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

IN THE MATTER OF THE APPLICATION OF MARATHON OIL PERMIAN, LLC TO POOL ADDITIONAL PARTIES UNDER THE TERMS OF ORDER NO. R-20966, EDDY COUNTY, NEW MEXICO.

CASE NO. 21213
ORDER NO. R-20996-A

MARATHON'S REPLY IN SUPPORT OF ITS MOTION TO STRIKE AND REQUEST FOR EXTENSION OF TIME

Marathon Oil Permian LLC ("Marathon") submits the following reply in support of its Motion to Strike and Request for Extension of Time.

INTRODUCTION

Sugar Creek Resources LLC's ("Sugar Creek") Motion to Vacate or Stay Order No. R-20960-A fails to comport with the Division's rules and should be stricken from the record. As a result, Marathon moved to strike the Sugar Creek's motion on June 15, 2020. In its Response to Marathon's Motion to Strike, Sugar Creek does not respond to Marathon's procedural arguments or even attempt to explain how it has complied with the Division's Rules. Instead, it appears that Sugar Creek attempts to gloss over the requirements contained in the Division's regulations and established precedent. In doing so, Sugar Creek mischaracterizes Marathon's application in Case 21213 and appears to fault Marathon for (at the very worst) over notifying royalty owners in the Unit. Because Sugar Creek has failed to follow the Division's Rules and its requests do not comport past Division precedent, the Division should either deny Sugar Creek's motion or strike it from the record.

I. MARATHON PROPERLY NOTIFIED PARTIES OF ITS POOLING APPLICATION.

Marathon decided to re-open Case 21213 and pool certain lessors because it found ambiguity in the pooling provisions of certain leases. Rule 19.15.4.12.A(1)(a) NMAC governs who must be provided notice of a compulsory pooling application. That rule states:

> **(a)** The applicant shall give notice to each owner of an interest in the ***mineral estate*** of any portion of the lands the applicant proposes to be pooled or unitized whose interest is evidenced by a written conveyance document either of record or known to the applicant at the time the applicant filed the application and whose interest has not been voluntarily committed to the area proposed to be pooled or unitized (other than a royalty interest subject to a pooling or unitization clause).

(Emphasis added.) The term "mineral estate" was specifically defined by the Commission to include both "mineral interests and ***royalty*** interests." Rule 19.15.2.7.M(9) NMAC (emphasis added). Whereas, the term "mineral interests owner" was more narrowly defined to consist of a "working interest owner, or an owner of a right to explore for and develop oil and gas that is not subject to an existing oil and gas lease." Rule 19.15.2.7.M(10) NMAC. In Case 21213, Marathon sought only to pool royalty interests – which are non-cost bearing interests.

In regards to royalty interests, the intent of Rule 19.15.4.12.A(1)(a) NMAC is to require that notification be sent to royalty owners if there is an insufficient or ambiguous pooling provision in the instrument creating the royalty. This provision applies all types of royalty interests (both overriding royalties and other royalties). Applicants have routinely followed this provision by providing notification of a request to pool to royalty interest owners. Marathon filed its application in Case 21213 to follow this provision, ***similar to what has been filed by other applicants in numerous other applications with the Division***.

Marathon notified Ms. Campos, Mr. Robbins, and Ms. Aldemir (the "Lessors") as part of the application process and in compliance with the Division's Rules. In its Response, Sugar Creek does not dispute the fact that Marathon notified the Lessors to pool their royalty interests within

the Unit pursuant to the Division's Rules. *See* Case 21213, Exhibits 2 and Ex. 3 at pgs. 17 and 19. Sugar Creek also does not dispute that none of Lessors appeared on the record to object to the pooling of their royalty interests or stay development. Nonetheless, Sugar Creek (a third-party and stranger to the lease agreements at issue) seeks to void an order pooling these royalty interests without even notifying the impacted Lessors of its request.[1] This request is procedurally improper and should be stricken by the Division.

II. MARATHON PROPERLY POOLED THE LESSORS' ROYALTY INTERESTS.

As stated in Marathon's Response to the Motion to Vacate and Stay Order No. R-20966-A, Marathon properly pooled the Lessors' royalty interests. Marathon's records (and the Eddy County public records) show that Marathon is the successor in interest to lease agreements currently in place with the Lessors. The Lessors have not contacted Marathon to dispute the validity of these leases and (as stated above), despite having notice, they did not appear at the hearing.

