

**STATE OF NEW MEXICO  
DEPARTMENT OF ENERGY, MINERALS AND NATURAL RESOURCES  
OIL CONSERVATION DIVISION**

**IN THE MATTER OF THE HEARING CALLED  
BY THE OIL CONSERVATION DIVISION FOR  
THE PURPOSE OF CONSIDERING:**

**APPLICATIONS OF FLAT CREEK RESOURCES, LLC  
FOR A HORIZONTAL SPACING UNIT AND  
COMPULSORY POOLING,  
EDDY COUNTY, NEW MEXICO**

**Case Nos. 21560 & 21747**

**APPLICATIONS OF MATADOR PRODUCTION  
COMPANY FOR COMPULSORY POOLING,  
EDDY COUNTY, NEW MEXICO**

**Case Nos. 21543 & 21630**

**MOTION FOR CONTINUANCE**

Flat Creek Resources, LLC (“Flat Creek”), OGRID No. 374034, respectfully requests a continuance of the hearing in these matters currently scheduled for May 6, 2021, at 8:15 a.m., until May 27, 2021. In support thereof, the following is shown:

**1. Introduction**

1. Flat Creek respectfully requests a continuance based on the uncertainty of the status of Communitization Agreement NMNM139002 which communitized all rights to all producible hydrocarbons from the Wolfcamp Formation underlying the S/2 of Section 23. (A copy of the Communitization Agreement is attached hereto as Exhibit 1.) Flat Creek filed its Request for Administrative Review by the State Director and An Immediate Stay of the Communitization Agreement that Flat Creek submitted to the State Director’s office on April 28, 2021. (A copy of this Request, which was served on opposing counsel on April 28, is Exhibit A-5 in Flat Creek’s Hearing Testimony in Case No. 21560.)

2. Pursuant to 43 C.F.R. § 3165.3(d), the State Director has ten business days, or until May 12, 2021, to issue a decision on Flat Creek's Request for Administrative Review. The State Director's will constitute the BLM's final decision. *Id.*

3. Thus, Flat Creek requests a continuance of this hearing until May 27, 2021.

4. Undersigned has consulted with counsel for Matador regarding this request and was informed that Matador opposes this request.

## **2. Procedural Background**

### **i. The Norris Thornton Com #204H Well (API 30-015-44659)**

5. Matador Production Company ("Matador") filed an Application for Permit to Drill the Norris Thornton Com # 204H Well with the Oil Conservation Division ("Division") on January 29, 2018. The Division approved the APD on February 2, 2018.

3. Matador spud the Norris Thornton Com # 204H Well on July 4, 2018, and completed it on September 13, 2018.

4. The surface location for this well is on fee land in the SW/4SW/4 of Section 23, and all take points are located in the S/2S/2 of Section 23, all of which are fee land.

5. While Matador proposed dedicating 320 acres to this well, consisting of the S/2 of Section 23, Matador did not file its pending pooling application in Case No. 21543 seeking to pool the S/2 of Section 23 until November 3, 2020.

### **ii. The Communitization Agreement**

6. Matador executed a proposed communitization agreement on June 27, 2018, which MRC Delaware Resources, LLC, Matador's parent company, sent to the BLM's Carlsbad District Office on June 28, 2018. The proposed communitization agreement covered the S/2 of Section 23, seeking to communitize all of the hydrocarbons produced from the Wolfcamp formation.

7. When Matador submitted the proposed communication agreement to the BLM, the Federal minerals located in NW/4SE/4 of Section 23 were released.

8. Section 5 of the Communitization Agreement requires the establishment of an interest bearing escrow account or trust account in which the operator is to deposit all proceeds attributable to unleased Federal land within the communitized lands until the land is leased.

9. Upon information and belief, no such escrow account was ever established for the proceeds attributable to the unleased Federal land within the communitized area, *i.e.*, the NW/4SE/4 of Section 23, and according to correspondence with the Office of Natural Resources Revenue (“ONRR”), no payments have been made since production from the well. *See* Email exchange on April 26 and 27, 2021, between Mike Gregory, Flat Creek, and Mark Moreno, Accountant, Revenue, Reporting & Compliance Management, ONRR, which is Exhibit A-6 of Flat Creek’s Hearing Testimony in Case No. 21560.

