Title 52 O.S. § 87.4

More Than an Affidavit

About the speaker

Nathan Enos

Senior Attorney, Oliva Gibbs

Nathan Enos is a senior attorney at Oliva Gibbs with more than a decade of legal experience. He assists clients with drilling, division order, and acquisition title opinions, as well as other oil and gas related matters. He is licensed in North Dakota and Oklahoma. Outside of the office, Nathan enjoys traveling and spending time outdoors.

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Agenda

1 The rule of capture & the race to drill

2 Pooling

3 Compulsory pooling in Oklahoma

4 Recent changes in OK law

5 Title 52 O.S. § 87.4

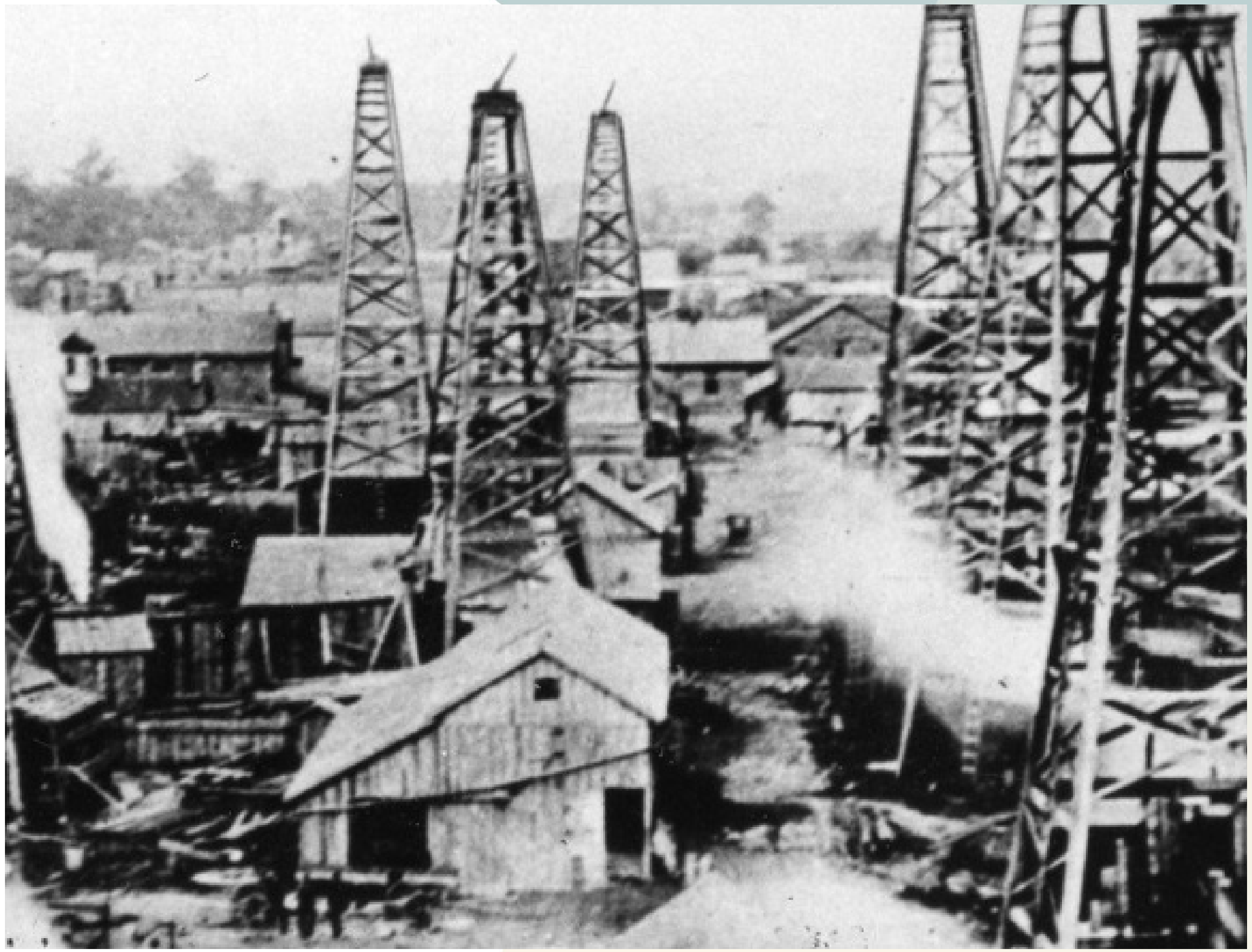
6 Questions

The rule of capture

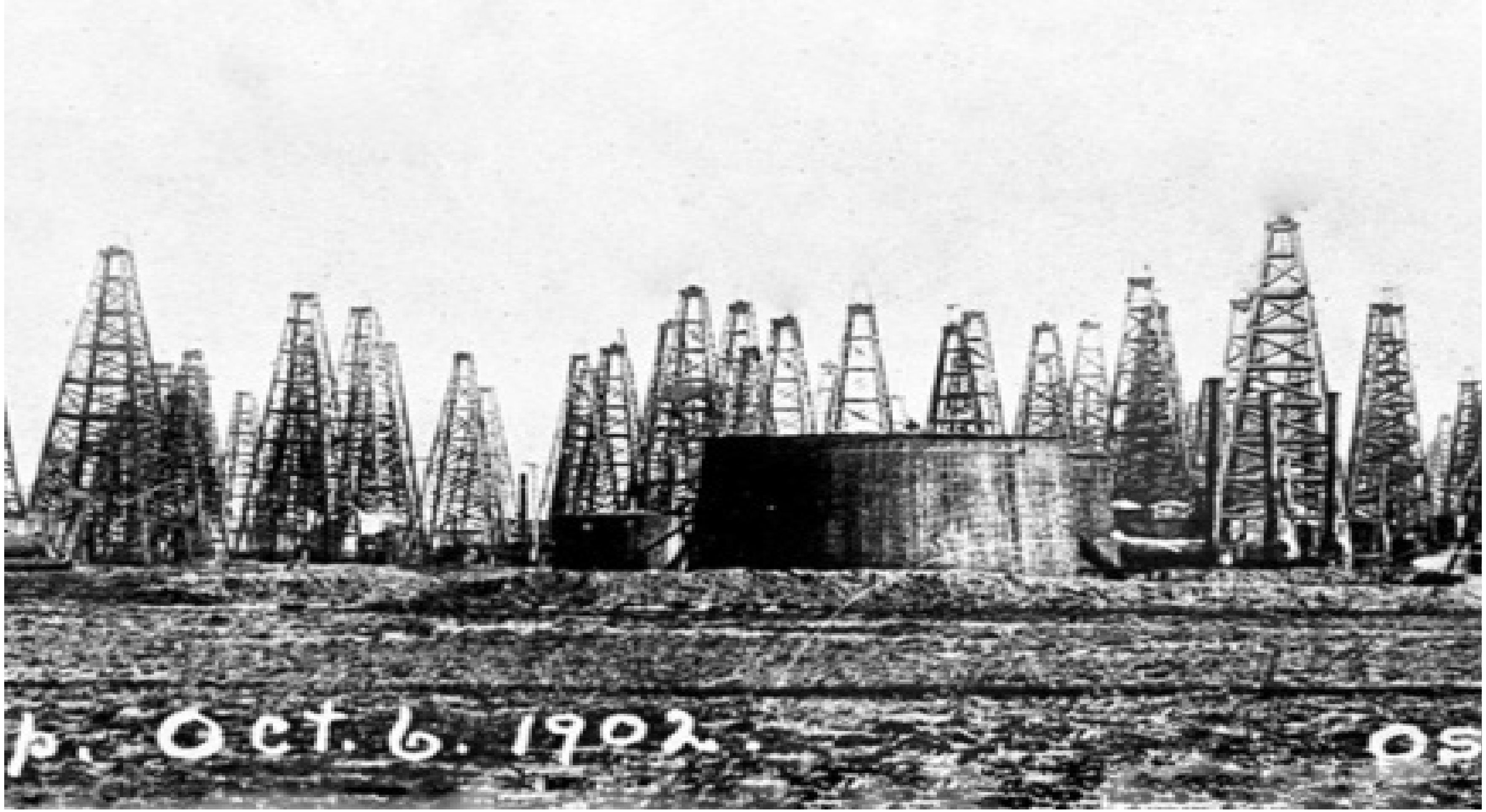
- Under the rule of capture, a person acquires ownership of a previously unowned or fugitive resource only by reducing it to actual possession or control; mere pursuit or opportunity to capture is not enough.
- First person to capture or extract oil, gas, or other minerals gains ownership.