As a matter of law, royalty interests are non-cost bearing interests. *See* 38 Am. Jur. 2d Gas and Oil § 187 ("An overriding royalty is similar to a royalty in that both are nonrisk and noncost bearing interests"). As such, royalty owners are not parties to a JOA (and do not have the right/obligation to execute a JOA). Likewise, royalty owners are not sent Authorities for Expenditures, because they do not have the right/obligation to approve or pay for development

[1] Marathon's understanding is that the proper process for seeking such relief would typically require the filing of an application, paying the NMOCD's application fee, and the sending certified notices to the affected parties, pursuant to the applicable statutes and Division regulations. This is the process that the Division has followed when cases are re-opened after an order is issued. This process ensures that all affected parties are provided with notice. This is important when a request seeks to stop development within a Unit, which clearly impacts each mineral interest owner's correlative rights. Sugar Creek's attempt to completely avoid this process creates numerous issues and does not comport with what the Division has required from other applicants seeking the same relief from the Division.

costs within the Unit. It does not make sense for Sugar Creek to argue that this information must be sent to non-cost bearing royalty owners.

Indeed, the Division has *routinely* pooled royalty and overriding royalty interests when insufficient pooling language exists in the assignment or lease agreement creating the royalty interest. When doing so, the Division has not required applicants to send a lease, new assignment, JOA or AFE (or any other document, other than notification of the hearing) to royalty interest owners. This is because overrides (similar to other royalty and production payment interests) are non-cost bearing interests. *See e.g.,* Case 20211; Orders R-14372 and R-13945-A (examples of orders pooling royalty owners). In fact, the Division has entered numerous orders ***this year alone*** pooling non-cost bearing royalty interests and it has not required anything similar to what Sugar Creek now demands. *See* Exhibit 1 (listing sample orders issued in May and June of 2020 which pool royalty interests). These orders were properly issued by the Division and it is proper for Marathon to rely on and follow the Division's well-established precedent. To Marathon's knowledge, the Division has not required any of these applicants to send a proposed lease, assignment, JOA or AFE to a non-cost bearing, royalty interest owner.

Furthermore, Marathon has worked (and will continue to work with) any pooled parties to obtain voluntary agreements. That being said, Marathon cannot change a party's interest or status based purely on statements made by a third-party, who is not a party to the actual lease agreements.

III. SUGAR CREEK DOES NOT DISPUTE THAT ITS MOTION FAILS TO COMPLY WITH THE DIVISION'S REGULATIONS.

In its Response, Sugar Creek does not argue that it is a "Party" in Case 21213. As a result, Sugar Creek appears to concede that it was not entitled to notice of Case 21213 and that it did not otherwise appear on the record in the Case before an order was issued, in compliance with the

standards articulated by the Commission in Order R-14097-A. Sugar Creek, nonetheless, now seeks review of the Order issued by the Division in Case 21213 from the Division.

Sugar Creek, however, has not complied with the Division's regulations concerning review of an agency order. In fact, Sugar Creek does not even attempt to explain in its Response how its request to vacate and void Division Order R-20966-A comports with the established *de novo* regulations and past Commission Precedent regarding such review. Nor, has it cited any Commission or Division precedent which supports it position.

Rule 19.15.4.23 NMAC undisputedly governs how and when applications must be filed for the review of a Division Order. It states:

> **A. De novo applications.** When the division enters an order pursuant to a hearing that a division examiner held, a ***party of record*** whom the order adversely affects has the right to have the matter heard de novo before the commission, ***provided that within 30 days from the date the division issues the order the party files a written application for de novo hearing with the commission clerk.*** If a party files an application for a de novo hearing, the commission chairman shall set the matter or proceeding for hearing before the commission.

(Emphasis added.) Sugar Creek, by its own admission, has not followed this process. Instead, Sugar Creek filed a motion in Case 21213 (which is no longer pending) with the Division, without filing an application for relief with the Commission (as is required of applicants seeking Division relief), and it has not provided any sort of notification to potentially impacted parties. As a result, Sugar Creek's request is improper and should be stricken.

Likewise, Sugar Creek made no attempt in its Response to comply with the requirements to obtain a stay outlined in Rule 19.15.4.23.B NMAC. That rule states:

> **B. Stays of division or commission orders.** A party requesting a stay of a division or commission order shall file a motion with the commission clerk and serve copies of the motion upon the other parties who appeared in the case, as Subsection A of 19.15.4.10 NMAC provides. The party shall attach a proposed stay order to the motion. The director may grant a stay pursuant to a motion for stay or upon the director's own initiative, after according parties who have appeared in the case

> notice and an opportunity to respond, if the stay is necessary to prevent waste, protect correlative rights, protect public health or the environment or prevent gross negative consequences to an affected party. A director's order staying a commission order shall be effective only until the commission acts on the motion for stay.

Sugar Creek has not complied with these requirements. As stated in Marathon's Motion to Strike, Sugar Creek's motion is procedurally deficient because it has not attached a proposed stay order to its motion. Sugar Creek has also not made any attempt in its Response to articulate how it will suffer immediate irreparable harm, or how Order R-20966-A could specifically impact its correlative rights or result in waste. *See* Order R-12275-B (following this standard).

