

# Oil & Gas Law

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## Class 12: OGL (4 / 7) –

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### **Pooling and its Impacts on the Oil & Gas Lease**

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# Pooling Review

- *What is pooling*
- *Why / How it is done*
- *How is it different from unitization*
- *Voluntary vs. compulsory*
- =====
- We talked previously about the regulatory mechanics of pooling ... tonight we talk about how pooling affects, and is affected by, the OGL

# Pooling and the OGL

## ■ Main Point:

- ❑ In the context of an Oil & Gas Lease, pooling is simply another “savings clause” ...
- ❑ ... that works as “constructive production” to keep the Lease alive during the secondary term, absent actual production on the Leased Lands

## ■ Purpose:

- ❑ Allow the Lessee to combine acreage in order to drill and produce

# 4 Fact Patterns



# Pooling and the OGL

## ■ 3 Main Sets of Issues:

- ❑ 1. Was pooling done in accordance with the terms of the OGL?
- ❑ 2. Was pooling done in good faith?
- ❑ 3. Other limits on pooling contained in the OGL

# 1. The “Standard” Pooling Clause

- Myth ... just like the creatures seen below
- See pp. 279 – 280
  - TX Form Paragraph 4 (& references in 5 & 6)
  - KS Form Paragraph 11 (& references in 5 & 8)



# 1. The “Standard” Pooling Clause

- Language Granting the Right to Pool
  - Form in text form is quite ltd. – its purposes are:
    - “to constitute a spacing unit” or
    - “to comply with any order ... of agency”
  - TX Form: “when, in Lessee’s judgment, it is necessary or advisable to do so in order to properly develop and operate the Leased Premises in compliance w/” RRC Spacing Rules
  - KS Form: similar

# 1. Pooling – Other Observations (1)

- pp 279-80: 3 ways pooling changes the OGL
  - 1. expands the granting clause by expanding the scope of the leased acreage
  - 2. expands the habendum clause – operations anywhere on the pooled properties = operations on each pooled OGL
  - 3. changes the royalty clause – Lessor's royalty reflects their proportionate share of production
    - *Acreage? How does that square with the allocation methods we learned about a few weeks ago?*
- Declaration of pooling usually filed of record
  - even if pooling clause doesn't mandate it
  - & depending on specific clause, filing could have very substantive effects [ see Sauder p.281 (1) ]



# 1. Pooling – Other Observations (2)

- Cts interpret Pooling Cl. language strictly; but some cases suggest more liberal interpretation
  - ❑ *Should Pooling Cl. be interpreted strictly or loosely?*
- Arguments for strict:
  - ❑ construed against L'ee – in form it selected
  - ❑ disparity of negotiating power
- Arguments against strict:
  - ❑ “anticipatory” cl., expressed in gen'l terms
  - ❑ t/f neither pty can know what facts it will be applied to, and not practical to wait
  - ❑ proper dev. – for both parties' benefit

# 1. Pooling – Issues / Problems

- 1. *1. If no Pooling Cl. in OGL, can L'ee pool leased acreage? If it does, what happens ?*
- 2. *2. If Pooling Cl. requires allocation on an acreage basis, what would L'ee do when other lessees want a combination method?*
- 3. L'ee pools after end of PT but w/in dry hole cl. 60-day grace period; *Valid?*
- 4. *4. Can L'ee pool OGL acreage w/ other acreage that's already had production?*

## Problem P. 294 N2

- Assume pooling was improperly exercised ...
- (a) well on pooled unit is off the Leased Acreage and the Primary Term has expired
- (b) well on pooled unit is on the Leased Acreage and the Primary Term has expired
- =====
- (c) change if there's production on the Lease Premises from outside the pooled unit?
- (d) change if Lease is still within Primary Term?

# 1. Repeated Pooling

- Series of pooling: 1 pooling exercise expires and is replaced by a new one
- *L'ee pools 1 portion of leased acreage – can L'ee pool 2<sup>nd</sup> portion?*



- Again, subject to good faith requirement

## 2. Amoco v. Underwood

### ■ Actions

- Pooled several different leases – small acre tracts combined with large tract from 1 Lease
- Broad pooling clause (similar to our TX form)

### ■ Issue: *what did Amoco's farmees do, to create the accusation that they did not pool in good faith?*

### ■ *Who has the burden of proof?*

### ■ Factors

- pooling occurred shortly before primary term expired
  - unit could have formed out of Sec. 3 or 81 – so no need to pool these tracts with the other tracts to form a std.-sized unit
  - unproductive property included, while productive property excluded
  - “smoking gun” letter
  - no additional dev. plans
- **BONUS QUESTION:** Who is Elbridge Gerry & what does he have to do with this case?



## 2. Other Evidence of Bad Faith

- These are NOT evidence by themselves, but could be used with other facts:
  - ❑ Unit boundaries drawn to hold as many OGLs as possible
  - ❑ Pooling shortly before the end of PT
  - ❑ Testimony that L'ee didn't consider geologic factors in forming the unit
  - ❑ Absence of plans for additional development
  - ❑ Pooling OGL acreage that's sufficient for unit with other leased acreage / excluding parts
  - ❑ Including acreage not likely to be productive / excluding acreage likely to be productive

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## 2. Good Faith – Other Issues

- “good faith”  $\neq$  fiduciary standard or a principal / agent relationship (pp. 287-8 N2)



### 3. Limits on Pooling Authority

- Acreage limitations in the Pooling Cl.
- Anti-Dilution Clause
  - The minimum number of OGL leased acres that can be included in a unit
  - But see HS Resources – p. 295
- **Pugh Clause**
  - Instead of all leased lands being held by pooling, the leased acreage outside the pooled unit is not held
  - Pugh clause can operate horizontally or vertically
  - **Why would a Lessor want this?**
- Retained Acreage Clause
  - Similar to Pugh Cl., but applies to drilling

## Next Class (CL 13):

- **OGL Topic 4:** Royalties
- Ch. 2 Sec. E1, 2, 5 & 6
  - pp. 298 – 315 AND 388 – 396