The rule of capture & the race to drill

- The rule of capture created a race to drill, resulting in over drilling, premature loss of reservoir pressure.
- States responded by creating regulatory commissions to prevent waste and protect correlative rights.

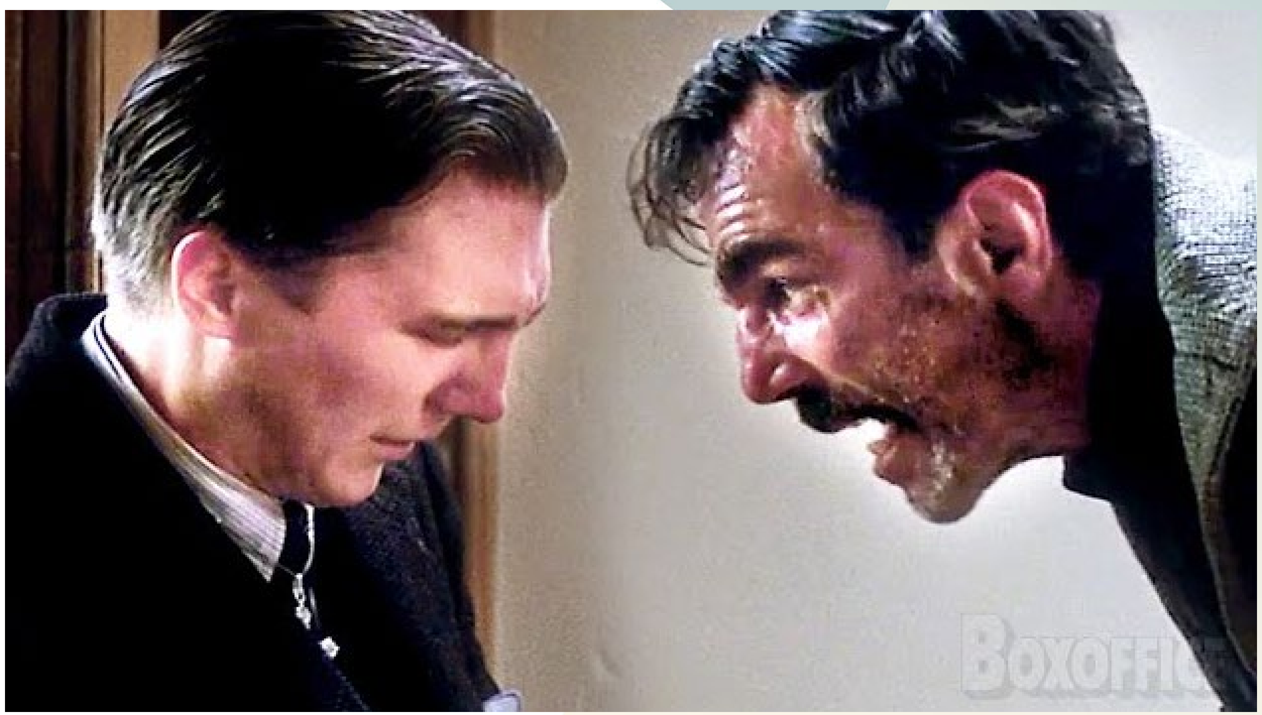


Spindletop, 1902



"I drink your milkshake!" — *There Will Be Blood*

- Taken from a 1920 senate hearing to explain how oil companies could legally drain a common reservoir from a distance.
- "Drainage"
- Overabundance
  - Spindletop wells went from producing over 17.5 million barrels of oil in 1902 to one-half the following year.
- Increased demand for legal and regulatory frameworks governing mineral ownership, leasing, conservation, and eventually, forced pooling and spacing laws in producing states like Oklahoma.
  - Set the stage for Oklahoma to become one of the nation's leading oil-producing states during the early 20th century.



Ohio Oil Co. v. Indiana

- In *Ohio Oil Co. v. Indiana*, Indiana passed a statute that prohibited the release of natural gas into the open air for a period longer than two days after gas or oil has been struck in a well.
- **Facts:** The Ohio Oil Company drilled a well in Madison County, Indiana, specifically targeting oil. When the well produced large quantities of natural gas instead, the company allowed it to continuously blow into the open air while hoping oil would follow, violating an 1893 Indiana conservation statute.
- United States Supreme Court case established the rule of capture for oil and gas.
- Ohio Oil Company had drilled multiple wells into a gas reservoir that was supplying nearby towns with a steady supply of natural gas. The State wanted to preserve this reservoir for as long as possible.
- For four to nine months, Ohio Oil let this gas escape into the open air, ignoring the Indiana Statute. The trial court permanently enjoined Ohio Oil from allowing the gas to escape into the open air pursuant to the statute. Ohio Oil appealed to the U.S. Supreme Court, claiming that the Indiana Statute violated the 14th Amendment because it deprived the defendant and others of liberty and property without due process.

Ohio Oil Co. v. Indiana

- “Considering this fact and the peculiar situation of the substances, as well as the character of the rights of the surface owners, we cannot say that the statute amounts to a taking of private property, when it is but a regulation by the State of Indiana of a subject which especially comes within its lawful authority.” — *Ohio Oil Co. v. Indiana*, 177 U.S. 190, 212.
- Oil and gas ownership does not exist until physically captured.

The role of state conservation agencies

- **Prevent waste**
  - Conservation agencies regulate drilling and production, so operators do not unnecessarily deplete reservoir pressure, drill excessive wells, flare/vent improperly, or leave recoverable oil and gas underground.
- **Protect correlative rights**
  - They make sure each owner in a common reservoir has a fair opportunity to recover their share of production.

Establishment of the Oklahoma Corporation Commission

- Established at statehood in 1907 to regulate certain Oklahoma state industries in the best interests of the public
- Including public utilities, transportation/pipeline safety, and oil and gas regulation
    - Prevents waste of oil and gas resources
    - Protects the rights of mineral owners
    - Prevents pollution and protects groundwater
    - Regulates drilling and production operations
- Originally established to regulate railroads, public service corporations, and transportation companies, ensuring fair rates and preventing discriminatory practices
- Unlike most state agencies, the OCC is a constitutional commission, meaning its authority derives directly from the Oklahoma Constitution rather than solely from legislative enactments
- The Commission is governed by three statewide elected Commissioners, each serving six-year terms

Conservation laws — The state's tools

- **Spacing** – Establishes the size and boundaries of a drilling and spacing unit for a common source of supply.
- **Pooling** – Effectively develop oil and gas production when multiple owners have the right to develop the same reservoir but cannot agree on a lease or development plan.
  - Prevents waste, protects correlative rights, prevents holdouts from a single owner, encourages orderly development, etc.
  - **"You don't want your minerals produced? Too bad, so sad."**
- **Density** – Determines how many wells may be drilling within a spacing unit.
- **Location** – Regulates where a well may be drilled within the spacing unit, including setback requirements.
- **Allowables** – Limits the amount of oil or gas that may be produced from a well or field to prevent waste. These limits govern the maximum daily rate a well can produce to prevent waste, protect rights, and balance market demand.
- **Multiunit horizontal well orders** – Well(s) can be spaced and exist over multiple sections of land.
  - Established in Oklahoma in 2011 by the Shale Reservoir Development Act, codified in 52 O.S. §§ 87.6–87.9.
  - Prevents waste, protects rights, and aids in future development of oil and gas.

Spacing order

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

IN THE MATTER OF BIG CHIEF DRILLING COMPANY FOR AN ORDER EXTENDING ORDER NO. 69236 AS TO THE HOXBAR OOLITIC LIME ZONES AND FOR AN ORDER CREATING 640-ACRE DRILLING AND SPACING UNITS FROM THE HOXBAR SAND, DEESE SAND, MORROW SAND, SPRINGER SAND FORMATIONS UNDERLYING SECTIONS 11, 12, 13, 14, 23 AND 24, TOWNSHIP 7 NORTH, RANGE 8 WEST, GRADY COUNTY, OKLAHOMA, AND SECTIONS 7, 18 AND 19, TOWNSHIP 7 NORTH, RANGE 7 WEST, GRADY COUNTY, OKLAHOMA.	Cause C.D. No.: 30667 Order No.: 75509 Filed: July 9, 1969

REPORT OF THE COMMISSION

This cause came on for hearing before W. H. Sollers, Trial Examiner for the Corporation Commission of Oklahoma, on the 9th day of July, 1969, at 10 o'clock A.M., in the Commission's Courtroom, Jim Thorpe Building, Oklahoma City, Oklahoma, pursuant to notice given as required by law and the rules of the Commission, for the purpose of taking testimony and reporting to the Commission.