In addition to the requirements contained in Rule 19.15.4.23.B, the Rules of Civil Procedure for the District Courts of New Mexico provide the standards that a party must meet to obtain a stay of a final administrative order. The Division and Commission have historically considered these standards when determining whether a stay should be issued. *See e.g.*, Case 13348. Under the Rules of Civil Procedure, a stay is warranted only if a party can show:

> 1. It is likely that the appellant will prevail on the merits of the appeal;
> 2. The appellant will suffer irreparable harm unless a stay is granted; and
> 3. No substantial harm will result to other interested persons or the public if a stay is granted.

Rule1-074 NMRA. Sugar Creek has not made, and indeed cannot make, these showings. A stay is similar to injunctive relief and must be based on more than mere blanket statements of speculative harm. Here, Sugar Creek presents no evidence and makes no claim that it seeks to develop the acreage or that it has even obtained an OGRID number.

CONCLUSION

WHEREFORE, Marathon respectfully requests that the Division strike Sugar Creek's Motion to Vacate or Stay Order No. R-20960-A.

Respectfully submitted,

By: */s/ Jennifer L. Bradfute*

Jennifer Bradfute
Marathon Oil Permian LLC
5555 San Felipe Street
Houston, TX 77056
Telephone: 505-264-8740
jbradfute@marathonoil.com

Deana M. Bennett
Modrall, Sperling, Roehl, Harris & Sisk, P.A.
Post Office Box 2168
Alb., NM 87103-2168
Phone: 505-848-1800
Email: dmb@modrall.com

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on counsel of record by electronic mail on July 7, 2020:

Stephen D. Ingram
P.O. Box 1216
Albuquerque, NM 87103
(505) 243-5400
singram@cilawnm.com
awilliamson@cilawnm.com

Respectfully submitted,

By: */s/ Jennifer L. Bradfute*
Jennifer Bradfute
Marathon Oil Permian LLC
5555 San Felipe Street
Houston, TX 77056
Telephone: 505-264-8740
jbradfute@marathonoil.com

Orders issued in May and June 2020 which pool royalty interests (ORRI and other royalty)

17-Jun	**R-21362**	21294	CHEVRON U.S.A. INC	APPLICATION FOR COMPULSORY POOLING SUBMITTED BY CHEVRON U.S.A. INC
17-Jun	**R-21363**	21296	CHEVRON U.S.A. INC	APPLICATION FOR COMPULSORY POOLING SUBMITTED BY CHEVRON U.S.A. INC
5-Jun	**R-21344**	21265	COG OPERATING, LLC	APPLICATION FOR COMPULSORY POOLING SUBMITTED BY COG OPERATING, LLC
5-Jun	**R-21345**	21264	COG OPERATING, LLC	APPLICATION FOR COMPULSORY POOLING SUBMITTED BY COG OPERATING, LLC
5-Jun	**R-21347**	21093	CATENA RESOURCES OPERATING, LLC	APPLICATION FOR COMPULSORY POOLING SUBMITTED BY CATENA RESOURCES OPERATING, LLC
19-May	**R-21104-A**	21257	SPC RESOURCES, LLC	APPLICATION OF SPC RESOURCES, LLC TO POOL AN ADDITIONAL INTERESTS OWNERS UNDER THE TERMS OF ORDER NO. R-21104, EDDY COUNTY, NEW MEXICO.
19-May	**R-21123-A**	21258	SPC RESOURCES, LLC	APPLICATION OF SPC RESOURCES, LLC TO POOL AN ADDITIONAL INTERESTS OWNERS UNDER THE TERMS OF ORDER NO. R-21104, EDDY COUNTY, NEW MEXICO.
7-May	**R-21274**	20911	MATADOR PRODUCTION COMPANY	APPLICATION FOR COMPULSORY POOLING SUBMITTED BY MATADOR PRODUCTION COMPANY
7-May	**R-21304**	21107	TAP ROCK RESOURCES, LLC	APPLICATION FOR COMPULSORY POOLING SUBMITTED BY TAP ROCK RESOURCES, LLC
7-May	**R-21319**	21180	CATENA RESOURCES OPERATING, LLC	APPLICATION FOR COMPULSORY POOLING SUBMITTED BY CATENA RESOURCES OPERATING, LLC
7-May	**R-21322**	20374	WPX ENERGY PERMIAN, LLC	APPLICATION FOR COMPULSORY POOLING SUBMITTED BY WPX ENERGY PERMIAN, LLC
7-May	**R-21323**	20375	WPX ENERGY PERMIAN, LLC	APPLICATION FOR COMPULSORY POOLING SUBMITTED BY WPX ENERGY PERMIAN, LLC