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**STATE OF NEW MEXICO
BEFORE THE NEW MEXICO WATER QUALITY CONTROL COMMISSION**

**NEW MEXICO ENVIRONMENT DEPARTMENT,
WATER PROTECTION DIVISION,**

Complainant,

**ADMINISTRATIVE ORDER
WQCC 20-16 (CO)**

v.

**MATADOR PRODUCTION COMPANY and
SAN MATEO MIDSTREAM, LLC,**

Respondents.

SETTLEMENT AGREEMENT

The Surface Water Quality Bureau of the Water Protection Division of the New Mexico Environment Department (the “Department”), and Matador Production Company and San Mateo Midstream, LLC (together, “Respondents”) (collectively, the “Parties”), pursuant to 20.1.3.22.B(1) NMAC, stipulate to resolve the alleged violations, orders and monetary obligations assessed in the Administrative Compliance Order issued by the Department to Respondents on April 2, 2020 (the “ACO”) and subsequent amendments and corrections thereto. The Parties have agreed on the terms and conditions specified in this Settlement Agreement (this “Agreement”). The Parties recommend the Commission approve this Agreement pursuant to 20.1.3.22.B(1) NMAC.

BACKGROUND

1. The Department is an agency of the executive branch of the State of New Mexico pursuant to NMSA 1978, § 9-7A-4. The Department is authorized to administer and enforce the New Mexico Water Quality Act (the “WQA”), NMSA 1978, §§ 74-6-1 to -17, and the Standards for Interstate and Intrastate Surface Waters (“the Regulations”), 20.6.4 NMAC, including issuing compliance orders for violations thereof pursuant to authorization contained within the WQA. NMSA 1978 § 74-6-10(A)(1).
2. Respondent Matador Production Company is an oil and gas exploration and production company, with its headquarters in Dallas County, Texas. Respondent San Mateo Midstream, LLC is a joint venture formed by Matador Resources Company and Five Point Energy LLC to operate and grow midstream assets in the Delaware Basin.
3. On April 2, 2020, the Department Issued the ACO to Respondent, alleging violations of 20.6.4 NMAC, assessing a fine, and requiring remediation of an area of the Black River in Southern New Mexico.
4. The Black River is a perennial water of the state subject to 20.6.4.202 NMAC with the designated uses of industrial water supply, irrigation, livestock watering, wildlife habitat, primary contact and warmwater aquatic life.
5. On June 18, 2020, the Department issued a First Amended Administrative Compliance Order which extended the deadlines for the remediation.
6. On August 7, 2020, the Hearing Officer issued an Order granting Respondents’ Motion to Amend Remediation Deadlines and Stay Accrual of Statutory Penalties.
7. Since the issuance of the ACO, the Parties have engaged in settlement negotiations, and have reached a settlement as set forth in the terms of this Agreement.

ALLEGED VIOLATIONS AND REQUIRED COMPLIANCE

8. The ACO claimed violations of the State of New Mexico Water Quality Standards including 20.6.4.13(A) and (J) NMAC caused by the alleged unauthorized discharge of bentonite clay-based drilling fluid into the Black River near Malaga, New Mexico, on or about February 24, 2020.
9. The ACO ordered Respondents to submit a remediation plan for approval by the Department, and to complete remediation within 90 days of receipt of the ACO.
10. The ACO assessed a civil penalty in the amount of \$20,000.

COMPROMISE AND SETTLEMENT

11. Respondents do not admit to any of the allegations contained within or suggested by the ACO. Entry into this Agreement shall not constitute an admission of liability in any administrative or judicial proceeding, nor shall evidence of settlement be admissible in any such proceeding, except for proceedings to enforce this Agreement and a related final order of the New Mexico Water Quality Control Commission (the "Commission").
12. Pursuant to 20.1.3.22.B(1) NMAC, Respondents admit the jurisdictional allegations of this Agreement and consent to the terms specified in the Agreement, including the payment of an administrative fee and the expenditure of the Restoration Funds (defined below), each as set forth below.
13. To avoid further legal proceedings, and as the result of good-faith, arms-length negotiations by the Parties, the Department and Respondents agree to the terms and conditions in this Agreement to resolve all matters related to the ACO.

14. In compromise and settlement of the alleged violations in the ACO, the Parties agree that Respondents shall collectively pay an administrative fee of \$15,000.00 and shall complete the Supplemental Environmental Project outlined below.