George L. Mothershed, Attorney, appeared for the applicant, Big Chief Drilling Company, Galen Ward, Attorney, appeared for Phillips Petroleum Company, and Nathan Sherman, Assistant Conservation Attorney, appeared for the Commission.

The Trial Examiner heard the cause and has filed his report recommending that the application be granted, which report and recommendation are hereby adopted and the Commission therefore finds as follows:

FINDINGS

1. That this is the application of Big Chief Drilling Company for an order extending 640-acre drilling and spacing units for the production of gas and gas condensate from the Hoxbar Oolitic Lime Zone as to Order No. 69236 to include Sections 11, 12, 13, 14, 23 and 24, Township 7 North, Range 8 West, Grady County, Oklahoma and Sections 7, 18 and 19, Township 7 North, Range 7 West, Grady County, Oklahoma and an order creating 640-acre drilling and spacing units for production of gas and gas condensate from the Hoxbar Sand, Deese Sand, Morrow Sand and Springer Sand formations in Sections 11, 12, 13, 14, 23 and 24, Township 7 North, Range 8 West, Grady County, Oklahoma and Sections 7, 18 and 19, Township 7 North, Range 7 West, Grady County, Oklahoma.

2. That the Commission has jurisdiction over the subject matter herein; that notice has been given in all respects as required by law and no protests have been entered to the granting of this application.

3. That the applicant is the owner of oil and gas interests in the above described area and is drilling its No. 1 Dietrich in the Southwest Quarter, 1780 feet North of the South one-fourth section line and 990 feet East of West one-fourth section line of said Section 13, Township 7 North, Range 8 West, Grady County, Oklahoma.

4. That by Order No. 69236, the Corporation Commission has established 640-acre drilling and spacing units for gas and gas condensate for production from the Hoxbar Oolitic Lime Zone among other lands, Sections 3 and 4, Township 7 North, Range 8 West, Grady County, Oklahoma. That subsequent study and information has shown that Sections 11, 12, 13, 14, 23 and 24, Township 7 North, Range 8 West and Sections 7, 18 and 19, Township 7 North, Range 7 West, all in Grady County, Oklahoma are underlain with the Hoxbar Oolitic Lime Zone common source of supply.

5. That this Commission is requested to extend Order No. 69236, which created 640-acre drilling and spacing units for gas and gas condensate production from the Hoxbar Oolitic Lime Zone to cover Sections 11, 12, 13, 14, 23 and 24, Township 7 North, Range 8 West, and Sections 7, 18 and 19, Township 7 North, Range 7 West, all in Grady County, Oklahoma.

6. That subsequent development now indicates that said common source of supply extends beyond the area spaced therefore and underlies all or a portion of the lands described in Paragraph Four hereof and said order above set out should be extended so as to include said lands.

7. That the testimony in this cause shows that the Hoxbar Sand is found at the approximate of 10,200 feet, the Deese Sand at the approximate depth of 11,000 feet, the Morrow Sand at the approximate depth of 14,000 feet, and the Springer Sand at the approximate depth of 14,300 feet, underlying the above described area, and that each of the above formations is capable of producing gas and gas condensate from each separate common source of supply of gas and gas condensate.

8. It is further the testimony in this cause that one well will adequately drain the recoverable gas and gas condensate from each of said formations underlying 640-acres and that it is unnecessaryto drill a well on a closer pattern.

9. That an order should be made establishing 640-acre drilling and spacing units for production of oil and gas from each of the above described formations underlying the above described area.

10. That in interest of securing the greatest ultimate recovery of gas and gas condensate from the pool, the prevention of waste and the protection of correlative rights, this application should be granted.

ORDER

IT IS THEREFORE ORDERED by the Corporation Commission of Oklahoma as follows:

1. That the area spaced by Order No. 69236 creating 640-acre drilling and spacing units for the production of gas and gas condensate from the Hoxbar Oolitic Lime Zone underlying Sections 3 and 4, Township 7 North, Range 8 West to be and the same is hereby extended to include all of Sections 11,12, 13, 14, 23 and 24, Township 7 North, Range 8 West, and Sections 7, 18 and 19, Township 7 North, Range 7 West, all situate in Grady County, Oklahoma.

2. That 640-acre drilling and spacing units be and the same are hereby established for the production of gas and gas condensate from the Hoxbar Sand Formation underlying

Sections 11, 12, 13, 14, 23 and 24, Township 7 North, Range 8 West, and Sections 7, 18 and 19, Township 7 North, Range 7 West, Grady County, Oklahoma.

3. That 640-acre drilling and spacing units be and the same are hereby established for the production of gas and gas condensate from the Deese Sand Formantion underlying

Sections 11, 12, 13, 14, 23 and 24, Township 7 North, Range 8 West, and Sections 7, 18 and 19, Township 7 North, Range 7 West, Grady County, Oklahoma.

4. That 640-acre drilling and spacing units be and the same are hereby established for the production of gas and gas condensate from the Morrow Sand Formation underlying

Sections 11, 12, 13, 14, 23 and 24, Township 7 North, Range 8 West, and Sections 7, 18 and 19, Township 7 North, Range 7 West, Grady County, Oklahoma.

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Increased density

BEFORE THE CORPORATION COMMISSION
OF THE STATE OF OKLAHOMA

APPLICANTS:	ROAN RESOURCES LLC	)
		) Cause CD No.
RELIEF SOUGHT:	INCREASED WELL DENSITY	)
		) 201809120
LEGAL DESCRIPTION:	SECTION 32 TOWNSHIP 11 NORTH RANGE 5 WEST OF THE IM CANADIAN COUNTY, OKLAHOMA	) Order No.) **689319**

FINAL ORDER OF THE COMMISSION

1. Hearing Date and Place: This Cause came on for hearing before an Administrative Law Judge at 8:30 a.m., on November 27, 2018, Jim Thorpe Building, Oklahoma City, Oklahoma.

2. Appearances: Emily P. Smith, attorney for Applicant, Roan Resources LLC.

Findings

3. Companion Causes: CD No. 201809122 and 201809124 (Well Location Exceptions)

4. Notice and Jurisdiction: Notice has been given by publication as required by Commission rules and affidavits of publication have been filed. Those owners whose names and addresses were attainable have been given actual notice by first-class mail. An adjudicative inquiry was conducted by the Administrative Law Judge into the sufficiency of the search to ascertain the names and addresses of all owners, and if a diligent effort had been made to locate all affected interest owners. The Commission finds that the Applicant has made a meaningful and diligent search of all reasonably available sources at hand to ascertain those parties that are entitled to notice and the whereabouts of those entitled to notice but who were served only by publication. The Applicant gave notice as required, the Commission approves the notice given by mail and publication, and the Commission has jurisdiction over the subject matter and the parties.

5. Amendments: None.

6. Relief Requested: Applicant requests that four (4) increased density wells be authorized as shown in "Relief Granted" herein.

7. Reason Relief Should Be Granted: The requested relief for the increased density wells should be granted, as modified herein. The additional wells are necessary to effectively and efficiently drain a portion of the drilling and spacing units and common sources of supply, as shown in "Relief Granted" herein. The evidence showed that original recoverable hydrocarbons in place from the mapped portion of the Woodford common source of supply is approximately 799 MBO and 38,541 MMCF. Without the increased density wells, only approximately 84 MBO and 4,042 MMCF will be recovered from the initial unit well. It is therefore necessary to authorize four (4) additional wells in order to recover all of the recoverable hydrocarbons. The wells are permitted for the Woodford common source of supply underlying Section 32, Township

11 North, Range 5 West of the IM, Canadian County, Oklahoma, a 640-acre horizontal drilling and spacing unit, as an exception to Order No. 670371.

8. Allowable: If any of the wells are an oil well, an 80-acre oil allowable as established by geological and engineering exhibits filed in the cause plus the additional incentive allowed for horizontal wells. All gas wells on the unit will share a single-unit gas allowable for said common source of supply.

9. Previous Orders: None.

Order

IT IS THE ORDER OF THE COMMISSION that the relief requested in the Application, as modified above, is necessary to ensure the greatest ultimate recovery of hydrocarbons from the above-mentioned common sources of supply, prevent or assist in preventing waste, and protect correlative rights of interested parties. Roan Resources LLC is authorized to drill said wells as set out herein and IT IS SO ORDERED.

The relief set forth in the Application, as modified above, is granted. Pursuant to OAC 165:5-15-5(b), this Order shall expire as to any well for which operations are not commenced within one year from the date of this Order, unless granted an extension by order of the Commission.