10. The authorized officer approved the Communitization Agreement on March 31, 2021, effective June 1, 2018. However, as of March 31, the lands subject to the Communitization Agreement were subject to competing forced pooling applications before the in Case No. 21543 and Case No. 21560.

**iii. Federal Oil and Gas Lease NMNM 139351**

13. Before approving the Communitization Agreement, the BLM issued Lease NMNM 139351 to Flat Creek on October 30, 2019, effective November 1, 2019. This Lease covers what was the unleased parcel within the then proposed communitized area, the NW/4SE/4 of Section 23, as well as W/2NE/4 and SE/4NE/4 of Section 23

14. A communitization agreement must be signed by all of the necessary parties. 43 C.F.R. § 3105.2-3. Lease NMNM 139351 did not contain any stipulation requiring Flat Creek to join the Communitization Agreement and Flat Creek has not joined the Communitization Agreement.

### 3. Argument

15. In its testimony and exhibits, Matador refers to the “S/2 spacing unit” as if the S/2 spacing unit has been approved by the BLM. In her Affidavit, Sara Hartsfield states that:

Matador’s existing S/2 spacing unit in the Wolfcamp formation was created in February of 2018 when the drilling permit for the Norris Thornton Com RB #204H was issued by the Division.

Affidavit of Sara Hartsfield (Senior Landman), at ¶ 6. *See also*, Hartsfield Affidavit at ¶ 3 (referring to “the existing S/2 spacing unit”); and at ¶ 2.a (stating that the S/2 of Section 23 “is already dedicated to the existing Norris Thornton COM RB #204 well”); and Affidavit of Trey Goodwin (Area Land Manager), Exhibit B, at ¶ 5.a (“Matador operates the S/2 spacing unit in the Wolfcamp formation . . .”).

16. However, the issue of whether there is an actual, existing S/2 spacing unit in the Wolfcamp formation “dedicated to the existing Norris Thornton COM RB #204 well” is entirely dependent on the BLM’s resolution of the question of the validity of the Communitization Agreement.

17. Finally, there is comity in the relationship between Division and the BLM. The BLM will normally defer to spacing and pooling decisions issued by the Division. However, the BLM Communitization Handbook does provide that:

If the Federal tract cannot be independently developed and there are a number of spacing options, the authorized officer should require the one that is in the best interest of the Federal Government, *i.e.*, the one that provides the largest Federal participation.

BLM Manual 3160-9, Section .11A.1.

18. In this case, Flat Creek’s Application to develop a 480-acre spacing unit consisting of the N/2 and N/2S/2 of Section 23 would result in the United States owning one-third of the mineral interests in the spacing unit (160/480) versus a one-eighth ownership in the minerals in the S/2 of Section 23 (40/320). Even if a communitization agreement were approved for the N/2 of Section 23, the United States would own a total of 160 net mineral acres in the 640 acres of

communitized lands, a one-quarter interest, versus owning 160 net mineral acres in Flat Creek's proposed 480-acre spacing unit, a one-third interest.

19. Thus, the Division should consider the interests of the BLM in maximizing its revenue from production from the lands covered by Lease NMNM 139351.

#### **4. Conclusion**

Because the BLM has primary jurisdiction over the Communitization Agreement, Flat Creek respectfully submits that the Division may benefit from feedback or input from BLM on these matters prior to hearing the competing cases.

Respectfully submitted,

ABADIE & SCHILL, PC

/s/ William E. Zimsky

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**Attorneys for Flat Creek Resources, LLC**

#### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was filed with the New Mexico Oil Conservation Division and was served on counsel of record via electronic mail on May 4, 2021, before 8:10 a.m:

Michael H. Felderwert  
Adam G. Rankin  
Julia Broggi  
Kaitlyn A. Luck

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jbroggi@hollandhart.com  
kaluck@hollandhart.com

*Attorneys for Matador Production Company*

/s/ William E. Zimsky

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William E. Zimsky



# United States Department of the Interior



BUREAU OF LAND MANAGEMENT  
New Mexico State Office  
301 Dinosaur Trail  
Santa Fe, New Mexico 87508  
<https://www.blm.gov/new-mexico>

