

portion of the lands *the applicant proposes to be pooled* or unitized....” (Emphasis added).

3. Rule 19.15.4.12(A)(1)(a) requires notice to interest owners who the applicant seeks to pool. Marathon is not seeking to pool BLM.

4. Rule 19.15.4.12(A)(1)(a) does not use the defined term “Affected person” to describe persons or entities entitled to notice of a compulsory pooling adjudicatory hearing. *Compare* Rule 19.15.4.12(A)(1)(a) (requiring notice to “each owner of an interest in the mineral estate of any portion of the lands the applicant proposes to be pooled”) *with* Rule 19.15.4.12(A)(2)(a) (requiring applicants who propose unorthodox well locations provide notice to “*affected persons* in each adjoining spacing unit in the same pool or formation” (emphasis added).

5. Rule 19.15.2.A(8) defines affected person, in relevant part, as follows “the following persons owning interests in a spacing unit or other identified tract:... (d) if the United States or state of New Mexico owns the mineral estate in the spacing unit or identified tract or any part thereof, the BLM or state land office, as applicable....”

6. Because Rule 19.15.4.12(A)(1)(a) does not use the defined term “Affected persons” but instead requires notice to be sent to only those parties an applicant is seeking to pool, BLM is not entitled to notice of a compulsory pooling adjudicatory hearing under Rule 19.15.4.12(A)(1)(a). Although BLM is arguably not entitled to notice of a compulsory pooling hearing, the undersigned has sent letters to BLM in the past regarding such hearings.

7. Under Rule 19.15.4.12(B), notice is to be sent “by certified mail, return receipt requested, to the last known address of the person to whom notice is to be given at least 20 days prior to the application’s scheduled hearing date....”

8. Consequently, the deadline for mailing notice letters for the November 14 Hearing to mineral interest owners that Marathon sought to pool was on or before, Friday, October 25, 2019.

9. Marathon mailed notice letters to the parties it sought to pool in these cases on October 24, 2019.

10. On Tuesday, October 29, 2019, the undersigned realized that BLM was not sent a notice letter.

11. To ensure that BLM received the notice letter timely (and to the extent notice to BLM was required), the undersigned decided to send a notice letter to BLM by federal express, overnight delivery.

12. On October 29, 2019, a notice letter to BLM was sent via federal express. *See e.g.*, Case No. 20867 and 20866 Hearing Exhibits page numbers 43-46 (notice letter identifying and discussing case numbers 20864-20868).

13. BLM received the letter sent via federal express on October 30, 2019, around 9:52 a.m. *See e.g.*, Case No. 20867 and 20868 Hearing Exhibits page number 47.

14. To the extent notice was required, BLM thus had actual notice, as of October 30, 2019, of the November 14 Hearing, which is around the same time that the certified mail letters were delivered to the parties Marathon sought to pool.¹

15. In addition to sending the notice letter to BLM via federal express overnight delivery, notice of the November 14 Hearing was published in the Carlsbad Current Argus on October 31, 2019. *See e.g.*, Case No. 20867 and 20868 Hearing Exhibits page numbers 48-51 (publication notice for all Valkyrie cases, including case numbers 20864, 20867, and 20868). The publication was timely and specifically identified BLM.

16. In the undersigned's opinion, either notice to BLM was not required or any technical error in not mailing the notice letter to BLM on October 25, 2019 was cured by mailing the letter via overnight delivery and by timely publication, because BLM had both actual and constructive notice of the November 14 Hearing.

17. I declare that the foregoing is true and correct to the best of my knowledge.


Deana M. Bennett

¹ The letters that were mailed by certified mail reached the addressees on October 28, 29, and 30, 2019.