

**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**

MOTION TO STRIKE AND REQUEST FOR EXTENSION OF TIME

Marathon Oil Permian LLC (“Marathon”) submits the following Motion to Strike and Request for Extension of Time. Specifically, Marathon requests that the Oil Conservation Division strike Sugar Creek Resources, LLC’s (“Sugar Creek”) motion to stay or vacate Order R-20966-A (the “Motion” or “Sugar Creek’s Motion”). Marathon further requests that the Division delay further briefing related to Sugar Creek’s Motion until a decision is rendered on this motion to strike.

Background

Case Nos. 16381 and 21213

(1) On August 7, 2018, Marathon filed an application in Case No. 16381 seeking to create a 1280-acre, more or less, spacing unit covering Sections 7 and 8, Township 23 South, Range 27 East, NMPM, Eddy County, New Mexico (the “Unit”); and, pooling all mineral interests in the Wolfcamp formation. On January 9, 2020, The Division granted Marathon’s application and entered Order R-20996.

(2) On March 3, 2020, Marathon filed an application in Case No. 21213 seeking to re-open Order R-20966 for the limited purpose of adding additional pooled parties within the Unit.

The hearing was held on April 30, 2020. No-one, other than Marathon, appeared on the record before Case No. 21213 was taken under advisement by the Division. On May 7, 2020, the Division entered Order R-20996-A, granting Marathon's application in Case No. 21213.

(3) Division Order R-20996-A finds that Marathon provided notice by certified mail to all uncommitted interest owners in the Unit whose interests were evidenced by a conveyance at the time the application was filed.

(4) Marathon's exhibits in Case No. 21213 prove that notice of Marathon's application was sent via certified mail, return receipt requested, and delivered to the following:

Christine Campos	Mailed 3/12/2020	Delivered 3/16/2020
Ronald Robbins	Mailed 3/12/2020	Delivered 3/16/2020
Stephanie Aldemir	Mailed 3/12/2020	Delivered 3/16/2020

See Case 21213, Exhibit 3 at pgs. 17 and 19. These individuals were also specifically named in the affidavit of publication. See Case 21213, Exhibit 3 at pg. 20. Despite receiving actual notice, none of these three individuals entered an appearance at the hearing on April 30, 2020 in Case 21213.¹ Additionally, none of these individuals filed an application with the Commission requesting *de novo* review.

(5) Marathon's Exhibits show that Ms. Campos, Mr. Robbins and Ms. Aldemir own royalty interests in the Unit. See Case 21213, Exhibit 2. This is because these three individuals entered into the following lease agreements in 2005, in which Marathon is a lessee of record as a successor in interest to Madison M. Hinkle:

¹ NMAC 19.15.4.10.A(2),(3) governs how interested persons become a "party" in a Division Case. This rule provides that parties consist of either a person to whom a statute or rule requires notice and who has entered an appearance in a case or a person who properly intervenes. Here, no-one entered an appearance or moved to intervene in Case 21213. As a result, the only party in the case was Marathon. See generally, NMAC 19.15.4.10.

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
Net Acres: Covering approximately 26.67 net acres

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
Net Acres: Covering approximately 26.67 net acres

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
Net Acres: Covering approximately 26.67 net acres

(6) These lease agreements were filed of-record in Eddy County when Marathon filed its applications in Cases 16381 and 21213, and it is Marathon's position that these leases are valid. There is a well that Marathon operates, the Cypress #001 (API 30-015-35855), located on the leases that is currently producing.

(7) Since Ms. Campos, Mr. Robbins, and Ms. Aldemir own royalty interests 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 prerequisite to obtaining compulsory pooling.² Consequently,

² Marathon determined that it would seek a pooling order for the lessor's royalty interests. This relief was sought out of an abundance of caution and is similar to relief sought by other operators in pooling applications filed by the Division. See, e.g., Case 15697 (pooling lessors subject to a lease agreement due to ambiguous pooling language in

and contrary to Sugar Creek's contention, Marathon was not required to reach an additional "voluntary agreement" with the royalty interest owners.

Marathon's Communications with Sugar Creek

(8) On May 13, 2020 (after Order R-20996-A was issued) Sugar Creek contacted Marathon for the first time, alleging that the above-listed leases had expired. *See* May 13, 2020 Sugar Creek Email, attached hereto as **Exhibit A**.

(9) Sugar Creek filed a quiet title lawsuit against Marathon 9 days later, on May 22, 2020, requesting that the Fifth Judicial Court rule that Marathon's leases have expired. *See Sugar Creek Resources, LLC v. Marathon Oil Permian, LLC*, D-503-CV-2020-00407. No determination has been made by a Court, finding that Marathon's leases have expired.

(10) Sugar Creek appears to have taken top leases for the acreage described herein in Paragraph 6. Sugar Creek's leases were not recorded, until April and May of 2020, which occurred many weeks ***after*** the application in Case 21213 had been filed with the Division. *See* Sugar Creek's Motion, p. 2.