**MAR 3 1 2021**

In Reply Refer To:  
NMNM139002  
3105.2 (NM920)

Reference:  
Communitization Agreement  
Norris Thornton Com #204H  
Section 23: S2  
T. 23 S., R. 27 E., N.M.P.M.  
Eddy County, NM

Matador Production Company  
5400 LBJ Freeway, Suite 1500  
Dallas, TX 75240

Gentlemen:

Enclosed is an approved copy of Communitization Agreement NMNM139002 involving 40 acres of Federal land in lease NMNM139351 and 280 acres of fee land, Eddy County, New Mexico, which comprise a 320 acre well spacing unit.

The agreement communitizes all rights to all producible hydrocarbons from the Wolfcamp formation beneath the S2 of Sec. 23, T. 23 S., R. 27 E., NMPM, Eddy County, NM, and is effective June 1, 2018. Approval of this agreement does not warrant or certify that the operator, thereof, and other working interest owners hold legal or equitable title to the leases which are committed hereto.


Approval of this agreement does not constitute an adjudication of any state, local government, or private interests, and does not constitute a warranty or certification that the information supplied by the party submitting this agreement regarding any private, state, or local government interests is accurate.

Copies of this approval letter are being distributed to the appropriate Federal agencies. You are requested to furnish all interested parties with the appropriate evidence of this approval. Any production royalties that are due must be reported and paid according to regulations set up by the Office of Natural Resources Revenue at 1-800-525-9167 or 303-231-3504.

If you have any questions regarding this approval, please contact Elizabeth Rivera at (505) 954-2162.

Please furnish all interested principals with appropriate evidence of this approval.

Sincerely,

  
Sheila Mallory  
Deputy State Director  
Division of Minerals

1 Enclosure:

1 - Communitization Agreement

cc:

ONRR, Denver  
NM Taxation & Revenue Dept. (Revenue Processing Div.)  
NMOCD  
NM (9200)  
NM (P0220-CFO, File Room)  
NMSO (NM925, File)  
NM STATE LAND COMM.



Determination - Approval - Certification

Pursuant to the authority vested in the Secretary of the Interior under Section 17(j) of the Mineral Leasing Act of 1920, as amended (74 Stat. 784; 30 U.S.C. 226(j)), and delegated to the authorized officer of the Bureau of Land Management, I do hereby:

- A. Determine that the Federal lease or leases as to the lands committed to the attached agreement cannot be independently developed and operated in conformity with the well-spacing program established for the field or area in which said lands are located, and that consummation and approval of the agreement will be in the public interest. Approval of this agreement does not warrant or certify that the operator thereof and other holders of operating rights hold legal or equitable title to those rights in the subject leases which are committed hereto.
  
- B. Approve the attached Communitization Agreement covering the S2 of Sec. 23, T. 23 S., R. 27 E., NMPM, as to all producible hydrocarbons from the Wolfcamp formation. This approval will become invalid if the public interest requirements under section 3105.2-3 (c) are not met. Approval also requires operator to submit copies of sundries or any other documentation regarding activity with this well to the Bureau of Land Management (BLM), Carlsbad Field Office pursuant to Item 9 of the approved Communitization Agreement.
  
- C. Certify and determine that the drilling, producing, rental, minimum royalty and royalty requirements of the Federal lease or leases committed to said agreement are hereby established, altered, changed, or revoked to conform with the terms and conditions of the agreement.

Approved:

MAR 31 2021



\_\_\_\_\_  
Sheila Mallory  
Deputy State Director  
Division of Minerals

Effective: June 1, 2018

Contract No.: Com. Agr. NMNM139002

COMMUNITIZATION AGREEMENT

Contract No. 139002 NMNM

THIS AGREEMENT, entered into as of the date shown in Section 10 hereof by and between the parties subscribing, ratifying, or consenting hereto, such parties being hereinafter referred to as "parties hereto."

