDED. You may revoke your proxy or change your vote at any time before the Mariner special meeting. If your shares are held in the name of a bank, broker or other fiduciary, please follow the instructions on the voting instruction card furnished to you by such record holder. Brokers cannot vote on the proposal to approve and adopt the merger agreement without your instructions.

We urge you to read the accompanying proxy statement/prospectus, including all documents incorporated by reference into the accompanying proxy statement/prospectus, and its annexes carefully and in their entirety. If you have any questions concerning the merger, the special meeting or the accompanying proxy statement/prospectus, would like additional copies of the accompanying proxy statement/prospectus or need help voting your shares of Mariner common stock, please contact Mariner's information agent/proxy solicitor:

Morrow & Co., LLC
470 West Avenue
Stamford, CT 06902
Stockholders, call toll-free: (800) 278-2141
Banks and brokers, call collect: (203) 658-9400

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ADDITIONAL INFORMATION

This proxy statement/prospectus incorporates by reference important business and financial information about Apache and Mariner from other documents filed with the SEC that are not included or delivered with this proxy statement/prospectus. See **Where You Can Find More Information; Incorporation by Reference.**

Documents incorporated by reference are available to you without charge upon written or oral request. You can obtain any of these documents by requesting them in writing or by telephone from the appropriate company at the following addresses and telephone numbers.

Apache Corporation
Attention: Corporate Secretary
One Post Oak Central
2000 Post Oak Boulevard, Suite 100
Houston, Texas 77056-4400
(713) 296-6157
www.apachecorp.com

Mariner Energy, Inc.
Attention: Corporate Secretary
One BriarLake Plaza
2000 West Sam Houston Parkway South, Suite 2000
Houston, Texas 77042
(713) 954-5505
www.mariner-energy.com

To receive timely delivery of the requested documents in advance of the special meeting, you should make your request no later than [], 2010.

ABOUT THIS DOCUMENT

This document, which forms part of a registration statement on Form S-4 filed with the SEC by Apache (File No. 333-166964), constitutes a prospectus of Apache under Section 5 of the Securities Act of 1933, as amended, which we refer to as the Securities Act, with respect to the shares of Apache common stock to be issued pursuant to the merger agreement. This document also constitutes a notice of meeting and a proxy statement under Section 14(a) of the Securities Exchange Act of 1934, as amended, which we refer to as the Exchange Act, with respect to the special meeting of Mariner stockholders, at which Mariner stockholders will be asked to consider and vote on, among other matters, a proposal to approve and adopt the merger agreement.

You should rely only on the information contained in or incorporated by reference into this document. No one has been authorized to provide you with information that is different from that contained in, or incorporated by reference into, this document. This document is dated [], 2010. The information contained in this document is accurate only as of that date or in the case of information in a document incorporated by reference, as of the date of such document, unless the information specifically indicates that another date applies. Neither our mailing of this document to Mariner stockholders nor the issuance by Apache of shares of its common stock pursuant to the merger agreement will create any implication to the contrary.

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QUESTIONS AND ANSWERS ABOUT THE MERGER

The following are some questions that Mariner stockholders may have regarding the merger and the special meeting, and brief answers to those questions. You are encouraged to read carefully this entire proxy statement/prospectus, including the Annexes, and the other documents to which this proxy statement/prospectus refers or incorporates by reference because the information in this section does not provide all the information that might be important to you. Unless stated otherwise, all references in this proxy statement/prospectus to Apache are to Apache Corporation, a Delaware corporation; all references to Mariner are to Mariner Energy, Inc., a Delaware corporation; all references to Merger Sub or the surviving entity are to ZMZ Acquisitions LLC, a Delaware limited liability company and a wholly owned subsidiary of Apache; and all references to the merger agreement are to the Agreement and Plan of Merger, dated April 14, 2010, by and among Apache, Merger Sub and Mariner, a copy of which is attached as Annex A to this proxy statement/prospectus and is incorporated herein by reference.

Q: Why am I receiving this document?

A: Apache and Mariner have agreed to a merger, pursuant to which Mariner will merge with and into a wholly owned subsidiary of Apache and will cease to be a publicly held corporation. In order to complete the merger, Mariner stockholders must vote to approve and adopt the merger agreement, and Mariner is holding a special meeting of stockholders to obtain such stockholder approval. In the merger, Mariner stockholders may elect to receive consideration consisting of cash, shares of Apache common stock, or a combination of both in exchange for their shares of Mariner common stock, subject to a proration feature.

