

Oil & Gas Public Assistance Department  
Oil & Gas Conservation Division  
Oklahoma Corporation Commission

# THE POOLING PROCESS IN OKLAHOMA

# The Pooling Process in Oklahoma

- Most OCC rules pertaining to forced pooling are found in Chapter 5, Rules of Practice, 165:5-7-7 and 165:5-15-3.
- What is pooling and why do we use it?
  - Pooling is a means of forcing interest owners in a spacing unit to come to a decision as to how the unit should be developed. This includes lease holders, mineral owners, and working interest owners.

# The Pooling Process in Oklahoma

- When was pooling started?
  - In 1935, spacing orders contained a paragraph pertaining to working interest owners and mineral owners who had not come to agreement. A form of pooling much more similar to what we use now began in 1947.

## How is pooling done?

Pooling requires an application filed with the Court Clerk, notice of hearing, hearing,

# Forced Pooling in Oklahoma


- and Commission order. Pooling is done by the spacing unit for the formations named in the application. Unspaced common sources of supply cannot be force pooled.
- Who can file a pooling application?
  - Anyone with the right to drill in the spacing unit can file a pooling application. This includes mineral owners, lease holders, and working interest owners. There is no minimum lease requirement to have the right to file a pooling application.



# The Pooling Process in Oklahoma

## Who can be pooled?


Most interest owners in the spacing unit are subject to pooling. Working interest owners can be named in a pooling if they have not come to an agreement prior to the pooling.



Mineral owners can be pooled if they have not signed an oil and gas lease, either because they cannot come to terms with the company, they cannot be located, or they are deceased and their heirs are unknown, or if they have not elected to participate in the well if given the option.



# The Pooling Process in Oklahoma

- Overriding royalty interests, restricted Indian minerals, and State owned minerals cannot be force pooled.
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# Pooling Notice of Hearing

- Rules for Notice of Hearing
  - The notice of hearing must state that the applicant showed *due diligence* in locating the respondents and made a *bona fide* effort to come to agreement with them before naming them in the pooling application.
  - What does come to an agreement mean?
    - For working interest owners, or investors, it means deciding if they want to participate in the well by paying their share of the costs, or assign their working interest in exchange for an overriding royalty interest.
    - For mineral owners, it means signing an oil and gas lease, or participating in the well if given the option.

# Pooling Notice of Hearing

- Rules for Notice of Hearing, cont'd
  - What constitutes *due diligence*?
    - For some, nothing more than searching the county records. For others, also searching telephone directories, the internet, contacting known respondents with the same name, etc.

What does *bona fide* effort to come to an agreement mean?

Some oil companies simply mail out a lease proposal and don't even include a copy of the oil and gas lease to review. If the owners don't respond, they are named in the pooling application. Other companies go to much more effort and attempt to contact the mineral owners and negotiate a lease. Working interest owners must also be contacted to inquire if they want to participate as stated above.



# Pooling Notice of Hearing

- Notice of hearing for pooling together with the application, shall be served by the applicant not less than fifteen days prior to the hearing, by restricted mail, upon each respondent.
- If it is anticipated that a company other than the applicant will be designated as the well operator, there must be a statement in the notice saying so.
- Notice of hearing must be published at least fifteen days prior to the hearing in a newspaper of general circulation in Oklahoma County and in each county in which the land being pooled lies.
- Proof of publication must be provided and is placed in the CD file.

# Pooling Notice of Hearing

- What information is included in the notice of hearing?
  - CD# and filing date
  - Applicant's name
  - Relief sought – pooling
  - Legal description of the pooled spacing unit
  - The names of the respondents
  - The date and place of the hearing
  - Common sources of supply being pooled
  - A statement that the notice was published, pursuant to OCC rules, at least fifteen days prior to the hearing in a newspaper of general circulation in Oklahoma County and also in the county in which the land being pooled is located.
  - If anticipated, a statement saying that someone other than the applicant may be designated as the well operator

# Pooling Notice of Hearing

- Signed by the commissioners and Commission secretary
- Additional information
  - That all involved parties may appear and be heard.
  - That telephonic communication is available
  - Contact information for a representative of the applicant and the applicant's attorney.

