

**STATE OF NEW MEXICO
DEPARTMENT OF ENERGY, MINERALS AND NATURAL RESOURCES
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-20996,
EDDY COUNTY, NEW MEXICO**

**Case No. 21213
Order No. R-20996-A**

MOTION TO VACATE OR STAY ORDER NO. R-20996-A

Sugar Creek Resources, LLC (“Sugar Creek”), an interested party herein, respectfully moves for an order vacating, or alternatively, staying OCD Order No. R-20996-A, and in support thereof shows as follows:

1. Marathon Oil Permian, LLC (“Marathon”) obtained force-pooling relief in Case No. 16381, January 9, 2020 Order No. R-20996. On March 3, 2020, Marathon filed its Application in Case No. 21213, seeking to re-open Case No. 16381 because it identified uncommitted mineral interest owners that it failed to pool. On May 7, 2020, this Division issued Order No. R-20996-A, purportedly force-pooling such additional parties. However, in violation of NMAC 19.15.4.12(A) and NMSA 1978 § 70-2-17(C), Marathon made no attempt whatsoever to reach a voluntary agreement with the additional mineral owners identified below who leased their interests to Sugar Creek, made no showing of such attempt before the Division, and Order No. R-20996-A makes no such finding—a necessary prerequisite to the pooling relief requested. Separately, Sugar Creek has filed a quiet title action against Marathon in district court because Marathon’s leases from such mineral owners terminated for failure to produce in paying quantities. Therefore, this Division’s Order, if not vacated, should alternatively be stayed pending resolution of said district court action affecting title to the subject interests.

2. Sugar Creek is the owner of a leasehold interest in the oil, gas and other minerals underlying the following lands in Eddy County, New Mexico:

Township 23 South, Range 27 East, NMPM
Section 8: N/2 NE/4, SE/4 NE/4, NE/4 SE/4, S/2 SE/4

(the "Subject Lands"). Sugar Creek is the owner of an interest in the Subject Lands by virtue of those certain oil and gas leases described as follows (the "Sugar Creek Leases"):¹

- (1) Lessor(s): Ronald Robbins
Lessee: Sugar Creek Resources, LLC
Effective Date: March 23, 2020
Recorded: Book 1135, Page 411 on April 6, 2020
Description: N/2 NE/4, SE/4 NE/4, NE/4 SE/4 and S/2 SE/4 of Section 8-23S-27E, Eddy County, NM

- (2) Lessor(s): Christine Campos, a married woman dealing in her sole and separate property
Lessee: Sugar Creek Resources, LLC
Dated: March 23, 2020
Recorded: Book 1135, Page 1111 on April 28, 2020
Description: N/2 NE/4, SE/4 NE/4, NE/4 SE/4 and S/2 SE/4 of Section 8-23S-27E, Eddy County, NM

- (3) Lessor(s): Stephanie R. Aldemir, a married woman dealing in her sole and separate property
Lessee: Sugar Creek Resources, LLC
Dated: March 23, 2020
Recorded: Book 1136, Page 376 on May 14, 2020
Description: N/2 NE/4, SE/4 NE/4, NE/4 SE/4 and S/2 SE/4 of Section 8-23S-27E, Eddy County, NM

¹ At the time Marathon's Application in Case No. 21213 was filed, Sugar Creek had not yet taken the Sugar Creek Leases, two of which were filed of record during the pendency of Case No. 21213, and one of which was filed of record after Order No. 20996-A was issued. Thus, Sugar Creek is not contending that it was initially entitled to notice in Case No. 21213. Rather, Sugar Creek has now stepped into the shoes of Ronald Robbins, Christine Campos and Stephanie Aldemir, who are mineral owners in the Subject Lands and were named as respondents by Marathon in Case No. 21213.

3. The Division has designated the E/2 of Section 8 as a 320-acre spacing or proration unit for the production of hydrocarbons from the South Carlsbad-Morrow and South Carlsbad-Atoka gas pools.

4. The predecessors-in-interest to the lessors of the Sugar Creek Leases previously executed the following Oil and Gas Leases (the "Prior Leases"):

- (1) Lessor(s): Christine Campos, a married woman dealing in her sole and separate property
Lessee: Madison M. Hinkle
Dated: August 5, 2005
Recorded: Book 610, Page 887
Description: N/2 NE/4, SE/4 NE/4, NE/4 SE/4 and S/2 SE/4 of Section 8-23S-27E, Eddy County, NM
Primary Term: 5 Years
- (2) Lessor(s): Ronald C. Robbins, a married man dealing in his sole and separate property
Lessee: Madison M. Hinkle
Dated: August 26, 2005
Recorded: Book 610, Page 890
Description: N/2 NE/4, SE/4 NE/4, NE/4 SE/4 and S/2 SE/4 of Section 8-23S-27E, Eddy County, NM
Primary Term: 5 Years
- 3) Lessor(s): Stephanie R. Aldemir, a married woman dealing in her sole and separate property
Lessee: Madison M. Hinkle
Dated: August 26, 2005
Recorded: Book 610, Page 892
Description: N/2 NE/4, SE/4 NE/4, NE/4 SE/4 and S/2 SE/4 of Section 8-23S-27E, Eddy County, NM
Primary Term: 5 Years

Marathon is the successor lessee under the Prior Leases.