WITNESSETH:

WHEREAS, the act of February 25, 1920 (41 Stat. 437), as amended and supplemented, authorized communitization or drilling agreements communitizing or pooling a Federal oil and gas lease, or any portion thereof, with other lands, whether or not owned by the United States, when separate tracts under such Federal lease cannot be independently developed and operated in conformity with an established well-spacing program for the field or area and such communitization or pooling is determined to be in the public interest; and

WHEREAS, the Commissioner of Public Lands of the State of New Mexico, herein called "the Commissioner", is authorized to consent to and approve agreements pooling state oil and gas leases or any portion thereof, when separate tracts under such state leases cannot be independently developed and operated economically in conformity with well-spacing and gas proration rules and regulations established for the field or area and such pooling is determined to be in the public interest; and

WHEREAS, the parties hereto own working, royalty or other leasehold interests, or operating rights under the oil and gas leases and lands subject to this agreement which cannot be independently developed and operated in conformity with the well-spacing program established for the field or area in which said lands are located; and

WHEREAS, the parties hereto desire to communitize and pool their respective mineral interests in lands subject to this agreement for the purpose of developing and producing communitized substances in accordance with the terms and conditions of this agreement;

NOW, THEREFORE, in consideration of the premises and the mutual advantages to the parties hereto, it is mutually covenanted and agreement by and between the parties hereto as follows:

1. The lands covered by this agreement (hereinafter referred to as "communitized area") are described as follows, and as depicted on "Exhibit "A".

**S/2 of Section 23, Township 23 South, Range 27 East, Eddy County, New Mexico**

containing **320.00 acres**, more or less, and this agreement shall include the **Wolfcamp Formation** underlying said lands and the crude oil, natural gas and associated liquid hydrocarbons, hereinafter referred to as "communitized substances," producible from such formations.

2. Attached hereto, and made a part of this agreement for all purposes is Exhibit B, designating the operator of the communitized area and showing the acreage, percentage and ownership of oil and gas interests in all lands within the communitized area, and the authorization, if any, for communitizing or pooling any patented or fee lands within the communitized area.

3. All matters of operation shall be governed by the operator under and pursuant to the terms and provisions of this agreement. A successor operator may be designated by the owners of the working interest in the communitized area and three (3) executed copies of a designation of successor operator shall be filed with the Authorized Officer and three (3) additional executed copies thereof shall be filed with the Commission.

4. Operator shall furnish the Secretary of the Interior, and the Commissioner, or his authorized representative, with a log and history of any well drilled on the communitized area, monthly reports of operations, statements of oil and gas sales and royalties and such other reports as are deemed necessary to compute monthly the royalty due the United States and the State of New Mexico, as specified in the applicable oil and gas regulations.

5. The communitized area shall be developed and operated as an entirety, with the understanding and agreement between the parties hereto that all communitized substances produced therefrom shall be allocated among the leaseholds comprising said area in the proportion that the acreage interest of each leasehold bears to the entire acreage committed to this agreement.

All proceeds, 8/8ths, attributed to unleased Federal, State, or Fee land included within the CA area are to be placed in an interest earning escrow or trust account by the designated operator until the land is leased or ownership is established.

6. The royalties payable on communitized substances allocated to the individual leases comprising the communitized area and the rentals provided for in said leases shall be determined and paid on the basis prescribed in each of the individual leases. Payments of rentals under the terms of leases subject to this agreement shall not be affected by this agreement except as provided for under the terms and provisions of said leases or as may herein be otherwise provided. Except as herein modified and changed, the oil and gas leases subject to this agreement shall remain in full force and effect as originally made and issued. It is agreed that for any Federal lease bearing a sliding or step-scale rate of royalty, such rate shall be determined separately as to production from each communitization agreement to which such lease may be committed, and separately as to any noncommunitized lease production, provided, however, as to leases where the rate of royalty for gas is based on total lease production per day, such rate shall be determined by the sum of all communitized production allocated to such a lease plus any noncommunitized lease production.

7. There shall be no obligation on the lessees to offset any well or wells completed in the same formation as covered by this agreement on separate component tracts into which the communitized area is now or may hereafter be divided, nor shall any lessee be required to measure separately communitized substances by reason of the diverse ownership thereof, but the lessees hereto shall not be released from their obligation to protect said communitized area from drainage of communitized substances by a well or wells which may be drilled offsetting said area.