CORPORATION COMMISSION OF OKLAHOMA

Dana L. Murphy

DANA L. MURPHY, Chairman

J. TODD HIETT, Vice Chairman

Bob Anthony

BOB ANTHONY, Commissioner

Multiunit

FINAL ORDER OF THE COMMISSION

1. **Hearing Date and Place**: This cause came on for hearing before Jacqueline Miller, Administrative Law Judge, at 8:30 a.m., on the 19th day of September, 2017, in the Commission's courtroom, Jim Thorpe Building, Oklahoma City, Oklahoma.

2. **Appearances**: Richard A. Grimes, Attorney, appeared for the Applicant, Apache Corporation.

3. **Notice and Jurisdiction**: Notice has been given as required by law and by the rules of the Commission. The Commission has jurisdiction of the subject matter herein.

4. **Amendments**: None.

5. **Dismissals**: At the hearing the Mississippian and Hunton common sources of supply were dismissed.

6. **Companion Cause**: None.

7. **Relief Requested**:

7.1 The Corporation Commission has heretofore, by Order No. 644679, established 640-acre drilling and spacing units for the Woodford common source of supply underlying Section 7, Township 7 North, Range 7 West, Grady County, Oklahoma.

7.2 The Corporation Commission has heretofore, by Order No. 661445, established 640-acre drilling and spacing units for the Woodford common source of supply underlying Section 18, Township 7 North, Range 7 West, Grady County, Oklahoma.

7.3 The Woodford common source of supply in the lands covered hereby is a shale formation and is a Targeted Reservoir under 52 O.S. §87.6.

7.4 Applicant has conducted a diligent and meaningful search of the local county assessor's records, county treasurer's records, and county deed records regarding the property involved for return addresses on recorded instruments, county probate records and city and county telephone directories and other sources of such information to locate each respondent. The Applicant has filed in this cause an Affidavit For Service By Publication describing those parties that could not be served notice of the hearing by mail.

1

For any such owner the testimony presented at the hearing established that all internal records of the Applicant were reviewed, including, where available, mineral take-offs, title opinions and revenue decks. The Applicant's internal and/or external consulting landmen used all available on-line records for directory assistance, yellow and white page designations. Access was had to Accurint, or comparable web sites, for review of the records at the Oklahoma Supreme Court Network; Oklahoma Secretary of State's Office for corporate entities; or, the Oklahoma Department of Corrections. For any party thought to be deceased an examination was made of the Social Security indexes and/or indices.

7.5 Applicant, as operator, has drilled one (1) multiunit horizontal well in the lands involved herein in the Target Reservoir, with a portion of the completion interval of such multiunit horizontal well to be located in one or more of the 640-acre drilling and spacing units formed for the separate common sources of supply named herein above. There are pending with the Commission applications seeking location exception and increased density authority for such well. The locations authorized for such well are as follows:

	Measured Depth	North/South Location-Ft	East/West Location-Ft	Unit Boundary
Surface Location in Section 7	N/A	2,205' FSL	363' FWL	Sec. 7-7N-7W
*First Perforation in Section 7	16,050'	1,978' FSL	471' FWL	Sec. 7-7N-7W
*Last Perforation in Section 7	18,054'	0' FSL	419' FWL	Sec. 7-7N-7W
*First Perforation in Section 18	18,054'	0' FNL	419' FWL	Sec. 18-7N-7W
*Last Perforation in Section 18	22,902'	459' FNL	422' FWL	Sec. 18-7N-7W

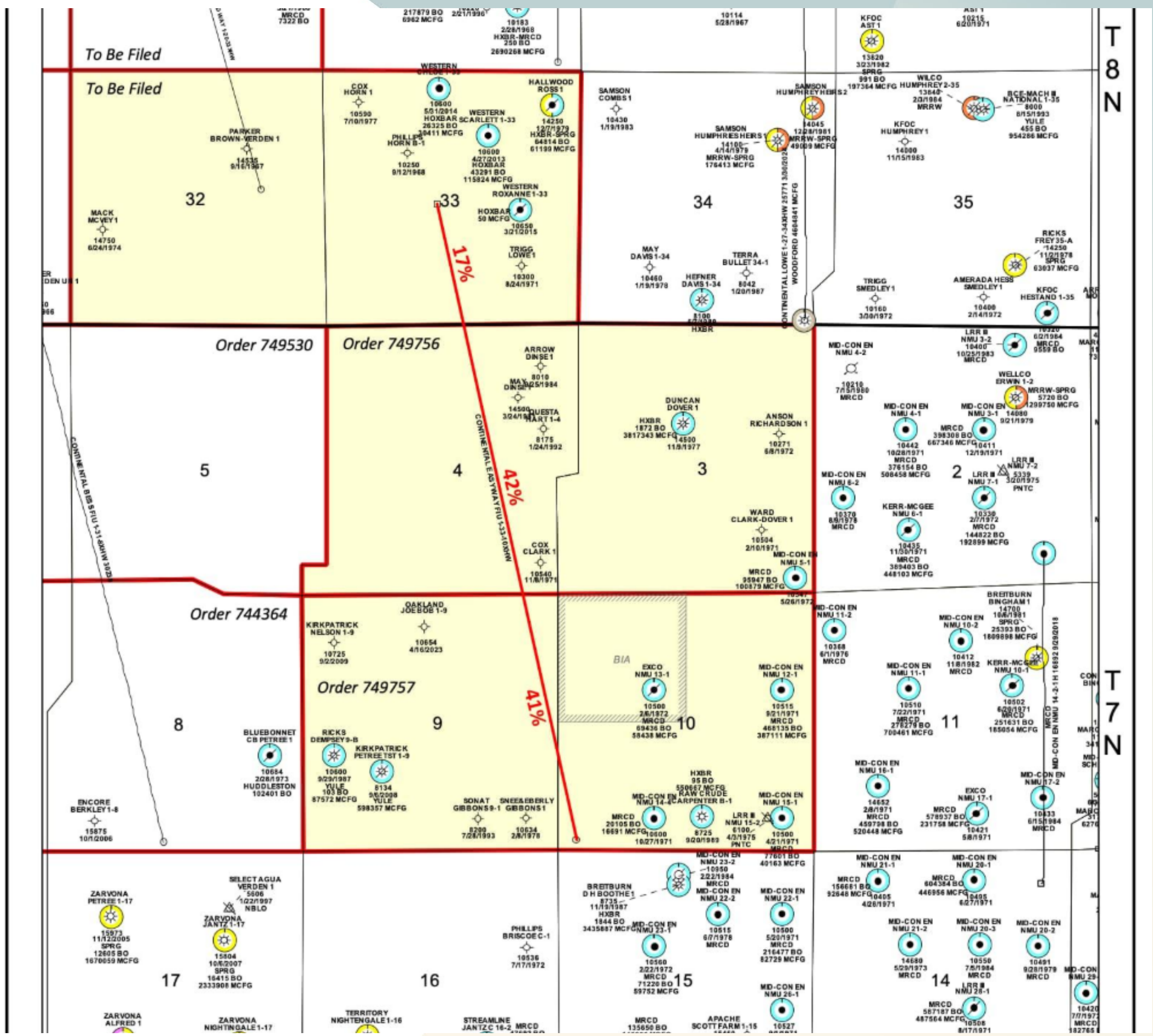
*The wellbore drifted west during the drilling of this horizontal well. The closest surveyed point in relationship to the west line of Section 18 was at a measured depth of 21,952'. That point was determined to be 1,507' from the south line and 387' from the west line of Section 18. An Amended Application and Notice of Hearing was filed to request authority for a point 387 feet from the west line of Section 18.

7.6 Based on the bottomhole survey run during the drilling of the well described above, the Commission must allocate to the affected units covered hereby the reasonable drilling, completion and production costs associated with the multiunit horizontal well involved herein and the commingled production and proceeds from the completion interval of such multiunit horizontal wells. Based upon the information now available, Applicant is proposing that the allocation factor for each of the affected units involved herein should be determined by dividing the length of the completion interval of the multiunit horizontal well involved herein located in each such affected unit by the entire length of the completion interval of such multiunit horizontal well. Using that method, and based on the bottomhole survey, 29.25% of the completion interval of such multiunit horizontal well is located in said Section 7 and 70.75% of such completion interval is located in said Section 18.

2

Multiunit

- In Oklahoma, proceeds from production attributable to a multiunit horizontal well are allocated among the affected spacing units based upon the percentage of the completed lateral transversing each unit, as determined by the Oklahoma Corporation Commission.
  - See example
- This is not the same in every state. Many states divide production equally, regardless of lateral length.



