Riviera Resources Inc, Petitioner,	MICHIGAN TAX TRIBUNAL
v	MOAHR Docket No. 19-001398
Mitchell Township, Respondent.	Presiding Judge Victoria L. Enyart

ORDER DENYING PETITIONER'S MOTION TO SET ASIDE DEFAULT

ORDER DENYING PETITIONER'S REFUND REQUEST

FINAL OPINION AND JUDGMENT ON REMAND

On July 21, 2023, Petitioner filed a motion requesting that the Tribunal set aside its default in the above-captioned case. In the motion, Petitioner states that it has complied with all Tribunal orders and supplied all requested information. Petitioner states that there is good cause to set aside the default.

Respondent has not filed a response to the motion.

The Tribunal has considered the motion and the case file and finds that this case was remanded from the Michigan Court of Appeals[1] to determine the extent to which the assessed personal property parcels are contiguous for the purposes of calculating the fee owed under Tribunal rules.[2] The Tribunal entered an order on May 19, 2022 granting Petitioner's December 28, 2021 Motion for Reconsideration and requiring

[1] *Riviera Resources, Inc v Mancelona Twp, et al*, unpublished per curiam decision of the Michigan Court of Appeals (Docket No 352608, etc), issued April 15, 2021.
[2] Specifically, the Court held:

> [A] question remains whether the personal property parcels in these cases are "contiguous," in order to be entitled to the filing fee exception. There is no binding authority addressing the meaning of "contiguous" under TTR 217 in the context of interconnected gas and mineral development structures. However, the tribunal's "glossary of terms" defined "contiguous as adjoining."
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> Fn. 8. The glossary of terms defines "contiguous parcel" as "Adjoining (i.e., next to each other). Parcels are generally not considered to be contiguous if they are separated by a road."

Petitioner to produce information and documentation to demonstrate the contiguity of each parcel of property at issue.

Petitioner filed a response to that order on July 18, 2022, indicating that the personal property at issue is contiguous and adjoining. Petitioner contends the personal property under appeal is upon adjoining or contiguous tracts of land and pooled into a unit subject to mineral leases authorizing the formation of the units. The legal description of each parcel in the pool is included. In Alcona Township, there are two units sharing a common boundary, one consisting of 40 wells and another consisting of 16 wells. In Mitchell Township, there is one unit consisting of 53 wells. In Caledonia Township, there are three units, respectively consisting of 45, 18, and 15 wells. In Hawes Township, there are five units each sharing a common boundary. In Mancelona Township, there are three units. Petitioner contends that the property includes wells and pipelines; within each unit, the pipelines transport the natural gas form the wells to the processing facility, as explained in the amended petition.[3] Petitioner also relies on the fees charged in MOAHR Docket No. 17-001476 and 19-001400. Petitioner states the subject parcels are contiguous in the manner contemplated by TTR 217(a)(ii)**.[4] Petitioner describes the property as contiguous and on adjoining tracts of land. The response also included several attachments.

- Affidavit of Jim Schramski, PE. In the Affidavit, Mr. Schramski states that each project under appeal in these cases exists on adjoining tracts of land, as demonstrated by the legal descriptions in the unitization agreement, including interconnected pipelines and other equipment. Mr. Schramski states that his affidavit is supported by maps.
- A Unitization Agreement for the Lost Lake Woods pipeline project, recorded March 6, 1997. The Agreement includes an exhibit with a schedule of leases as of 1997. The Agreement was supplemented by a Declaration recorded on October 11, 1997.
- A Unitization Agreement for the Comstock Hills pipeline project, recorded September 19, 1995. The agreement included an exhibit with a schedule of leases, some of which have been crossed out.
- A Unitization Agreement for the Doctor's Club pipeline project, recorded on April 1, 1996. The agreement included an exhibit with a schedule of leases as well as declarations modifying the agreement, entered on September 22, 1997, and January 6, 1999.
- A Unitization Agreement for the North Bay pipeline project, recorded on July 25, 1996. The agreement included an exhibit with a schedule of leases, some of which have been crossed out.
- A Unitization Agreement for the Churchill Point pipeline project, recorded on September 10, 1995. The agreement included an exhibit with a schedule of

[3] Petitioner's use of the term "unit" is a reference to that term as used in MCL 324.61715.
[4] That subrule states: "The filing fee for multiple, contiguous parcels owned by the same person is the filing fee for the parcel that has the largest value in contention, plus $25.00 for each additional parcel, not to exceed a total filing fee of $2,000.00."

leases, one of which has been crossed out, as well as a declaration modifying the agreement, entered on November 21, 1995 and January 5, 1999.