8. The commencement, completion, continued operations, or production of a well or wells for communitized substances on the communitized area shall be construed and considered as a commencement, completion, continued operations, or production on each and all of the lands within and comprising said communitized area, and operations or production pursuant to this agreement shall be deemed to be operations or production as to each lease committed hereto.

9. Production of communitized substances and disposal thereof shall be in conformity with allocation, allotments, and quotas made or fixed by any duly authorized person or regulatory body under applicable Federal or State statutes. This agreement shall be subject to all applicable Federal and State laws or executive orders, rules and regulations, and no party hereto shall suffer a forfeiture or be liable in damages for failure to comply with any of the provisions of this agreement if such compliance is prevented by, or if such failure results from, compliance with any such laws, orders, rules or regulations.

10. This agreement is effective **June 1, 2018**, upon execution of the necessary parties, notwithstanding the date of execution, and upon approval by the Secretary of Interior, or his duly authorized representative, and shall remain in force and effect for a period of two (2) years and so long thereafter as communitized substances are produced or can be produced from the communitized area in paying quantities; provided, that this agreement shall not expire if there is a well capable of producing gas in paying quantities located upon some part of the communitized area, if such well is shut-in due to the inability of the operator to obtain a pipeline connection or to market the gas therefrom, and if a shut-in royalty has been timely and properly paid pursuant to the provisions of one of the State of New Mexico oil and gas leases covering lands subject to this agreement so as to prevent the expiration of such lease; provided further that prior to production in paying quantities from the communitized area and upon fulfillment of all requirements of the Secretary of Interior, or his duly authorized representative, and all requirements of the Commissioners, with respect to any dry hole or abandoned well, this agreement may be terminated at any time by mutual agreement of the parties hereto. This agreement shall not terminate upon cessation of production if, within sixty (60) days thereafter, reworking or drilling operations on the communitized area are commenced and are thereafter conducted and prosecuted with reasonable diligence during the period of nonproduction. The two-year term of this agreement will not in itself serve to extend the term of any Federal lease which would otherwise expire during said period. As to lands owned by the State of New Mexico, there shall be no cessation of more than twenty (20) consecutive days; provided, however, that as to lands owned by the State of New Mexico, written notice of intention to commence such operations shall be filed with the Commissioner within thirty (30) days after the cessation of such production, and a report of the status of such operations shall be made by the Operator to the Commissioner every thirty (30) days, and the cessation of such operations for more than twenty (20) consecutive days shall be considered as an abandonment of such operations as to any lease from the State of New Mexico included in this agreement.

11. The covenants herein shall be construed to be covenants running with the land with respect to the communitized interests of the parties hereto and their successors in interest until this agreement terminates, and any grant, transfer, or conveyance of any such land or interest subject hereto, whether voluntary or not, shall be and hereby is conditioned upon the assumption of all obligations hereunder by the grantee, transferee, or other successor in interest, and as to Federal

lands shall be subject to approval by the Secretary of the Interior, or his duly authorized representative.

12. It is agreed by the parties hereto that the Secretary of the Interior, or his duly authorized representative, shall have the right of supervision over all operations within the communitized area to the same extent and degree as provided in the oil and gas leases under which the United States of America is lessor, and in the applicable oil and gas operating regulations of the Department of the Interior. It is further agreed between the parties hereto that the Commissioner shall have the right of supervision over all operations to the same extent and degree as provided in the oil and gas leases under which the State of New Mexico is lessor and in the applicable oil and gas statutes and regulations of the State of New Mexico.

13. This agreement shall be binding upon the parties hereto and shall extend to and be binding upon their respective heirs, executors, administrators, successors, and assigns.

14. This agreement may be executed in any number of counterparts, no one of which needs to be executed by all parties, or may be ratified or consented to by separate instrument, in writing, specifically referring hereto, and shall be binding upon all parties who have executed such a counterpart, ratification or consent hereto with the same force and effect as if all parties had signed the same document.

15. Nondiscrimination: In connection with the performance of work under this agreement, the operator agrees to comply with all of the provisions of Section 202(1) to (7) inclusive, of Executive Order 11246 (30 F.R. 12319), as amended, which are hereby incorporated by reference in this agreement.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the date and year first above written and have set opposite their respective names the date of execution.