15. Payment of the administrative fee shall be made by certified check or other guaranteed negotiable instrument, payable to the State of New Mexico and shall be sent to the Department at the following address:

Bureau Chief
Surface Water Quality Bureau
New Mexico Environment Department
P.O. Box 5469
Santa Fe, New Mexico 87502

16. Payment of the administrative fee shall be accompanied by a transmittal letter referencing this Agreement.

17. Respondents shall make timely and complete payment of the administrative fee within 30 days of final signature of the stipulated final order by the duly authorized representative of the Commission.

SUPPLEMENTAL ENVIRONMENTAL PROJECT

18. The Parties agree that Respondents shall expend a minimum of \$15,000 (the "Restoration Funds") to plan, undertake, and complete a supplemental environmental project ("SEP") as described in Attachment 1 to this Agreement to control erosion and reduce sediment inflows into the Black River in the areas identified in Attachment 1 and shown on the map in Attachment 2.

19. The SEP shall include the selection and design of various erosion control measures to slow the flow of stormwater runoff and decrease sediment load to improve water quality in the Black River.

20. The Parties agree that Respondents will submit a detailed workplan for one or more of the locations identified in Attachment 1 to the Department within 30 days of the effective date of this Agreement that will include engineering specifications and estimated costs, and will not commence work on the project until the Department has approved the workplan, as provided below.

21. The Department will complete review of the workplan within 14 days of submittal and will prioritize specific sites within the workplan based on benefit to the environment and cost to complete. The Department shall not unreasonably withhold or condition approval of the workplan or expand its scope.

22. The final selection and prioritization of sites shall be considered the final workplan, shall be fully enforceable, and will be attached to this agreement as Addendum 1.

23. Respondents shall complete the SEP within 90 days following their receipt of written notice from the Department that it has approved the workplan. For the project to be considered complete, Respondents must submit the following documentation (the "Final Documentation"):

- a) Final engineering specifications ("as-built" drawings) for each site;
- b) Projected maintenance requirements, or requirements to establish vegetation, if any and identification of responsible party for this step; and
- c) Certified costs of the project, once complete.

24. Upon completion of the SEP, Respondents shall submit a signed and sworn Certification of Completion, executed by an authorized representative, including the pertinent attachments and data related to the final implementation of the SEP, to the Department for approval within 30 days after the completion of the SEP.

25. Following completion of the SEP and submittal of a Certification of Completion, the Department will review and provide Respondents with written approval certifying satisfactory completion of the SEP, or alternatively, written correspondence identifying the specific reason(s) why the SEP or Certification of Completion is deficient. The Department shall not unreasonably withhold written approval. Respondents shall have an opportunity to correct any deficiencies and/or supplement the Certification of Completion before resubmitting to the Department for approval.

26. In no event shall Respondents be required to expend more than \$15,000 in the aggregate (the "Restoration Fund Limit") to complete the approved SEP; all costs associated with the preparation of proposals and the Final Documentation shall be counted towards the Restoration Fund Limit, however such costs shall not exceed 25% of the total amount expended.

OTHER TERMS AND CONDITIONS

27. Except as otherwise provided herein, the Department reserves all of the powers, authorities, rights, and remedies, whether administrative or judicial, civil or criminal, legal or equitable, to enforce the requirements of the WQA and the Regulations for any past, present or future violations not addressed in the ACO. In any such action, Respondents reserve the right to assert any defenses that they may have.

28. The Department retains its right to enforce this Agreement by administrative or judicial action should Respondents fail to comply with its terms, and Respondents reserve the right to assert any defenses that they may have.

COVENANTS NOT TO SUE

29. The Department covenants not to sue or take any administrative or civil action against the Respondents under the WQA, the Regulations, and this settlement for any matters that were raised

or could have been raised in the ACO or related to this Agreement. This covenant not to sue extends to Respondents and their affiliates, and their respective officers, directors, agents, employees, contractors, subcontractors, successors and assigns and does not extend to any other person. This Covenant does not extend to future violations of the WQA, the Regulations, or Conditions in this Agreement.

30. Respondents covenants not to sue the State of New Mexico for any claims that were raised or could have been raised regarding the facts and violations alleged in the ACO.

EFFECTIVE DATE

31. This Agreement shall become effective on the date it is approved and a stipulated final order is signed by the duly authorized representative of the Commission. The Parties recommend the Commission approve this Agreement pursuant to 20.1.3.22.B(1) NMAC.