- A Unitization Agreement for the Holcomb Creek pipeline project, recorded on September 12, 1995. The agreement included an exhibit with a schedule of leases, some of which have been crossed out.
- A Unitization Agreement for the Mt. Mohican pipeline project, recorded on June 15, 2006. The agreement included an exhibit listing numerous leases, the recording dates of those leases, and the locations of the leased parcels.
- A Unitization Agreement for the Sucker Creek pipeline project, recorded on February 1, 2007. The agreement included an exhibit listing numerous leases, the recording dates of those leases, and the locations of the leased parcels.
- A Unitization Agreement for the Big Kahuna pipeline project, recorded on August 29, 2006. The agreement included an exhibit listing numerous leases, the recording dates of those leases, and the locations of the leased parcels.
- A Unitization Agreement for the Thibodeau pipeline project, recorded on February 21, 2006. The agreement included an exhibit listing numerous leases, the recording dates of those leases, and the locations of the leased parcels.
- A Unitization Agreement for the Raising Cain pipeline project, recorded on February 1, 2007. The agreement included an exhibit listing numerous leases, the recording dates of those leases, and the locations of the leased parcels.
- A Unitization Agreement for the Bijou East pipeline project, recorded on July 19, 1995. The agreement included an exhibit with a schedule of leases.
- A Unitization Agreement for the Bijou West pipeline project, recorded on May 10, 1996, as well as amendments recorded on July 19, 1995, May 10, 1996, and December 3, 1996. The agreement included an exhibit with a schedule of leases.
- A Unitization Agreement for the Lakes of the North pipeline project, recorded on June 11 and July 6, 1993. The agreement included an exhibit with a schedule of leases.
- A pipeline map for the Doctor's Club pipeline project.
- A pipeline map for the Holcomb Creek and Fantasy Island projects.
- A pipeline map for the Comstock Hills project.
- A pipeline map for the Churchill Point project.
- A pipeline map for the North Bay project.
- A pipeline map for the Lost Lakes Woods project.
- A pipeline map for the Hubbard Lake project.
- A pipeline map for the Lakes of the North Antrim project.
- A pipeline map for the Mancelona 8 project.
- Petition filed in MOAHR Docket No. 17-001476
- Petition filed in MOAHR Docket No. 19-001400
- Amended Petition filed in MOAHR Docket No. 19-001400
- Order Setting Aside Default in MOAHR Docket No. 19-001400
- *Turnberry Homes, LLC v Orion Township*, unpublished per curiam decision of the Michigan Court of Appeals (Docket No. 280584), issued April 7, 2009

- *Francis Oil and Gas, et al v Exxon Corp*, 687 F2d 484 (Temp Emerg Ct App 1982).
- *Louisiana Land and Exploration Co and Subsidiaries v Commissioner of Internal Revenue*, 102 TC 21 (TC 1994).

On January 31, 2023, the Tribunal entered an Order Holding Petitioner in Default because Petitioner's July 18, 2022, response did not satisfy the Tribunal's order, arising from the Court of Appeals decision, that Petitioner must demonstrate contiguity of the parcels at issue in this case to be eligible for the refund sought.

Petitioner filed a response to the Tribunal order on April 3, 2023. In the response, Petitioner contends that the evidence on the record has already established contiguity. This evidence includes maps showing the location of wells, flowlines, and production facilities for each project, lists of personal property assets, and the affidavit of Mr. Shramski.

On May 24, 2023, the Tribunal entered an order extending the time for Petitioner to cure the default. This order indicated that Petitioner was being provided a final opportunity to provide contiguity and that Petitioner was now also required to file a motion to set aside the default. Petitioner filed the above motion in response. However, no new evidence related to contiguity was submitted on this date.

Given the above, the Tribunal finds that Petitioner has failed to demonstrate the contiguity of either the personal property parcels at issue or the real property parcels upon which the personal property parcels are located. Specifically, Mr. Shramski's affidavit that the personal property parcels are interconnected within each project, or the reiteration of such claim in the various responses, is not sufficient evidence to carry the burden of proof of contiguity. Project maps were provided purporting to show the contiguity of the personal property parcels, but those maps failed to identify the applicable parcel numbers they purport to demonstrate. And with respect to the real property, legal descriptions were provided for the underlying land upon which the personal property is located in each unitization agreement, but the Tribunal shall not bear the burden of mapping those legal descriptions to determine whether the parcels are contiguous.

