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

RESPONSE TO MARATHON OIL PERMIAN, LLC'S MOTION TO STRIKE AND REQUEST FOR EXTENSION OF TIME

Sugar Creek Resources, LLC ("Sugar Creek"), for its response to Marathon Oil Permian, LLC's ("Marathon") Motion to Strike and Request for Extension of Time (the "Motion" or "Marathon's Motion")[1] shows as follows:

Marathon goes to great lengths to avoid the threshold question of whether it validly pooled the mineral interest of the Sugar Creek Lessors.[2] Instead, Marathon argues that it is not required to comply with the rules of the Division governing compulsory pooling. Marathon argues that, "[s]ince [the Sugar Creek Lessors] own royalty interest that are **already subject to a lease agreement with Marathon**, Marathon is not required to offer to enter into a new/different lease agreement as a prerequisite to obtaining compulsory pooling." (*See* Marathon's Motion, p. 3, ¶ 7) (emphasis added). Marathon's position is untenable. Marathon cannot contend, on the one hand, that it has a valid agreement with the Sugar Creek Lessors, while simultaneously treating the royalty owners as unleased and seeking to pool their interest without complying with the legal prerequisites governing compulsory pooling.

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[1] Prior to filing this Motion, counsel for Marathon was advised that Sugar Creek has "been directed and authorized by EMNRD counsel to file an application for de novo hearing to the OCC, so that our complaint as to Order No. R-20996-A is heard contemporaneously with MRC Permian's complaint as to same, and that has been done."

[2] These parties are Ronald Robbins, Christine Campos and Stephanie Aldemir, who will hereinafter be referred to as the "Sugar Creek Lessors."

First, NMSA 1978 § 70-2-17 dictates who may be subject to a compulsory pooling application:

> **C.** When two or more separately owned tracts of land are embraced within a spacing or proration unit, . . . the owner or owners thereof may validly pool their interests and develop their lands as a unit. Where, however, **such owner or owners have not agreed to pool their interests,** and where one such separate owner, or owners, who **has the right to drill** has drilled or proposes to drill a well on said unit to a common source of supply, the division . . . shall pool all or any part of such lands or interests or both in the spacing or proration unit as a unit.

NMSA 1978 § 70-2-17(C) (emphasis added). Here, Marathon contends that it has a voluntary agreement with the Sugar Creek Lessors and argues they do not have the "right to drill." Based on Marathon's admission, then, the Sugar Creek Lessors cannot be subject to compulsory pooling.[3] *See* NMSA 1978 § 70-2-17(C) ("Where . . .**such owner or owners have not agreed to pool their interests,** . . . the division . . . shall pool all or any part of such lands or interests or both in the spacing or proration unit as a unit). Thus, even if Marathon is not required to attempt to obtain a voluntary agreement from the Sugar Creek Lessors, Order No. R-20996-A is nevertheless ineffective as to them.

Second—and assuming that the requirements of NMSA 1978 § 70-2-17(C) are present, which Marathon contends are not—Marathon then contradicts itself and argues that it is not required to attempt to reach a voluntary agreement with the Sugar Creek Lessors prior to compulsory pooling. This position is belied by the express language governing compulsory pooling applications.[4] NMAC 19.15.4.12(A)(1)(b)(vi) expressly states that "[t]he application **shall**

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[3] Sugar Creek is not arguing that it or the Sugar Creek Lessors cannot be validly pooled. Rather, it is Sugar Creek's position that, to the extent Marathon wishes to pool the interest, it must comply with the law requiring a good-faith attempt to reach a voluntary agreement.

[4] Marathon cites Case No. 15697 in footnote 2 for the proposition that leased royalty owners may be subject to compulsory pooling. However, the cited case is strictly an OCD enforcement action for deficient plugging bonds by an operator. Furthermore, this is not a case where there is an issue with the pooling language in the lease. Rather, this dispute concerns the ongoing validity of the of the

include . . . written evidence of attempts the applicant made to gain voluntary agreement including but not limited to copies of relevant correspondence." (emphasis added). This language is not permissive. Under New Mexico law, the words **"shall" and "must" express a duty, obligation, requirement or condition precedent."** NMSA 1978 § 12-2A-4(A) (emphasis added). *See also Yedidag v. Roswell Clinic Corp.*, 2015-NMSC-012, ¶53, 346 P.3d 1136, 1151. According to Marathon's position, the omission of any of the following items from its application would not have any bearing on the validity of any order subsequently issued:

> **(i)** a statement that the applicant expects no opposition including the reasons why;
> **(ii)** a map outlining the spacing unit to be pooled, showing the ownership of each separate tract in the proposed unit and the proposed well's location;
> **(iii)** the names and last known addresses of the interest owners to be pooled and the nature and percent of their interests and an attestation that the applicant has conducted a diligent search of all public records in the county where the well is located and of phone directories, including computer searches;
> **(iv)** the names of the formations and pools to be pooled;
> **(v)** a statement as to whether the pooled unit is for gas or oil production or both;
> **(vi) written evidence of attempts the applicant made to gain voluntary agreement including but not limited to copies of relevant correspondence;**
> **(vii)** proposed overhead charges (combined fixed rates) to be applied during drilling and production operations along with the basis for such charges;
> **(viii)** the location and proposed depth of the well to be drilled on the pooled units; and
> **(ix)** a copy of the AFE the applicant, if appointed operator, will submit to the well's interest owners.

See NMAC 19.15.4.12 (emphasis added). Thus, Marathon is asking the Division to change the word "shall" to "may" when interpreting the directives of NMAC 19.15.4.12 (1) (b), a result which would be contrary to law. *See Yedidag, supra at* ¶53.

Lastly, Marathon makes multiple arguments alleging that Sugar Creek's Motion to Stay or Vacate Order No. R-20996-A is either untimely or otherwise defective. There are no Division regulations prohibiting the filing of such a motion by an aggrieved party to correct an erroneously

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Marathon leases and who has the "right to drill" on the mineral interests owned by the Sugar Creek Lessors.

issued order. Notwithstanding, Marathon tacitly admits that Order No. R-20996-A is **facially defective** by acknowledging it did not seek to reach a voluntary agreement with the Sugar Creek Lessors, a necessary prerequisite to issuance of said order. Marathon's application in Case No. 21213 did not include this information because no such attempt was made by Marathon as to the Sugar Creek Lessors. Thus, Order No. R-20996-A is ineffective as to the interest of the Sugar Creek Lessors.

WHEREFORE, Sugar Creek respectfully requests that the Division issue an order denying Marathon's Motion to Strike, that Order No. R-20996-A be vacated, stayed and/or reversed by the Division or the Commission as appropriate, and that Sugar Creek have all other relief to which it is entitled.

RESPECTFULLY SUBMITTED,

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