# Oil & Gas Law

Class 12: OGL (4/7) -

Pooling and its Impacts on the Oil & Gas Lease

### **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

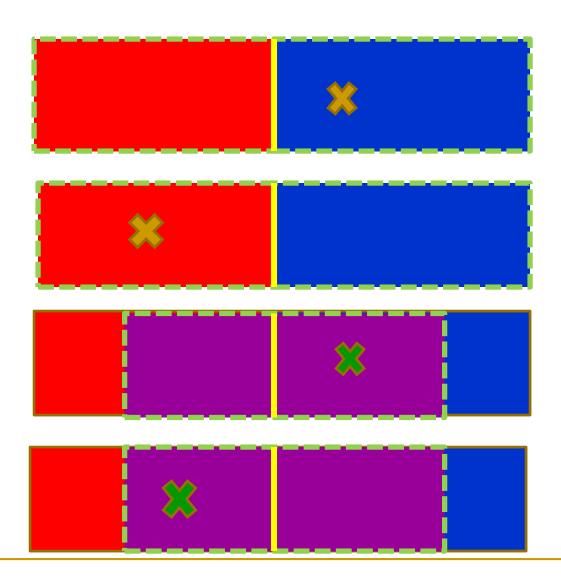
#### Main Point:

- 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, <u>in Lessee's judgment</u>, it is <u>necessary or advisable</u> to do so in order to <u>properly develop and operate</u> 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 <u>granting clause</u> by expanding the scope of the leased acreage
  - 2. expands the <u>habendum clause</u> operations anywhere on the pooled properties = operations on each pooled OGL
  - 3. changes the <u>royalty clause</u> 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 <u>Sauder</u> 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. If no Pooling CI. in OGL, can L'ee pool leased acreage? If it does, what happens?
- 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; <u>Valid?</u>
- 4. <u>Can L'ee pool OGL acreage w/ other acreage that's already had production?</u>

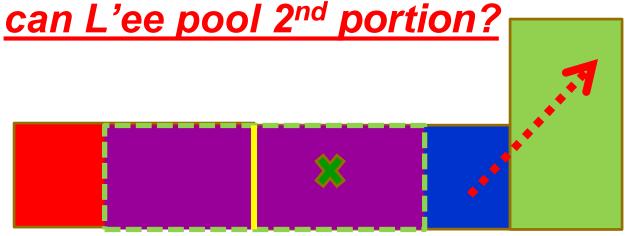
### Problem P. 294 N2

- Assume pooling was improperly exercised ...
- (a) well on pooled unit is <u>off</u> 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 –



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 <u>NOT</u> 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

### 2. Good Faith – Other Issues

"good faith" ≠ fiduciary standard or a principal / agent relationship (pp. 287-8 N2)

### 3. Limits on Pooling Authority

- Acreage limitations in the Pooling CI.
- 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 <u>or</u> 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