**I, the undersigned, hereby certify, on behalf of Matador Production Company, the Operator of the proposed Communitization Agreement, that all working interest owners (i.e., lessees of record and operating right owners) shown on Exhibit "B" attached to the Communitization Agreement are, to the best of my knowledge, the working interest owners of the Federal or Indian leases subject to the Communitization Agreement, and that the written consents of all of the named owners have been obtained and will be made available to the BLM immediately upon request.**

**OPERATOR:**

**Matador Production Company**

Date: 6/27/18

By: 

Name: Craig N. Adams

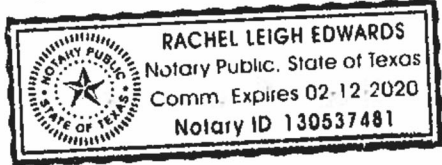
Title: Executive Vice President

*SMH  
1/2/18*

**CORPORATE ACKNOWLEDGEMENT**

STATE OF TEXAS                   §  
   §  
COUNTY OF DALLAS           §

The foregoing instrument was acknowledged before me this 27 day of June, 2018, by Craig N. Adams, Executive Vice President of **Matador Production Company**, a Texas corporation, on behalf of said corporation.



My Commission Expires: 2/12/20                   Rachel Edwards  
Notary Public, State of Texas

**WORKING            INTEREST            OWNER/RECORD            TITLE            OWNER:**

**MRC Permian Company**

Date: 6/27/18                    By: [Signature]

Name: Craig N. Adams SMH  
PDC  
Title: Executive Vice President

**MRC Permian LKE Company**

Date: 6/27/18                    By: [Signature]

Name: Craig N. Adams SMH  
PDC  
Title: Executive Vice President

**CORPORATE ACKNOWLEDGEMENT**

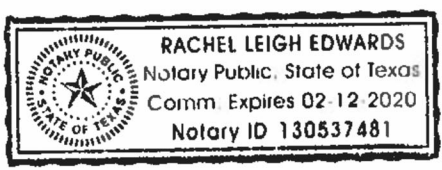
STATE OF TEXAS           §  
  §  
COUNTY OF DALLAS       §

The foregoing instrument was acknowledged before me this 21 day of June, 2018, by **Craig N. Adams, Executive Vice President** of MRC Permian Company, a Texas corporation, on behalf of said corporation.

My Commission Expires: 2/12/20

Rachel Edwards  
Notary Public, State of Texas

STATE OF TEXAS           §  
  §  
COUNTY OF DALLAS       §



The foregoing instrument was acknowledged before me this 21 day of June, 2018, by **Craig N. Adams, Executive Vice President** of MRC Permian LKE Company, a Texas corporation, on behalf of said corporation.