# Pooling Application

- Rules for Pooling Applications
  - Together with the pooling notice of hearing, the pooling application must be sent by restricted mail requiring a signature proving receipt no later than fifteen days (calendar days) prior to the hearing.
  - If the applicant anticipates that some other party will be designated the well operator, the application must state so.
- What information is included in a pooling application?
  - CD# and filing date
  - Applicant's name

# Pooling Application

- Relief sought – pooling
- Legal description of the pooled spacing unit
- Parties – Applicant and the names and addresses of the respondents, Exhibit “A”
- Common sources of supply being pooled, spacing unit, and spacing order number
- A statement that the applicant has the right to drill
- The statute giving authority for pooling Title 52 O.S.A. § 87.1
- Signed by attorney for applicant

# Pooling Hearing

- The docket is called at 8:30.
- The Administrative Law Judge (ALJ) asks what type of due diligence the company used to locate interest owners.
- The applicant's representative (attorney, landman) states which respondents are being dismissed from the application (because they came to an agreement or signed an oil and gas lease)
- Usually, a landman representing the applicant testifies about terms, including

# Pooling Hearing

- lease bonus and royalty, of signed leases in the pooled unit and the adjoining ones in the last year. If there are none, the ALJ has discretion to inquire further into time and distance
- Lease offers are not considered, only actual leases.
- The applicant presents an authorization for expenditure (AFE) with a breakdown of the costs for drilling the well as a dry hole and as a completed well.

# Pooling Hearing

- Indian and State leases are not considered in pooling hearings.
- Only arms length transactions are considered in pooling hearings
- The applicant can request the term they want for the pooling order, usually 180 or 365 days.



# Pooling Hearing

- The ALJ considers the testimony provided in the hearing regarding lease terms to determine fair market value and make a recommendation to the commissioners.
- A pooling application may be protested by a mineral owner or working interest owner before or at the hearing causing it to be continued and placed on a protest docket.
- A pooling hearing may be continued many times causing the case to go on for a year or longer.


# Pooling Order

- Rules pertaining to pooling orders:
  - OCC rules state that the order will terminate if a well is not commenced within the designated time. Pooling bonuses must be paid whether the well is drilled or not.
  - An affidavit of mailing must be filed with the Court Clerk stating that the order was sent by regular U.S. mail to all the respondents within three days of the order date – the date it was signed by the commissioners.
  - The pooling order must contain a list of dismissed respondents, if any.



# Pooling Order

## Rules for Pooling Orders, cont'd

- No pooling order shall be extended in time except upon the same notice as provided for in the initial application.
  - There is no new pooling election if a pooling order is extended.
  - Pooling bonuses are sometimes ordered to be paid again if a pooling order is extended.
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# Pooling Order


- The known respondents must be listed with addresses. Unknown, unlocatable, and respondents listed for curative purposes must be designated so in the order.
- The pooling order must state that the respondents have a twenty day election period from the date of the order to send their election to the party and address provided in the order and that the U.S. mail postmark will be their proof of mailing in a timely manner.
- Pooling bonus and royalties owed to unlocatable pooling respondents must be held in escrow.

# Pooling Order

- What information is included in a pooling order?
  - CD #
  - Order #
  - Applicant's name
  - Relief sought – pooling
  - Legal description of the pooled spacing unit
  - A statement saying when and where the pooling hearing was held and who appeared at the hearing



# Pooling Order

- A statement that the applicant made an attempt to locate and come to agreement with all the owners in the pooled unit.
  - That the applicant has the right to drill.
  - The spacing order number, legal description, and common sources of supply being pooled.
  - Estimated Well costs (from the AFE)
    - To complete as a dry hole
    - To complete for production
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# Pooling Order