Champlain Refining Co. v. Corporation Com. of Oklahoma

- "Every person has the right to drill wells on his own land and take from the pools below all the gas and oil that he may be able to reduce to possession, including that coming from land belonging to others; but the right to take and thus to acquire ownership is subject to the reasonable exertion of the power of the State to prevent unnecessary loss, destruction or waste. And that power extends to the taker's unreasonable and wasteful use of natural gas pressure available for lifting the oil to the surface and the unreasonable and wasteful depletion of a common supply of gas and oil to the injury of others entitled to resort to and take from the same pool." — *Champlin Refining Co. v. Corporation Com. of Oklahoma*, 286 U.S. 210, 233-234.
- **Facts:** Champlin challenged the constitutionality of Oklahoma's "Curtailment Act" (a conservation statute) and the proration orders issued by the Corporation Commission. They argued these limits restricted their right to extract and process oil, claiming it was a taking of private property and an unlawful restriction on interstate commerce.
- Validates a State's right to enforce oil proration laws to prevent economic and physical waste.

Patterson v. Stanolind Oil Co.

- "It has already been decided that this police power of the state to prevent the destruction of the common source of supply may be exercised by regulation of the production therefrom." — *Patterson v. Stanolind Oil & Gas Co.*, 1938 OK 138, P13.
- **Facts:** The plaintiff owned mineral rights on a tract of land where a producing well was located. Pursuant to the Oklahoma Well Spacing Act of 1935, the Oklahoma Corporation Commission created a 10-acre well-spacing unit that combined the plaintiff's tract with land owned by other lessors. Under this order, the plaintiff was required to share production and royalties with the other owners in the unit. The plaintiff sued, alleging that the order unconstitutionally deprived him of his private property rights and impaired the obligations of his preexisting lease contracts. He claimed a legal right to all the oil produced exclusively from the well situated on his specific plot of land.
- States have broad police power to regulate the oil and gas industry to prevent waste, conserve natural resources, and protect the correlative rights of all property owners in a common reservoir. Preexisting lease contracts are entered into subject to the state's regulatory powers.
- Upheld Oklahoma's 1935 Well Spacing Act.
- Confirmed the OCC may establish drilling and spacing units.

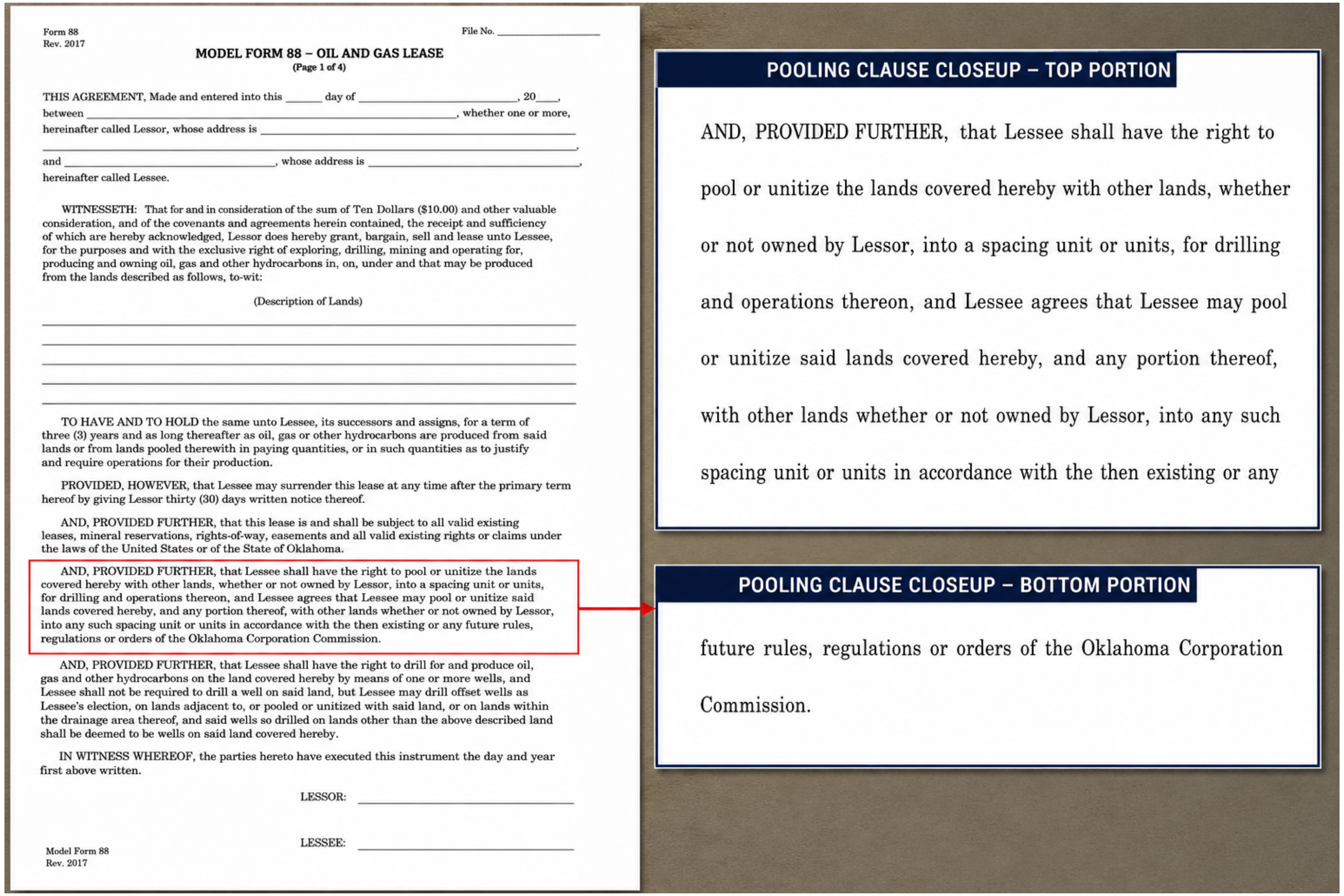
Pooling, generally

- Pooling combines the separately owned interests within a spacing unit, so the unit can be efficiently developed.
- Together, spacing and pooling ensure that the reservoir is developed efficiently while giving each owner an opportunity to receive their fair share of production.
- The two different types of pooling:
  - Voluntary
  - Compulsory

Who is pooled?

- Those parties who possess the right to drill and develop the spacing unit, (*i.e.*, the executive right). This includes unleased mineral owners and working interest owners (lessees) who have not voluntarily agreed to develop the unit. In other words, the party, or parties, who own the right to operate.
  - The proper respondents to an Oklahoma pooling proceeding are those persons who possess the executive right—the legal right to lease, drill, or otherwise develop the oil and gas estate within the spacing unit. Stated differently, compulsory pooling is directed to owners of uncommitted development rights, including unleased mineral owners and lessees holding working interests who have not voluntarily agreed to unit development pursuant to 52 O.S. § 87.1.
  - Unleased mineral owners
  - Lessees, or owners of an oil and gas lease, or leases, covering a mineral interest; working interest owner
- Terms of an oil and gas lease; can have limits on voluntary pooling
- Terms of lease cannot affect compulsory pooling. That authority lies solely with the Oklahoma Corporation Commission.
- Who cannot be forced pooled?
  - Minerals owned by Restricted Indians
  - State-owned minerals
  - Unspaced formation(s); only those formations under proper OCC order can be pooled
  - Overriding royalty interest owners

Terms of an oil and gas lease



Form 88
Rev. 2017

File No. ____________

MODEL FORM 88 – OIL AND GAS LEASE
(Page 1 of 4)

THIS AGREEMENT, Made and entered into this ______ day of __________________________, 20___, between ______________________________________, whether one or more, hereinafter called Lessor, whose address is ____, and ______________________________, whose address is ______________________________, hereinafter called Lessee.

WITNESSETH: That for and in consideration of the sum of Ten Dollars ($10.00) and other valuable consideration, and of the covenants and agreements herein contained, the receipt and sufficiency of which are hereby acknowledged, Lessor does hereby grant, bargain, sell and lease unto Lessee, for the purposes and with the exclusive right of exploring, drilling, mining and operating for, producing and owning oil, gas and other hydrocarbons in, on, under and that may be produced from the lands described as follows, to-wit:

(Description of Lands)

TO HAVE AND TO HOLD the same unto Lessee, its successors and assigns, for a term of three (3) years and as long thereafter as oil, gas or other hydrocarbons are produced from said lands or from lands pooled therewith in paying quantities, or in such quantities as to justify and require operations for their production.

PROVIDED, HOWEVER, that Lessee may surrender this lease at any time after the primary term hereof by giving Lessor thirty (30) days written notice thereof.