NON-DISPARAGEMENT

32. The Parties agree that any press release issued, or statement made to the media or other third parties, will be neutral and factual and will not be derogatory or disparaging toward any Party.

INTEGRATION

33. This Agreement merges all prior written and oral communications between the Department and Respondents concerning the subject matter of this Agreement and contains the entire agreement between the Department and Respondents.

BINDING EFFECT

34. This Agreement shall be binding upon the Department and its successor agencies and shall be binding upon Respondents and on its successors.

AUTHORITY OF SIGNATORIES

35. The persons executing this Agreement represent that they have the requisite authority to bind either the Department or Respondents, as appropriate, to this Agreement, and that their representation shall be legally sufficient evidence of actual or apparent authority to bind the Department or Respondents to this Agreement.

[SIGNATURE PAGE TO FOLLOW]

For: **NEW MEXICO ENVIRONMENT DEPARTMENT**

By: **Rebecca**
Roose
REBECCA ROOSE
DIRECTOR
WATER PROTECTION DIVISION

Digitally signed by Rebecca
Roose
Date: 2020.09.08 15:22:07
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Date: _____

For: **MATADOR PRODUCTION COMPANY**

By: *Matthew H* *BSW CSW*
MATTHEW V. HAIRFORD
PRESIDENT
MATADOR PRODUCTION COMPANY

Date: 9/8/2020

For: **SAN MATEO MIDSTREAM, LLC**

By: *Matthew H* *BSW CSW*
MATTHEW HAIRFORD
PRESIDENT
SAN MATEO MIDSTREAM, LLC

Date: 9/8/2020

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ATTACHMENT 1

WQCC 20-16 (CO) DESCRIPTION OF POTENTIAL LOCATIONS FOR SUPPLEMENTAL ENVIRONMENTAL PROJECT, TARGET AREAS, AND EXAMPLES

Supplemental Environmental Projects (SEPs) are environmentally beneficial projects that a respondent agrees to undertake in settlement of an enforcement action. SEPs must improve, protect, or reduce risks to public health and the environment through pollution prevention, pollution reduction, and/or restoration or protection. SEPs provide tangible environmental or public health benefits to the affected community or environment, and are usually closely related to the alleged violation being resolved.

The Surface Water Quality Bureau of the Water Protection Division of the New Mexico Environment Department (“Department”, or “Complainant”), and Matador Production Company and San Mateo Midstream LLC (“Respondents”) (collectively, the “Parties”) have entered into a Settlement Agreement to resolve Administrative Order WQCC 20-16 (CO). Accordingly, Respondents agree to plan, undertake, and complete a SEP to reduce sediment inflows into the Black River at a minimum cost of \$15,000 (but in no event shall be required to expend more than \$15,000). The Parties agree that the intent of the SEP is to stabilize and control runoff from active sites and roads to prevent and reduce sediment before it enters the Black River.

The Department has identified four (4) potential target areas for erosion control, which are described below from upstream to downstream locations, respectively:

1. **Higby Hole:** The road crossing, dirt parking lot, and area immediately upstream of Higby Hole, including an arroyo/gully on the north bank of the Black River channel;
2. **Upstream:** Approximately 350-700 yards upstream of the alleged discharge on the north bank there are several arroyos/gullies that enter the Black River, which may individually or collectively contribute excess sediment;
3. **Arroyo:** The small arroyo located upstream of the alleged discharge on the north bank. Respondents provided video footage of sediments entering the Black River from this arroyo during a storm event on March 4, 2020; and
4. **Downstream:** Approximately 300-600 yards downstream from the alleged discharge, there are dirt roads on both sides of the river and cleared land along the northeast side of the river, including some rills and possible gullies, which may contribute excess sediment during storm events.

Examples of potential erosion control methods for inclusion in the SEP include:

- Installing fiber rolls, baffles, rock/log dams, earth dikes, sediment traps, drainage swales, sediment basins, or rock cross vanes to slow the velocity and reduce the power of storm flows;
- Seeding, re-vegetating, and/or mulching to create riparian buffers or set-backs;
- Preventing livestock or off-road vehicles from disturbing the stream bank and channel by installing barriers or exclusions, and possibly installing livestock watering tanks in the uplands;
- Increasing outreach to locals through outdoor interpretive/educational signs and community workshops; or
- Acquiring/purchasing land to protect important riparian and wetland areas.