This document is being delivered to you as both a proxy statement of Mariner and a prospectus of Apache in connection with the merger. It is the proxy statement by which the Mariner board of directors is soliciting proxies from you to vote on the approval and adoption of the merger agreement, as it may be amended from time to time, at the special meeting or at any adjournment or postponement of the special meeting. It is also the prospectus by which Apache may issue Apache common stock to you in the merger.

Q: What will happen in the merger?

A: In the merger, Mariner will merge with and into Merger Sub, with Merger Sub surviving the merger as a wholly owned subsidiary of Apache. As a result of the merger, Mariner will cease to exist, Merger Sub will continue to be owned by Apache and Apache will continue as a public company.

Q: What will I receive in the merger?

A: If the merger is completed, each of your shares of Mariner common stock will be converted into the right to receive, at your election and subject to proration, one of the following: (i) 0.24347 shares of Apache common stock, par value \$0.625 per share, which is sometimes referred to as the stock consideration, (ii) \$26.00 in cash, which is sometimes referred to as the cash consideration or (iii) a combination of \$7.80 in cash and 0.17043 shares of Apache common stock, which is sometimes referred to as the mixed consideration, as described under *The Merger Agreement* *Conversion of Securities*.

The total amount of cash and shares of Apache common stock that will be paid and issued, respectively, pursuant to the merger agreement is fixed, and an election to receive stock consideration or cash consideration is subject to a proration feature. As a result, if Mariner stockholders elect, in the aggregate, to receive cash in an amount greater than the aggregate cash consideration payable under the merger agreement, then those holders electing to receive all cash

consideration will be prorated down (in accordance with their respective shares for which the cash consideration was elected) and will receive Apache stock as a portion of the overall consideration they receive for their shares. On the other hand, if Mariner stockholders elect, in the aggregate, to receive stock in an amount greater than the aggregate number of shares issuable under the merger agreement, then those holders electing to receive all stock consideration will be prorated down (in accordance with their respective shares for which the stock consideration was elected) and will receive cash as a portion of the overall consideration they receive for their shares.

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Based on the closing price of \$108.06 for Apache common stock on the New York Stock Exchange, or NYSE, on April 14, 2010, the last trading day before the public announcement of the merger agreement, the mixed consideration represented approximately \$26.22 in value for each share of Mariner common stock. Based on the closing price of \$[] for Apache common stock on the NYSE on [], 2010, the most recent practicable trading day prior to the date of this proxy statement/prospectus, the mixed consideration represented approximately \$[] in value for each share of Mariner common stock. **The market price of Apache common stock will fluctuate prior to the merger, and the market price of Apache common stock received by Mariner stockholders upon completion of the merger could be greater or less than the current market price of Apache common stock.** See Risk Factors.

Q: What happens if the merger is not completed?

A: If the merger agreement is not approved and adopted by Mariner stockholders or if the merger is not completed for any other reason, you will not receive any consideration for your shares of Mariner common stock in connection with the merger. Instead, Mariner will remain an independent public company and its common stock will continue to be listed and traded on the NYSE. If the merger agreement is terminated under certain circumstances, Mariner may be required to pay Apache a termination fee of \$67 million as described under The Merger Agreement Termination, Amendment and Waiver. See Risk Factors Risks Relating to the Merger Failure to complete the merger could negatively impact the stock price and the future business and financial results of Mariner.

Q: What will happen to Mariner's stock options and restricted stock in the merger?

A: Upon completion of the merger, each outstanding option to purchase Mariner common stock will be converted into a fully exercisable option to purchase the number of shares of Apache common stock obtained by multiplying the number of Mariner shares subject to the option by the 0.24347 exchange ratio, with a per share exercise price equal to the existing per-Mariner-share exercise price divided by the 0.24347 exchange ratio.

In addition, upon completion of the merger, each outstanding unvested share of Mariner restricted stock (other than shares of restricted stock granted pursuant to Mariner's 2008 Long-Term Performance-Based Restricted Stock Program, which are referred to as the Performance-Based Restricted Stock) will vest and will entitle the holder to the merger consideration in respect of each such vested share. See The Merger Agreement Employee Stock Options; Restricted Shares.

