

## **Davidson, Florene, EMNRD**

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**From** Jordan L Kessler <JLKessler@hollandhart.com>  
**Sent** Monday June 5 2017 10:50 AM  
**To** Goetze Phillip EMNRD Jones William V EMNRD Brooks David K EMNRD McMillan Michael EMNRD  
**Cc** Jennifer L Bradfute (jlb@modrall.com) Davidson Florene EMNRD Joanna Garcia Adam Rankin Earl E DeBrine (edebrine@modrall.com)  
**Subject** Response to Request for Continuance Case No 15717

Gentlemen

Marathon submitted a request for a continuance on Thursday June 1. McElvain strongly objects to Marathon's request as follows:

- Marathon apparently owns a working interest in the spacing unit by virtue of an unrecorded assignment acquired from the Crown/Crump entities and Nadel & Gussman (Crown/Crump entities).
- McElvain has been negotiating in good faith since mid-March with the Crown/Crump entities. McElvain proposed the well to Crown/Crump and notified them that a pooling application would be filed due to a lease expiration issue.
- Crown/Crump are the interest owners of record and were the only interest owners known to McElvain at the time the pooling application was filed. See NMAC 19-15-4-12 A(1)(a).
- Subsequently, after having filed the pooling application and provided notice, McElvain was informed by Crown/Crump of an unrecorded assignment to Marathon. Marathon did not show up in McElvain's title opinion because the assignment was not of record. McElvain has requested, but not seen, a copy of the assignment.
- McElvain has attempted on multiple occasions to contact Marathon. McElvain emailed and called Marathon several times per week since May 17. Marathon did not respond to any of McElvain's correspondence.
- On June 1, 2017, Marathon filed a pre-hearing statement and requested a continuance. This was the first communication from Marathon. Only after McElvain once again emailed Marathon on June 1 regarding a potential agreement did Marathon respond.
- McElvain's state lease VO 9239, which is committed to the proposed spacing unit, expires on July 31. To hold the lease, operations must be commenced by July 31. McElvain does not own a tract in each of the tracts to be penetrated by the proposed well. Therefore, McElvain must have a pooling order in hand to drill the well, and actual drilling operations must be commenced by July 31. It is urgent that McElvain proceed with a June 8 hearing.
- McElvain will continue to negotiate with Marathon regarding the proposed well. McElvain has provided Marathon a well proposal and proposed a term assignment. However, because Marathon was not an owner of record at the time the application was filed pursuant to Division regulations, it has no basis to request a continuance.
- Furthermore, it is unfair for Marathon to request a continuance despite having been informed of the pooling hearing since McElvain first learned of the assignment to Marathon. The timing of McElvain's lease expiration means that McElvain must proceed on June 8.

Very best  
Jordan

**Jordan Lee Kessler**

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