(11) To Marathon's knowledge, Sugar Creek has ***not*** been issued an OGRID Number. Likewise, Marathon has not received any well proposals or development plans from Sugar Creek to develop any of the mineral interests underlying the 1280-acre Unit.

Sugar Creek's Filings with the NMOCD and NMOCC

(12) On June 5, 2020, Sugar Creek filed its Motion seeking to void, vacate or alternatively stay Order R-20966-A issued in Case 21213.

the underlying lease agreements); *see also* NMAC 19.15.4.12.A(1)(a) (indicating the royalty interests should be pooled in certain circumstances).

(13) On June 11, 2020, Sugar Creek filed a *de novo* application with the Commission, which was filed more than 30 days after the Division entered Order R-20966-A.

Legal Arguments

Sugar Creek's motion to vacate and void Orders R-20966-A does not comport with the agency's regulations and Commission precedent. As a result, Marathon requests that Sugar Creek's motion be stricken from the record.

After holding evidentiary hearings, the Division entered orders in Case Nos. 16381 and 21213 granting Marathon's applications and pooling of all the uncommitted mineral interests underlying the Unit. The royalty interests owned by Ms. Campos, Mr. Robbins, and Ms. Aldemir were pooled in Case 21213. These lessors received proper notice prior to the April 30th hearing and did not appear at the hearing, or otherwise submit objections to Marathon's application. Sugar Creek states in its Motion that it steps in the shoes of Ms. Campos, Mr. Robbins, and Ms. Aldemir and now seeks to vacate or void the effect of Order R-20996-A. *See* Motion, p. 2, fn. 1. This request is improper under the Division's rules for several reasons.

I. Sugar Creek's motion is untimely and does not comply with NMAC 19.15.4.16.C.

First, Sugar Creek's motion is untimely. Ms. Campos, Mr. Robbins and Ms. Aldemir undisputedly had notice of Case 21213 and the hearing on the case, and yet, did not appear in the case or, apparently, request that Sugar Creek appear in the case or at the hearing. Case 21213 was taken under advisement on April 30, 2020, an order was issued and May 7, 2020, and the time to seek *de novo* review has now passed.

NMAC 19.15.4.16.C states that Division examiners may rule on motions only "prior to a hearing on the merits." Here, a motion regarding Marathon's application was filed *long-after* the

hearing on the merits was held in Case 21213. As a result, Sugar Creek's motion filed with the Division in Case 21213 is untimely and should be stricken.

II. A proper *de novo* application was not filed with the Commission.

Second, Sugar Creek should not be permitted to circumvent the Division's appeals process in order to collaterally attack Order R-20966-A. NMAC 19.15.4.23 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 has not followed this process. Instead, Sugar Creek filed a motion in Case 21213 (which is no longer pending) with the Division. That motion seeks agency review of Orders R-20966-A but completely fails to follow the regulatory *de novo* review process.

Now more than 30 days have passed from the date the Division issued Order R-20966-A – May 7, 2020. Nonetheless, Sugar Creek belatedly filed an application for *de novo* review with the Commission on June 11, 2020. This request is untimely. As a result, Sugar Creek has not properly sought *de novo* review of Order R-20966-A with the Commission. Likewise, Ms. Campos, Mr. Robbins, and Ms. Aldemir have not filed any requests with the Commission for *de novo* review.

Furthermore, Sugar Creek was not entitled to seek *de novo* review because it was not a party of record in Case 21213. Likewise, Ms. Campos, Mr. Robbins, and Ms. Aldemir do not qualify as parties of record because they never filed an entry of appearance in Case 21213 and otherwise failed to appear on the record in the Case. *See* NMAC 19.15.4.10.A(2),(3) (stating that parties consist of either a person to whom a statute or rule requires notice and who has entered an appearance in a case or a person who properly intervenes). Both NMSA (1978) § 70-2-13 and

NMAC 19.15.4.23(A) provide that only a "party of record adversely affected shall have the right to have the matter heard *de nova* before the commission." The Oil Conservation Commission has previously held that parties **must appear on the record in a Division Case before a case is taken under advisement** in order to qualify as a "party of record". See Order R-14097-A, ¶ 15.

The Commission explained in Order R-14097-A that:

The Commission does not agree that the term "party of record" should be given an overly broad meaning simply because the Commission proceeding will be *de novo*. First, "party of record" is used in the Act to determine who has the right to appeal both Division and Commission decisions, and Commission decisions are subject to record review proceedings in the district court and the Court of Appeals. Sections 70-2-12.2 and 70-2-25 NMSA 1978. Second, the Act and the Commission rules intend for a full and fair proceeding before the Division hearing examiners and the Division Director, including notice to all affected parties, in the hopes that the issues will be fully developed and addressed by the Division. Finally, if a person wants the Commission to hear the case initially, they can request that the Division Director assert his authority under the Act to hold the hearing before the Commission.