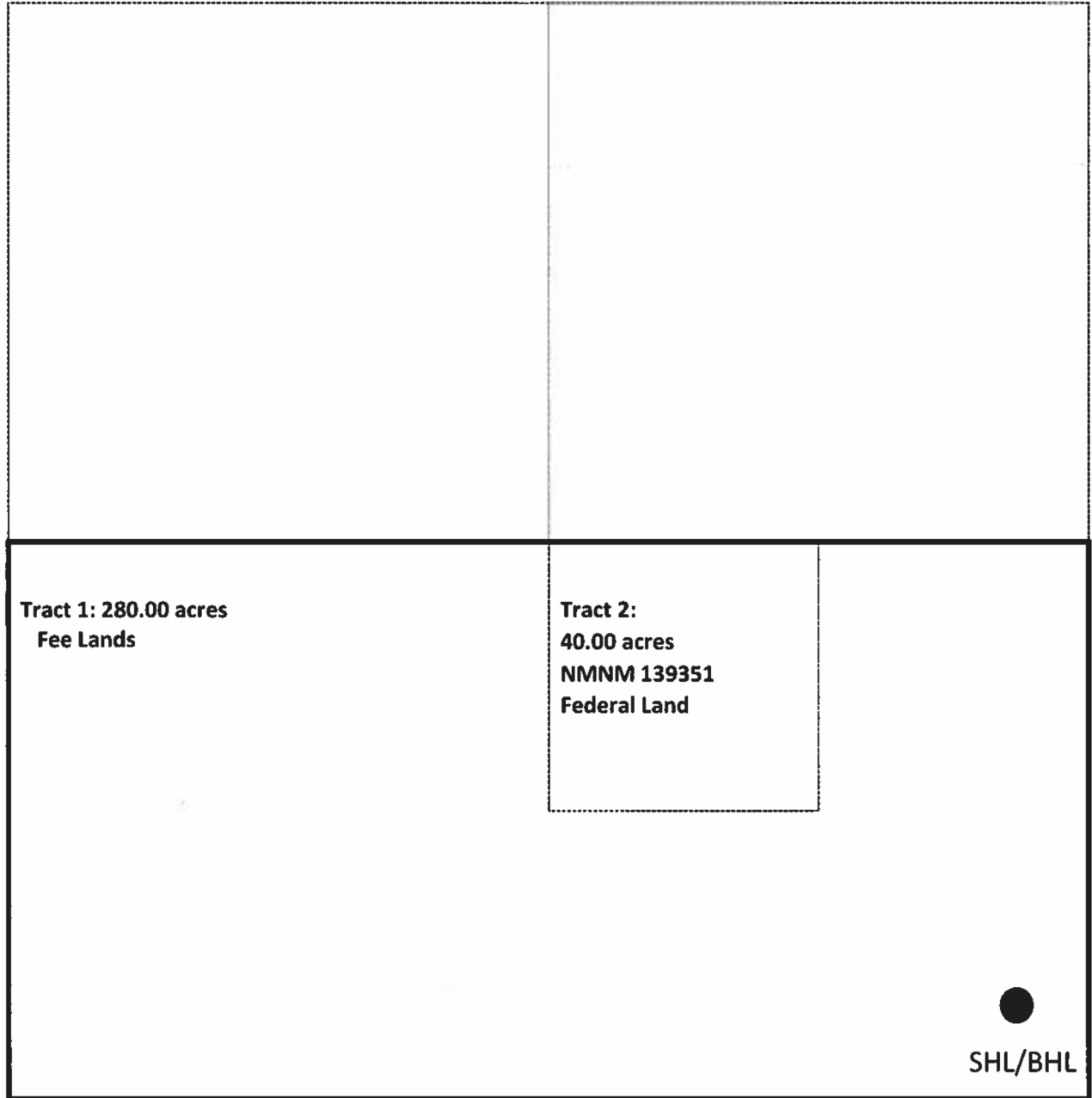
My Commission Expires: 2/12/20

Rachel Edwards  
Notary Public, State of Texas



**EXHIBIT "A"**

**PLAT OF COMMUNITIZED AREA COVERING THE S/2 OF SECTION 23,  
TOWNSHIP 23 SOUTH, RANGE 27 EAST, N.M.P.M., EDDY COUNTY, NEW MEXICO**





**EXHIBIT "B"**

**ATTACHED TO AND MADE A PART OF THAT CERTAIN COMMUNITIZATION  
AGREEMENT DATED JUNE 01, 2018, COVERING THE S/2 OF SECTION 23,  
TOWNSHIP 23 SOUTH, RANGE 27 EAST, N.M.P.M., EDDY COUNTY, NEW MEXICO**

**DESCRIPTION OF LEASES COMMITTED:**

**Tract No. 1:**

Lessor: Fee Mineral Owners  
Lessee of Record: MRC Permian Company and MRC Permian LKE Company  
Description of Township 23 South, Range 27 East, N.M.P.M.  
Lands Committed: Section 23: SW/4, S/2SE/4 and NE/4SE/4  
Number of Acres: 280.00

**Tract No. 1 Working Interest Owner:**

MRC Permian Company	42.59246%
MRC Permian LKE Company	<u>57.40754%</u>
	100.0000%

**Tract No. 2:**

Lessor: United States of America (NMNM-139351)  
Lessee of Record: Flat Creek Resources  
Description of Township 23 South, Range 27 East, N.M.P.M.  
Lands Committed: Section 23: NW/4SE/4  
Number of Acres: 40.00

**RECAPITULATION**

<u>Tract No.</u>	<u>Acreage Committed</u>	<u>Percentage of Interest</u>
Tract 1	280.00	87.50%
Tract 2	40.00	<u>12.50%</u>
Total:	320.00 acres	100.00%