- Pooling Elections
  - Usually 1 – 4 elections provided from which to choose.
  - Fair market value established from testimony presented in pooling hearing
  - As the royalty goes up, the bonus goes down and vice versa
    - $\frac{1}{8}$  royalty and \$1,000 per mineral acre
    - $\frac{3}{16}$  royalty and \$750 per mineral acre
    - $\frac{1}{5}$  royalty and \$500 per mineral acre
    - $\frac{1}{4}$  royalty and no bonus

# Pooling Order

- Participation
  - Interest owners always have the right to participate in a well under a pooling order.
  - Estimated costs of completion as a dry hole and as a producing well are provided so owners can determine their estimated costs to participate.
  - The order states how many days from the order date the owner has to pay their share of the drilling costs to the applicant or make arrangements.
  - A pooling order states that if an owner elects not to participate in the first well, he will not be allowed to participate in subsequent wells drilled under the same pooling order.
  - The order describes the type of notice that participating owners must receive so they can decide if they want to participate in subsequent wells and timeliness of elections and payment for participation.



# Pooling Order

- There is a twenty calendar day election period during which a pooling respondent must make a written election to the address and party provided in the order.
  - If the last day of the election period falls on a Sunday, holiday, or other non-mail day, the election period will end on the following regular mail day.
  - Failure to make a timely election will result in the owner being deemed to have elected the option with the smallest royalty and largest bonus.
  - During the election period, a respondent may still sign an oil and gas lease and the lessee will make an election under the pooling order.

# Pooling Order

- The pooling order states how many days the operator has to commence the well.
- The pooling order states how many days the applicant has to pay the pooling bonuses – usually, thirty-five.
- The pooling order may contain a statement that the interest owner must submit Form W-9 before receiving their pooling bonus.
- The order states that the bonus and royalties for the unlocatable pooling respondents must be held in escrow, usually, in the Mineral Owner Escrow Account (MOEA) at the OCC.
- The pooling order is signed by the commissioners and Commission secretary, the ALJ, technical reviewer, and attorney for the applicant.

# MOEA

- Set up for unlocatable pooling respondents only.
- Applicant must remit pooling bonuses to OCC either on their MOEA anniversary date or within one year of the pooling order.
- Must remit royalties owed to the unlocatable pooling respondents on their anniversary date.
- OCC retains 10% of all MOEA money collected.
- OCC holds MOEA money in an account at the Treasurer's office for five years, then, turns it over to the Treasurer to be placed in Unclaimed Property.

# Pooling v. Leasing

- A pooling order is usually for a term of six months or one year. In Oklahoma, an oil and gas lease is usually for a term of three years.
- Under a pooling order, the respondents do not negotiate anything. They only decide if they want to participate in the well or which royalty and bonus option they want. Under an oil and gas lease, there are many issues to negotiate.
- Your interest will probably be charged post production charges under a pooling order,
- however, you might be able to negotiate a “no deductions” lease with the oil company.

# Pooling v. Leasing

- A pooling order has a sort of built in depth clause because the oil company only has the right to explore the formations named in the pooling order. Under an oil and gas lease, a mineral owner might lease all depths to the center of the earth, or request a depth clause to a certain depth or formation.
- A pooling order does not have a shut-in clause. Under an oil and gas lease, the lessor will receive payment of a dollar or more per acre while a well is shut-in and can put a term limit on shut-ins so the lease will expire if the well does not go back into production.

# Pooling v. Leasing

- A pooling order does not automatically terminate due to non-production. An application must be filed to vacate the order. An oil and gas lease may have requirements for certain revenue, volume, or limits on time of non-production or the lease expires.
- A pooling respondent might get a higher bonus than a lessor depending upon the evidence provided in the pooling hearing.

# Pooling v. Leasing

- Some attorneys will advise an interest owner to never get pooled while others will advise pooling in order to possibly get better royalty and bonus terms.
- The OCC has no authority over oil and gas leases and our department will not get involved in a lease dispute but we might be able to help in a pooling situation.
- An affidavit of pooling is filed at the County Clerk's office and shows which elections the respondents made.
- Finally, it's always a gamble whichever way you go!