Also, upon completion of the merger, 40% of each outstanding award of Performance-Based Restricted Stock held by Mariner employees will vest and will entitle the holder to the merger consideration in respect of each such vested share, and the remaining portion of each award of Performance-Based Restricted Stock will be cancelled. Partial vesting of outstanding Performance-Based Restricted Stock awards occurs solely as a result of the terms of the merger agreement; otherwise, under the terms of Mariner's 2008 Long-Term Performance-Based Restricted Stock Program, 100% of the Performance-Based Restricted Stock would be forfeited. On the date the merger agreement was executed, the value of merger consideration associated with such partial vesting was approximately \$12.4 million based on a price of \$26 per share for Mariner common stock. See The Merger Agreement Employee Stock Options; Restricted Shares and The Merger Interests of the Mariner Directors and Executive Officers in the Merger Treatment of Equity Awards.

Q: When must I elect the type of merger consideration that I prefer to receive?

A: Holders of Mariner common stock who wish to elect the type of merger consideration they prefer to receive pursuant to the merger should review and follow carefully the instructions set forth in the election form provided

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to Mariner stockholders together with this proxy statement/prospectus or in a separate mailing. These instructions require that a properly completed and signed election form be received by the exchange agent by the election deadline, which is 5:00 p.m., New York time, on [], 2010. If the merger is consummated, each Mariner stockholder who did not submit a properly completed and signed election

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form to the exchange agent by the election deadline will receive a mix of cash and stock consideration consisting of \$7.80 in cash and 0.17043 shares of Apache common stock in exchange for each Mariner share.

Q: What am I being asked to vote on?

A: Mariner stockholders are being asked to vote on the following proposals:

to approve and adopt the merger agreement, as it may be amended from time to time; and

to approve the adjournment of the special meeting to a later date or dates if necessary to solicit additional proxies if there are insufficient votes to approve and adopt the merger agreement at the time of the special meeting.

The approval by Mariner stockholders of the proposal to approve and adopt the merger agreement is a condition to the obligations of Mariner and Apache to complete the merger.

Q: Does Mariner's board of directors recommend that stockholders approve and adopt the merger agreement?

A: Yes. The Mariner board of directors has approved the merger agreement and the transactions contemplated thereby, including the merger, and determined that these transactions are advisable and in the best interests of Mariner and its stockholders. Therefore, the Mariner board of directors unanimously recommends that you vote **FOR** the proposal to approve and adopt the merger agreement at the special meeting. See The Merger Recommendation of the Mariner Board of Directors and its Reasons for the Merger.

In considering the recommendation of Mariner's board of directors, stockholders of Mariner should be aware that members of Mariner's board of directors and its executive officers have agreements and arrangements that provide them with interests in the merger that may be different from, or in addition to, those of Mariner stockholders. See The Merger Interests of the Mariner Directors and Executive Officers in the Merger.

Q: What stockholder vote is required for the approval of each proposal?

A: The following are the vote requirements for the proposals:

Approval and Adoption of the Merger Agreement. The affirmative vote of holders of a majority of the outstanding shares of Mariner common stock entitled to vote on the proposal, either in person or represented by proxy. Accordingly, abstentions and unvoted shares will have the same effect as votes **AGAINST** approval and adoption.

Adjournment. The affirmative vote of holders of a majority of the shares of Mariner common stock present in person or represented by proxy at the special meeting and entitled to vote thereat. Abstentions and broker non-votes will have the same effect as a vote **AGAINST** the proposal.

Your vote is very important. You are encouraged to submit a proxy as soon as possible.

Q: What constitutes a quorum for the special meeting?

A: The presence in person or by proxy of the holders of a majority of the outstanding shares of Mariner common stock is necessary to constitute a quorum at the special meeting. If a stockholder is not present in person or

represented by proxy at the special meeting, such stockholder's shares will not be counted for purposes of calculating a quorum. Abstentions and broker non-votes count as present for establishing a quorum.

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Q: If my shares are held in street name by my bank, broker or other nominee will they automatically vote my shares for me?

A: No. If you hold shares of Mariner common stock in an account at a bank, broker or other nominee and do not chose to attend the special meeting in person, you must provide your bank, broker or other nominee with instructions as to how to vote your shares of Mariner common stock. You may also vote in person at the special meeting; however, if you wish to do so, you must bring a proxy from the bank, broker or other nominee identifying you as the beneficial owner of such shares of Mariner common stock and authorizing you to vote. Brokers will NOT vote shares of Mariner common stock held in street name unless you have instructed your broker how to vote. A failure to vote will have the same effect as a vote **AGAINST** the approval and adoption of the merger agreement.