AND, PROVIDED FURTHER, that this lease is and shall be subject to all valid existing leases, mineral reservations, rights-of-way, easements and all valid existing rights or claims under the laws of the United States or of the State of Oklahoma.

AND, PROVIDED FURTHER, that Lessee shall have the right to pool or unitize the lands covered hereby with other lands, whether or not owned by Lessor, into a spacing unit or units, for drilling and operations thereon, and Lessee agrees that Lessee may pool or unitize said lands covered hereby, and any portion thereof, with other lands whether or not owned by Lessor, into any such spacing unit or units in accordance with the then existing or any future rules, regulations or orders of the Oklahoma Corporation Commission.

AND, PROVIDED FURTHER, that Lessee shall have the right to drill for and produce oil, gas and other hydrocarbons on the land covered hereby by means of one or more wells, and Lessee shall not be required to drill a well on said land, but Lessee may drill offset wells as Lessee's election, on lands adjacent to, or pooled or unitized with said land, or on lands within the drainage area thereof, and said wells so drilled on lands other than the above described land shall be deemed to be wells on said land covered hereby.

IN WITNESS WHEREOF, the parties hereto have executed this instrument the day and year first above written.

LESSOR: ______________________

LESSEE: ______________________

Model Form 88
Rev. 2017

POOLING CLAUSE CLOSEUP – TOP PORTION

AND, PROVIDED FURTHER, that Lessee shall have the right to pool or unitize the lands covered hereby with other lands, whether or not owned by Lessor, into a spacing unit or units, for drilling and operations thereon, and Lessee agrees that Lessee may pool or unitize said lands covered hereby, and any portion thereof, with other lands whether or not owned by Lessor, into any such spacing unit or units in accordance with the then existing or any

POOLING CLAUSE CLOSEUP – BOTTOM PORTION

future rules, regulations or orders of the Oklahoma Corporation Commission.

Terms of an oil and gas lease — Royalty and pooling

- Royalty provision
- Modern voluntary pooling provision
  - This limits the allowable acres in a voluntarily pooled unit.
- Not effect on State of Oklahoma's authority to establish drilling and spacing units and pool.
- Additional terms
- Under the terms of this oil and gas lease, the mineral owner is entitled to a 1/5 royalty on production. The lessee is entitled to a 4/5 royalty on production.
  - Subsequently created burdens (overriding royalty interests) are possible and would be carved out of the lessee's 4/5 royalty.
  - Assignments of oil and gas leases
    - The current owner(s) of this lease would be subject to a forced pooling order.

1. It is agreed that this lease shall remain in force for a term of three (3) years (herein called primary term), and as long thereafter as oil and gas, or either of them, is produced from the leased premises by the lessee, in furtherance of the consideration for this lease, the said lessee covenants and agrees:

1st. To deliver in-kind to lessor, at the well, or to the credit of lessor into the pipeline or storage tank to which the well may be connected, the 1/5th part of all oil (including condensate) produced and saved from the leased premises. In lieu thereof, lessee shall have the option, at any time, to sell lessor's oil, in which case lessor's royalty shall be based on lessee's net proceeds at the lease, or to purchase lessor's oil for the value of such oil at the lease. In any event, lessor's interest shall be free of all costs of production, but shall bear its proportionate part of production and similar taxes, and shall share proportionately with lessee in any costs to market, transport, or condition the oil.

2nd. To pay lessor for gas (including casinghead gas, all gaseous substances, and all constituents thereof) produced and sold from the leased premises, 1/5th part of the net proceeds at the lease from the sale of such gas, after deducting lessor's proportionate part of production and other similar taxes; lessor's interest to be free of all costs of production, but to bear proportionately with lessee any costs incurred by lessee to market the gas, to deliver the gas to a market off the leased premises, or to dehydrate, compress, process, treat, or otherwise place such gas in marketable condition. If, after the primary term of this lease, gas from any well or wells on the leased premises capable of producing gas in commercial quantities is not sold or used off the leased premises or in the manufacture of gas for a period of one (1) year or more, during which time there is no other production from the leased premises, then lessee shall become obligated to pay or tender as royalty for such annual period a sum of one dollar ($1.00) per net acre within ninety (90) days after the end of such annual period, and this lease shall be maintained until sales shall re-commence.

2. If, at the expiration of the primary term, lessee is conducting operations for drilling, completing, hydraulic fracturing or reworking a well this lease nevertheless shall continue as long as such operations are prosecuted or additional operations are commenced and prosecuted (whether on the same or successive wells) with no cessation of more than 90 days, and if production is discovered, this lease shall continue as long thereafter as oil or gas are produced. In addition, if at any time or times after the primary term, there is a permanent cessation of all production, for any cause (subject to the force majeure provisions), this lease shall not terminate if lessee commences or resumes any drilling, completing, hydraulic fracturing or reworking operations, or production, within ninety (90) days after such cessation. Drilling operations or mining operations shall be deemed to be commenced when the first material is placed on a location or when the first work, other than surveying or staking the location, is done thereon which is necessary for such operations.

3. Lessee is hereby granted the right at any time and from time to time to pool, combine and to unitize the leased premises or any portion or portions thereof, as to all lands, strata or any stratum, with any other lands, strata or any stratum, for the production primarily of oil or primarily of gas with or without condensate. However, no vertical unit for the production primarily of oil shall embrace more than 160 acres, or for the production primarily of gas with or without condensate more than 640 acres; provided that any horizontal unit that includes the leased premises shall be deemed in compliance with this lease if it embraces the acreage permitted by the Oklahoma Corporation Commission in a valid spacing order of the said Commission; provided further that if any governmental regulation shall prescribe a spacing pattern for the development of the field or allocate a producing allowable based on acreage per well, then any such unit may embrace as much additional acreage as may be so prescribed or as may be used in such allocation of allowable. Lessee may file voluntary unit designations in the county in which the leased premises are located. Operations from pooled, combined or unitized lands and production from the unit shall be treated as if such operations were upon or such production were from the leased premises whether or not the well or wells are located thereon. The entire acreage within a unit shall be treated for all purposes as if it were covered by and included in this lease except that the royalty on production from the unit shall be as below provided, and except that in calculating the amount of any shut-in gas royalties, only the part of the acreage originally leased and then actually embraced by a unit shall be counted. In respect to production sold from the unit, lessee shall pay lessor, in lieu of other royalties thereon, only such proportion of the royalties stipulated herein as the amount of his acreage placed in the unit, or his royalty interest therein on an acreage basis bears to the total acreage in the unit.

Voluntary pooling

- Contractual method of pooling that combines separately owned interests within a spacing unit by voluntary agreement.
- Usually authorized by a lease pooling clause, allowing the lessee to combine multiple tracts or leases for unit development.
- All tracts combined into the unit shall be treated as though they are within the boundaries of the lease.
- Protects correlative rights by ensuring each owner receives only their fair share of production.
- Commonly done through a declaration or designation of pooled unit, but the lessee must strictly comply with the lease.

Methods of voluntary pooling

- Declaration of pooling
  - A declaration of pooling is a document filed by the lessee or operator exercising pooling authority granted in a lease. When the lease contains a pooling clause, the lessee may be allowed to pool the leased tract with other lands by executing and recording a declaration that identifies the pooled unit, the leases or lands included, the unit size, and the well or formation covered. Unlike a community lease, the declaration usually does not create pooling authority by itself; it implements pooling authority already granted by contract.

Methods of voluntary pooling

- Pooling by agreement
  - Pooling by agreement occurs when separate mineral or leasehold interests are combined voluntarily by contract. This usually happens through a pooling clause in an oil and gas lease or through a separate pooling agreement signed by the affected owners. The key point is that the parties have agreed to treat their separate tracts or interests as one pooled unit for purposes of drilling, production, and allocation of proceeds.

Methods of voluntary pooling

- Community leases
  - A community lease is a single lease executed by multiple mineral owners covering separate tracts of land. Because the owners join in one lease, production from any part of the leased premises is generally treated as production for the benefit of all lessors, unless the lease provides otherwise. In effect, the lease itself can operate like a pooling arrangement because the separate tracts are developed under one common lease.

Issues with voluntary pooling

- Holdouts
  - Voluntary pooling also creates a holdout problem. Because the operator needs agreement from multiple owners, a single owner may refuse to pool or demand better terms than everyone else. That owner may know their consent is necessary and use that leverage to extract a higher bonus, larger royalty, or other special concessions.
- Costs
  - Even if most owners are willing to agree, the cost of locating every party and negotiating separate agreements can delay development or make the project less efficient.

