

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

**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**

ORDER

This Order concerns Sugar Creek Resources, LLC's ("Sugar Creek") Motion to Vacate or Stay Order R-20996-A ("Stay Motion") and Marathon Oil Permian, LLC's ("Marathon") Motion to Strike and Request for Extension of Time ("Strike Motion"). In response to the Oil Conservation Division's ("OCD") Order Setting Out Briefing Schedule for Motions, Sugar Creek and Marathon filed additional briefs and argued the motions in a hearing on July 9, 2020. Having considered the motions, briefs, oral arguments, and recommendation of the hearing examiner, the OCD Director denies both motions.

1. Sugar Creek moves to stay or vacate Order R-20996-A ("Order"), which OCD issued in Case No. 16381, on the ground that Marathon did not make a showing that it attempted to reach a voluntary agreement with Sugar Creek as lessee of certain mineral interests covered by the pooling order or with Sugar Creek's predecessors in interest in the lease, Campos, Robbins, and Aldemir as required by 19.15.4.12(A)(1)(b)(vi) NMAC. However, neither Sugar Creek nor its predecessors' interest, in whose shoes Sugar Creek claims to stand, are parties entitled to request a stay of the Order. *See* 19.15.4.23(B) NMAC ("A party requesting a stay of a division or commission order shall file a motion with the commission clerk...") The parties to an adjudicatory proceeding are the applicant, a person entitled to notice who entered an appearance in the case, and a person who properly intervenes. *See* 19.15.4.10(A) NMAC. Assuming that Sugar Creek or

its predecessors in interest were entitled to notice of Marathon's application,¹ none of them entered an appearance or moved to intervene, and therefore none of them became parties entitled to request a stay of the Order.²

2. Sugar Creek also fails to demonstrate that a stay is necessary “[t]o protect correlative rights and prevent gross negative consequences to Sugar Creek,” *See* Sugar Creek's Stay Motion at ¶ 10. The OCD director may grant a stay if “necessary to prevent waste, protect correlative rights, protect public health or the environment or prevent gross negative consequences to an affected party.” 19.15.4.23(B) NMAC. With respect to Sugar Creek's claim of “gross negative consequences”, it is not an “affected party.” *See* 19.15.2.7(A)(8)(c) NMAC. With respect to Sugar Creek's claim of harm to correlative rights, Sugar Creek in its briefs and again at the hearing failed to articulate any basis for making such a finding. Indeed, Sugar Creek in its reply brief asserts that Marathon had suspended drilling in the area covered by the Order, obviating any possible harm. When during the hearing Sugar Creek was asked how, in these circumstances, the Order harmed its correlative rights, it merely referred to Marathon's alleged failure to seek a voluntary agreement before filing its compulsory pooling application. Whether such failure might cause harm warranting a stay is not the question here, but whether Sugar Creek was so harmed.

¹ The record is unclear whether Sugar Creek or its predecessors in interest were the lessees when Marathon filed its application in Case No. 16381. During oral argument on the motion, Sugar Creek indicated that it may have acquired one or more of the lessees before Marathon filed its application, but Marathon contends that when it filed its application, Sugar Creek had not recorded any of the leases and it did not know about Sugar Creek's acquisition of the lease(s). *See* 19.15.4.12(A)(1)(a) NMAC (the applicant must give notice to mineral interest owners “whose interest is evidenced by a written conveyance document 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”).

² Marathon observes that Sugar Creek did not file an application in connection with its Stay Motion. *See* Marathon's Reply in Support of Strike Motion at p.3 n.1. Marathon is correct that OCD's practice has been to require an application to reopen a case after the order is issued, and that Sugar Creek did not file an application. However, OCD declines to fault Sugar Creek for this omission because OCD did not advise Sugar Creek of this requirement when the Stay Motion was filed. OCD intends to enforce this requirement in future cases.

On the record before OCD, Sugar Creek did not make a cognizable argument, let alone proffer credible evidence of harm to correlative rights.

For the foregoing reasons, Sugar Creek's Stay Motion is DENIED. Having done so, Marathon's Strike Motion is moot, and hereby DENIED.

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Adrienne Sandoval, Director

Date: 8/06/2020