Further, Petitioner continues its argument about a contiguous system, and the Tribunal shall not analyze the merits of this argument because, as stated in prior orders, it ignores the mandate of the remanding order of the Court of Appeals to determine actual contiguity. Petitioner's responses often have failed to focus upon the issue of actual contiguity with which the Tribunal was required to make a determination.

Petitioner also contends that fees charged for parcels in this case is not treated the same as other Tribunal cases, for which two examples were provided. The Tribunal finds that the fees charged in those cases are not controlling in this case. Notwithstanding, the Tribunal cannot rely on those cases because it is required in this case to follow the Court of Appeals' instructions to determine the subject parcels'

contiguity.

Petitioner has been given ample opportunity to cure the default in this case. Instead of focusing on providing a map showing the contiguity of the personal property parcels at issue or the contiguity of the underlying real property parcels at issue,

Based on the foregoing, it is now appropriate for the Tribunal to weigh Petitioner's action under the test set forth in *Grimm v Dep't of Treasury*.[5] In *Grimm*, the Michigan Court of Appeals summarized factors that the Tribunal should consider before imposing the sanction of dismissal. Those factors are:

> (1) whether the violation was wilful or accidental; (2) the party's history of refusing to comply with previous court orders; (3) the prejudice to the opposing party; (4) whether there exists a history of deliberate delay; (5) the degree of compliance with other parts of the court's orders; (6) attempts to cure the defect; and (7) whether a lesser sanction would better serve the interests of justice.[6]

Here, although this process was prolonged, there existed no deliberate delay by Petitioner in the processing of this refund request. Nevertheless, dismissal is appropriate at this time. As explained above, the Tribunal has sought verification regarding the contiguity of the subject parcels through several orders. Petitioner's ongoing failure to cure the default has arisen to the level of a willful violation. Further, there is no lesser sanction that the Tribunal can determine would better serve the interests of justice. Although Petitioner has responded to all Tribunal orders, its ongoing failure to provide the proper evidence of contiguity after being allowed several opportunities now results in the Tribunal's determination that dismissal is appropriate under *Grimm*. As a result, giving careful consideration to the factors involved and considering all options in determining what sanction is just and proper, the Tribunal finds that dismissal is appropriate, and a lesser sanction would not be appropriate in light of Petitioner's history of noncompliance in this case. Therefore,

IT IS ORDERED that Petitioner's Motion to Set Aside Default is DENIED.

IT IS FURTHER ORDERED that Petitioner's Refund Request is DENIED.

This Final Opinion and Judgment on Remand resolves the last pending claim and closes this case.

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[5] *Grimm v Dep't of Treasury*, 291 Mich App 140 (2010).
[6] *Id.* at 149.

APPEAL RIGHTS

If you disagree with the final decision in this case, you may file a motion for reconsideration with the Tribunal or a claim of appeal with the Michigan Court of Appeals.

A motion for reconsideration must be filed with the Tribunal with the required filing fee within 21 days from the date of entry of the final decision. Because the final decision closes the case, the motion cannot be filed through the Tribunal's web-based e-filing system; it must be filed by mail or personal service. The fee for the filing of such motions is $50.00 in the Entire Tribunal and $25.00 in the Small Claims Division, unless the Small Claims decision relates to the valuation of property and the property had a principal residence exemption of at least 50% at the time the petition was filed or the decision relates to the grant or denial of a poverty or disabled veterans exemption and, if so, there is no filing fee. You are required to serve a copy of the motion on the opposing party by mail or personal service or by email if the opposing party agrees to electronic service, and proof demonstrating that service must be submitted with the motion. Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.

Alternatively, you may file a claim of appeal with the Michigan Court of Appeals. If the claim is filed within 21 days of the entry of the final decision, it is an "appeal of right." If the claim is filed more than 21 days after the entry of the final decision, it is an "appeal by leave." You are required to file a copy of the claim of appeal with the Tribunal in order to certify the record on appeal.

Entered: October 4, 2023 By Victoria K. Enjart
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PROOF OF SERVICE

I certify that a copy of the foregoing was sent on the entry date indicated above to the parties or their attorneys or authorized representatives, if any, utilizing either the mailing or email addresses on file, as provide by those parties, attorneys, or authorized representatives.

By: Tribunal Clerk