Voluntary pooling example

- For example, assume Oil and Gas Co. leases two 20-acre tracts in an area where the applicable spacing laws require 40 acres to drill a well. Standing alone, each 20-acre tract is not large enough to satisfy the acreage requirement for a spacing unit.
- Pooling solves that problem by allowing the 20-acre tracts to be combined into a full drilling unit under the pooling clause in the oil and gas lease.
- Still a viable option, but rare in Oklahoma.

Compulsory pooling

- Compulsory pooling is created by statute; the process varies significantly from state to state.
- Generally, any owner with the right to drill and produce within the unit may file an application with the appropriate conservation agency to pool the remaining interests.
- In Oklahoma, any party who owns, or may own the executive right to drill, develop, or elect should be named in a pooling application.
- This is the main method of pooling used by operators in Oklahoma.
  - Operator friendly
  - Good-faith effort
  - Formation-specific
  - Election-based
  - Conservation-oriented

Advantages of compulsory pooling

- Prevents holdouts from blocking development
  - Forced pooling allows the unit to be developed even when one or more owners refuse to lease, participate, or agree to voluntary pooling.
- Promotes efficient development and prevents waste
  - It helps ensure the spacing unit can be developed as one unit, reducing unnecessary wells and protecting the reservoir.
- Protects correlative rights
  - Each owner is given an opportunity to receive their fair share of production, either by participating in the well or selecting a bonus-and-royalty option.

History of pooling in Oklahoma

- Before 1935, Oklahoma oil and gas production was largely governed by the rule of capture.
- In 1935, the Well Spacing Act authorized the OCC to create drilling and spacing units. Voluntary pooling was allowed, but holdouts could still frustrate development of a unit.
- In 1947, Oklahoma authorized compulsory pooling after notice and hearing.
- In modern times, it is the main tool used by operators.
- Has advanced with the development of production methods.
  - Multiunit basis

Compulsory pooling in Oklahoma

- In Oklahoma, compulsory pooling is governed by 52 O.S. § 87.1(e).
- Once a drilling and spacing unit has been established, the interests within that unit must be pooled before the unit can be developed efficiently.
- If the owners cannot reach a voluntary agreement, an owner with the right to drill may ask the Oklahoma Corporation Commission to pool the remaining interests.
- The pooling order then gives each respondent an election: participate in the well or accept one of the bonus-and-royalty options.

Sellers v. Corp. Comm'n, 1981 Ok 55, 635 P.2d 1006.

- The Commission has "authority to order forced pooling if a well is proposed," and here the appellant offered no evidence the forced pooling statute was unconstitutional as applied, and the Commission made a definite provision for the payment of costs.
- **Facts:** Mineral owners of a drilling unit proposed a well and applied for a forced pooling order from the Oklahoma Corporation Commission. Non-participating, separate mineral owners (the appellants) objected to the pooling order. They argued that the Commission could not legally force the unit to pool unless the applicant bound themselves unconditionally and "inextricably" to drill the well before the pooling.
  - Limits holdouts
- As long as a well is proposed, the Commission has the authority to pool the interests. The pooling order itself inherently mandates the commencement of drilling operations (often within 120 days).
  - Use it or lose it.

Oklahoma Pooling

Spacing Order to Pooling Election

- **Spacing order** – The OCC first establishes the drilling and spacing unit, identifying the lands and common source of supply to be drained.
- **Pooling application and notice** – If no private agreement is reached, a mineral owner may apply to pool the interests in the unit and must provide notice to affected respondents.
- **Pooling hearing** – A hearing is held before an OCC administrative law judge, where the applicant presents evidence on ownership, notice, good-faith negotiations, well costs, and fair market lease values.
- **Pooling order and elections** – The final order sets out each respondent's election options, deadlines, and payment obligations, including the choice to participate or accept a bonus-and-royalty option.

Oklahoma Pooling

Forced Pooling Application Requirements

- There must be a spacing unit in place.
- Applicant must possess the right to drill and produced hydrocarbons.
  - Does not matter the size of the interest.
- The applicant must determine the identity of all other owners in the unit as of the date of the filing of the pooling action.
- The applicant must have made a good-faith effort to reach an agreement.
- A determination of the fair and reasonable value of the right to explore and produce hydrocarbons from the named common source of supply.
- An application must include a fair and reasonable mechanism for the respondents to elect whether to participate in unit development.

Amoco Prod. Co. v. Corp. Comm'n

- **Facts:** OCC established a standard drilling and spacing unit and initially force pooled the mineral interest owners for a specific well. Amoco, and other parties, "participated" and paid to drill the initial well. Other parties, elected under said Order. The Well was productive and profitable. Subsequently, the initial non-participating parties sought to force pool a second "Increased Density" Well, located within the same drilling and spacing unit.
  - Issue: Does the OCC have legal authority to pool by wellbore (limit to one well)?
  - Second bite at the apple
- The Commission exceeded its statutory authority by allowing a mineral owner to participate in a second well after electing not to participate in the first well.
  - Limits OCC authority.
- Pooling applies to the spacing unit as a unit, not on a well-by-well basis.
- The owner's initial election allocated the risk and vested property rights in the operator.
- Allowing a later election imposed unreasonable terms on the operator and violated substantive due process.
- The Commission also exceeded its authority by attempting to affect vested title rights, rather than merely interpreting or enforcing its prior order.
- The court concluded that forcing initial, risk-capital investors to share the rewards of subsequent (increased density) wells with those who originally refused to take financial risks was unjust, unreasonable, and a violation of substantive due process.

Gulfstream Petroleum Corp. v. Layden

- **Facts:** Gulfstream Petroleum Corp. challenged a district court's authority to evaluate or interfere with an OCC order establishing a drilling and spacing unit.
- Under Oklahoma statute (Title 52, Section 87.1), the OCC is granted exclusive police power to create spacing units and pool interests to prevent waste and protect correlative rights.
- The OCC has exclusive jurisdiction to adjudicate public rights as they relate to oil, gas and other minerals.
- Cannot be collaterally attacked by a district court.
- The OCC was established for a reason, including regulation of oil and gas production. That authority cannot be collaterally attacked by a district court.

What’s in a pooling order?

- Final OCC order entered after application, notice, and hearing.
- Pools the named respondents for the listed lands and common sources of supply.
- Designates the operator and sets the proposed well costs.
- Gives respondents election options: participate or accept a bonus-and-royalty alternative.
- Respondents must election within a certain number of days. This is set forth in the Order.
- Requires Operator to commence operations for the drilling of a well within a certain number of days.
  - What constitutes “commencement”?
  - Activities such as staking the well location, surveying, moving equipment onto the location, grading, constructing the pad, and other good-faith preparatory operations have been held sufficient to constitute commencement, provided they are undertaken with the bona fide intent to diligently continue drilling to completion.
  - The key inquiry is **whether the operator has begun operations in good faith with the present intention of completing the well**, rather than whether actual drilling has begun.

Who should be named as a respondent in a pooling order?

- Every person or entity that owns the executive right or other right to drill, develop, or elect under 52 O.S. § 87.1 should be named as a respondent in a pooling application.
  - Unleased mineral owners
  - Working interest owners
  - Curative parties
- What if an owner of executive rights was not named in the pooling order?
  - The order will have no effect as to that party; unleased mineral owner.
- What constitutes a "curative party"?
  - A person or entity that is named in a pooling application because a title defect or uncertainty must be cured before the operator can confidently determine who owns the executive right or working interest.
    - The "we are not sure parties."
    - Examples: Unknown heirs of a deceased mineral owner; Unknown successors or assigns; Devisees under an un-probated will; Heirs when no probate or affidavit of heirship exists; Parties to an ambiguous deed; Persons claiming under an unreleased reservation; Record owners where conflicting conveyances exist; Dissolved corporations whose successors are uncertain; and Trusts or trustees where title is unclear.
    - The list of curative respondents can be quite extensive.
    - Curative parties are often determined from a title opinion.

Fact pattern example

Who should be named as a curative party?