Id. at ¶ 16. Similar to the rationale expressed in Order No. R-14097-A, Sugar Creek should not be permitted to collaterally attack Order R-20966-A without properly following the Division's procedural rules and complying with past Commission precedent.

III. Sugar Creek's motion fails to comply with NMAC 19.15.4.23.B.

Sugar Creek alternatively moves the Division to stay the effect of Order R-20966-A until such time as title to the above-listed leases is determined. It further requests a stay of any election letters being sent for the drilling or wells. See Sugar Creek Motion, p. 6. Rule NMAC 19.15.4.23.B, however, only allows the Division Director to stay the effect of Division Orders in certain circumstances. 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.

First, Sugar Creek's motion to stay was not filed with the Commission. Second, Sugar Creek has not attached a proposed stay order to its motion. Third, and most important, Sugar Creek has failed to show that it will suffer immediate irreparable harm. NMAC 19.15.4.23.B provides that a stay of a Division order may be granted **only if** "the stay is necessary to prevent waste, protect correlative rights, protect public health and the environment or prevent gross negative consequences to any **affected party**." (Emphasis added).

Here, Sugar Creek summarily states in its Motion that Order R-20966-A impacts its correlative rights and that the order must be stayed to prevent gross negative consequences to Sugar Creek. This sort of summary statement is insufficient to warrant the issuance of a stay, which similar to an injunction must be based on immediate and irreparable harm. The compulsory pooling order does not materially change the lessors' interests, status, benefits, or obligations. It simply ensures that interests are pooled to facilitated development. Sugar Creek also fails to articulate how Order R-20966-A negatively impacts its correlative rights or imposes gross negative consequences on Sugar Creek.³ Indeed, the three leases at issue only cover approximately 80-acres within the 1280-acre Unit and it there is a potential that Sugar Creek's motion (if granted)

³ It is unclear whether Sugar Creek would even qualify as an affected party. The Division rules regarding affected persons indicate that there must be a recorded instrument in the county records at the time when the application is filed with the Division. *See, e.g.*, NMAC 19.15.2.7.A(8); NMAC 19.15.4.12.A(1). Here, both parties agree here that Sugar Creek did not record its top leases until after Marathon filed its application in Case 21213. NMAC 19.15.4.10.A(2),(3) governs how interested persons become a "party" in adjudications. As stated above, this rule provides that parties consist of either a person to whom a statute or rule requires notice and who has entered an appearance in a case or a person who properly intervenes. It is undisputed that Sugar Creek never filed an entry of appearance or moved to intervene.

would prevent development of the Unit and negatively impact the correlative rights of other interest owners. Sugar Creek does not appear to be in a position to develop the acreage itself, as it does not yet have an OGRID number from the Division. As a result, Sugar Creek's motion fails to support establish that its correlative rights will be negatively impacted. Sugar Creek's request for a stay fails to comply with the requirements in NMAC 19.15.4.23.B and should be stricken from the record.

Request for Extension

Marathon respectfully requests that the Division Hearing Officer issue a ruling on Marathon's Motion to Strike before it is required to file a response on the merits to Sugar Creek's motion.

Conclusion

WHEREFORE, Marathon respectfully requests that the Division strike Sugar Creek's Motion. Marathon further asks that it not be expected to respond to Sugar Creek's Motion until the Division first rules on this motion to strike.

Respectfully submitted,

By: /s/ Jennifer L. Bradfute
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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 June 15, 2020:

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Respectfully submitted,

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From: Ryan Hartwig <ryan.sugarcreek@gmail.com>
Sent: Monday, May 18, 2020 2:58 PM
To: Rule, Clayton W. (MRO)
Subject: [External] Re: Sec. 8-23S-27E - Eddy County, NM - OGLs

Beware of links/attachments.

Clayton:

Would you be available for a quick phone call tomorrow morning regarding Sugar Creek's leases in Sec. 8-23-27?

Thanks,

Ryan Hartwig, CPL
Wake Energy, LLC
(405) 664-2824

On May 13, 2020, at 2:52 PM, Ryan Hartwig <ryan.sugarcreek@gmail.com> wrote:

Clayton:

Good afternoon. I am emailing to give you the heads up that Sugar Creek Resources owns 80.0 acres of top leases in the E/2 of Sec. 8-23S-27E, Eddy County, NM. Two of these leases are recorded of record and the other will be recorded by tomorrow. Since Marathon's base leases have expired due to the lack of commercial production from the Cypress Well, are you agreeable to willingly release the base leases? If Marathon is instead interested in purchasing Sugar Creek's leases due to Marathon's development plans for Section 8, we would be willing to discuss that as well.

Thanks and have a great day.

Ryan Hartwig
Sugar Creek Resources
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