5. In April 2008, during the primary term of the Prior Leases, Plantation Operating, LLC completed the Cypress #1 Well, located in the NW/4 NE/4 (UL "B") of Section 8 in the

Morrow and Atoka formations (“Cypress Well”). The Prior Leases expired by their own terms as the Cypress Well failed to produce in paying quantities.

6. Sugar Creek has filed a lawsuit entitled *Sugar Creek Resources, LLC v. Marathon Oil Permian, LLC*, et al, No. D-503-CV-2020-00407, in the Fifth Judicial District Court of Eddy County, New Mexico, in which Sugar Creek seeks to have the court declare that the Prior Leases terminated for failure of the Cypress Well to produce in paying quantities. Said action invokes the district court’s jurisdiction to construe the lease provisions and quiet title to the subject minerals. Thus, there is pending a civil action which involves contractual rights and title disputes, none of which matters fall within the jurisdiction of the OCD.

7. No New Mexico statute confers jurisdiction upon the OCD to adjudicate issues regarding contractual disputes and title disputes. The OCD’s authority is to prevent waste of oil and gas resources and protect correlative rights. NMSA 1978, §70-2-11; *Continental Oil Co. v. Oil Conservation Commission*, 70 N.M. 310, 321, 373 P.2d 809, 816 (1962). Disputes over contractual rights or title do not implicate the OCD’s duty to prevent waste or protect correlative rights. The OCD has repeatedly disclaimed authority to resolve disputes over contracts and ownership of property, as being with the exclusive province of the courts:

The Division has no jurisdiction to determine the validity of any title, or the validity or the continuation in force and effect of any oil and gas lease. Exclusive jurisdiction of such matters reside in the courts of the State of New Mexico.

In re TMBR/Sharp, Order No. R-11700 (Dec. 13, 2001). In the event Marathon now claims its Prior Leases were still valid and that these mineral owners did not need to be pooled, such a determination is outside the jurisdiction of the Division, and the pooling order would be of no effect if these mineral owners were still under lease to Marathon (which they are not).

8. NMAC 19.15.4.12(A)(1)(b)(vi) requires that “[t]he application **shall** include the following: written evidence of attempts the applicant made to gain voluntary agreement including but not limited to copies of relevant correspondence. (emphasis added). NMSA 1978 §12-2A-4(A) states that, in matters of statutory construction, **“shall” and “must” express a duty, obligation, requirement or condition precedent.**” (emphasis added). *See also Yedidag v. Roswell Clinic Corp.*, 2015-NMSC-012, ¶53, 346 P.3d 1136, 1151 (“The word ‘shall’ is ordinarily the language of command. And when a law uses ‘shall,’ the normal inference is that it is used in its usual sense—that being mandatory.”)

9. Therefore, Order No. R-20996-A is invalid and void on its face because Marathon failed to make a necessary showing, and the Division failed to make a necessary finding, that a good faith attempt was made to obtain a voluntary agreement with the purportedly pooled parties.. No lease, AFE or JOA was sent to the subject mineral owners prior to the hearing, and thus no opportunity was provided to them to elect to participate, which is required by NMSA 70-2-17(C) and NMAC 15.19.4.12 as a statutory prerequisite to pooling relief being granted by the Division. Thus, the resulting order should be declared void and of no effect. *See, Continental Oil Co.*, 70 N.M. at 318, 321:

The Oil Conservation Commission is a creature of statute, expressly defined, limited and empowered by the laws creating it...We therefore find that the order of the commission lacked the basic findings necessary upon which jurisdiction depended, and that therefore Order No. R-1092-C and Order No. R-1092-A are invalid and void. We would add that although formal and elaborate findings are not absolutely necessary, nevertheless basic jurisdictional findings, supported by evidence, are required to show that the commission has heeded the mandate and the standards set out by statute.

10. To protect correlative rights and prevent gross negative consequences to Sugar Creek, Sugar Creek requests that said Order be vacated and declared void or, alternatively, stayed until such time as title to the subject minerals is determined. Election letters should also be stayed.

11. Counsel has conferred with Marathon, but cannot come to an agreement with Marathon regarding this matter, this necessitating the present Motion.

WHEREFORE, Sugar Creek requests that Order No. R-20996-A be vacated or stayed, and that Sugar Creek receive all other relief to which it is entitled.

RESPECTFULLY SUBMITTED,

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ATTORNEYS FOR SUGAR CREEK
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I hereby certify that a true and correct copy of the foregoing was served via e-mail and/or U.S. Mail on June 5, 2020 to the following:

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