- In 1984, ABC Gas Corporation, an Oklahoma corporation, acquired an undivided 1/2 mineral interest in the NE/4 of Section 10, Township 5 North, Range 8 West, Canadian County, Oklahoma ("Blackacre"). In 1992, the record reflects that ABC Gas, LLC executed a Mineral Deed purporting to convey an undivided 1/2 mineral interest in Blackacre to Mary Sue Smith. The record contains no documentation establishing that ABC Gas Corporation ever converted into, merged with, or assigned its assets to ABC Gas, LLC. Mary Sue Smith later died. No probate proceedings have been filed in Oklahoma or any other jurisdiction, and no Affidavit of Heirship appears of record. In 2008, James Smith, identifying himself only as the widower of Mary Sue Smith, executed a Mineral Deed conveying an undivided 1/2 mineral interest in Blackacre to John Dean, Trustee of the 1985 Jimmy Dean Living Trust. The deed contains no explanation of James Smith's authority to convey Mary Sue Smith's interest. Several years later, Loretta Dean, acting as Trustee of the 1985 Jimmy Dean Revocable Trust, executed a Mineral Deed conveying the same undivided 1/2 mineral interest to John Smith. However, the record contains no instrument establishing that the 1985 Jimmy Dean Living Trust and the 1985 Jimmy Dean Revocable Trust are the same trust, that Loretta Dean succeeded John Dean as trustee, or that the trust itself ever acquired title. John Smith now appears to be the record owner of the mineral interest. The operator files an application to pool the Mississippian common source of supply.
- **Who should be named as respondents to the pooling application?**

Fact pattern example

Who should be named as a curative party?

- **Answer:**
  - A prudent title examiner would likely conclude that John Smith is the person most likely to own the executive rights and should therefore be named as an ownership respondent. However, because the chain of title contains multiple unresolved defects, the following parties should also be named as curative respondents to ensure that any person potentially possessing the executive right receives notice of the pooling proceeding:
    - ABC Gas Corporation
    - ABC Gas, LLC - Entity discrepancy (ABC Gas Corporation vs. ABC Gas, LLC)
    - Mary Sue Smith, deceased – missing probate
    - The heirs, devisees, successors, and assigns of Mary Sue Smith – missing probate. Other heirs may claim an interest.
    - James Smith – unclear if this was all his interest.
    - John Dean, Trustee of the 1985 Jimmy Dean Living Trust
    - The successors and assigns of John Dean, Trustee of the 1985 Jimmy Dean Living Trust
    - Loretta Dean, Trustee of the 1985 Jimmy Dean Revocable Trust
    - The successors and assigns of the 1985 Jimmy Dean Revocable Trust (Living Trust vs. Revocable Trust and different trustees)
  - Better safe than sorry. A good title opinion allows the operator to name all the necessary parties to cover all their bases.

Example of respondent list

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

APPLICANT: XTO ENERGY INC. CAUSE CD NO. 202101234 ORDER NO. 720059

POOLING ORDER

THE COMMISSION FINDS THAT this cause should be, and hereby is, set for hearing before an Administrative Law Judge of the Commission, that due public notice of time and place of hearing has been given as required by law, and that this cause is hereby heard.

THE COMMISSION FINDS THAT XTO Energy Inc. ("Applicant") is the owner of an oil and gas leasehold estate in the lands hereinafter described, which lands are common sources of supply of oil and gas.

IT IS THEREFORE ORDERED that the oil and gas interests in the lands hereinafter described be, and the same are hereby pooled into the **Red Fork 2560-Unit** as a single drilling and spacing unit in the Mississippian common source of supply for the development and operation of such unit, and that Applicant be, and hereby is, designated as operator of such unit.

IT IS FURTHER ORDERED that Applicant and all other parties having an oil and gas interest in said lands, and their respective heirs, devisees, executors, administrators, successors and assigns, be, and they are hereby designated as respondents to this cause.

LEGAL DESCRIPTION:
The E/2 NW/4 of Section 14 and the W/2 NE/4 of Section 23, Township 15 North, Range 6 West, Garfield County, Oklahoma.

RESPONDENTS:

1. XTO Energy Inc.
2. Chesapeake Exploration, LLC
3. Devon Energy Production Company, L.P.
4. EOG Resources, Inc.
5. Red Rock Petroleum, LLC
6. Franklin Mountain Energy, LLC
7. Halliburton Energy Services, Inc.
8. Coterra Energy Inc.
9. ConocoPhillips Company
10. Bison Oil & Gas II, LLC
11. Cimarex Energy Co.
12. Merit Energy Company
13. Scissortail Energy, LLC
14. Alta Mesa Holdings, LLC
15. Paloma Permian AssetCo, LLC
16. Black Mesa Energy, LLC
17. WPX Energy Permian, LLC
18. Great Western Oil & Gas Company, L.P.
19. Velo Resources, LLC
20. IPC Operating, LLC
21. HKN Petroleum Company
22. RKI Exploration & Production, LLC
23. PetroLegacy Energy II, LLC
24. Prodigy Operating, LLC
25. Trident Exploration, LLC
26. Maverick Natural Resources, LLC
27. Longfellow Energy, LP
28. Yates Petroleum Corporation
29. Lilis Energy, Inc.
30. OK Operating, LLC
31. Blackbeard Operating, LLC
32. Radius Operating, LLC
33. Cordillera Operating, LLC
34. Intrepid Energy, LLC
35. Ironhorse Energy Partners, LLC
36. Oak Valley Resources, LLC
37. Falcon Energy Partners III, LLC
38. Tamarack Energy, LLC
39. Summit Energy, LLC
40. Grain Management, LLC
41. Southwind Energy, LLC
42. Northern Oil & Gas, Inc.
43. Tascosa Energy Partners, LLC
44. 3R Operating, LLC
45. XCL Resources Holdings, LLC
46. Native Trails Energy, LLC
47. Cactus Jack Resources, LLC
48. Riviera Operating, LLC
49. Crownquest Operating, LLC
50. Colgate Operating, LLC
51. HighPoint Resources, LLC
52. Flat Creek Resources, LLC
53. White Star Petroleum, LLC
54. Quorum Resources, LLC
55. Mustang Fuel Corporation
56. AEC Operating, LLC
57. Strata-X Energy, LLC
58. Stepstone Energy, LLC
59. Basis Energy Services, LLC
60. Birch Resources, LLC
61. Terra Exploration, LLC
62. EnerVest Operating, LLC
63. Painted Pony Operating, LLC
64. Red Mountain Resources, LLC
65. Bevo Operating, LLC
66. Heirs, devisees and successors
67. Unknown heirs, devisees and successors
68. Unknown owners
69. Unknown assignors
70. Unknown successors and assigns
71. All other persons, owners, claimants or parties, known or unknown, claiming any right, title, interest or claim in or to the lands or any part thereof.

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BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

APPLICANT: COTERRA ENERGY INC. CAUSE CD NO. 202300567 ORDER NO. 730189

POOLING ORDER

LEGAL DESCRIPTION:
The S/2 of Section 31 and the N/2 of Section 6, Township 16 North, Range 7 West, Kingfisher County, Oklahoma

FORMATION: Mississippian **SPACING UNIT:** 640-acre

RESPONDENTS:

1. Coterra Energy Inc.
2. Continental Resources, Inc.
3. Devon Energy Production Company, L.P.
4. XTO Energy Inc.
5. Cimarex Energy Co.
6. EOG Resources, Inc.
7. Mewbourne Oil Company
8. Franklin Mountain Energy, LLC
9. Red Rock Petroleum, LLC
10. Paloma Permian AssetCo, LLC
11. Alta Mesa Holdings, LLC
12. Meridian Energy Partners, LLC
13. Scissortail Energy, LLC
14. Great Western Oil & Gas Company, L.P.
15. Bison Oil & Gas II, LLC
16. Maverick Natural Resources, LLC
17. Strata-X Energies, LLC
18. Intrepid Energy, LLC
19. SB Energy, LLC
20. Tamarack Energy, LLC
21. TC Energy, LLC
22. Lilis Energy, Inc.
23. Radius Operating, LLC
24. Blackbeard Operating, LLC
25. White Star Petroleum, LLC
26. Ironhorse Energy Partners, LLC
27. Durrant Oil & Gas, LLC
28. Oak Valley Resources, LLC
29. PetroLegacy Energy II, LLC
30. Prodigy Operating, LLC
31. Falcon Energy Partners III, LLC
32. RKI Exploration & Production, LLC
33. Longfellow Energy, LP
34. Stepstone Energy, LLC
35. Birch Resources, LLC
36. EnerVest Operating, LLC
37. Red Mountain Resources, LLC
38. Crownquest Operating, LLC
39. HighPoint Resources, LLC
40. Terra Exploration, LLC
41. Painted Pony Operating, LLC
42. 3R Operating, LLC
43. Northern Oil & Gas, Inc.
44. Florida Oil & Gas Corporation
45. BEH Operating, LLC
46. Colgate Operating, LLC
47. Bencal Energy, LLC
48. HKN Petroleum Company
49. AEC Operating, LLC
50. Basis Energy Services, LLC
51. Cordillera Operating, LLC
52. Heirs, devisees and successors
53. Unknown heirs, devisees and successors
54. Unknown owners
55. Unknown assignors
56. Unknown successors and assigns
57. All other persons, owners, claimants or parties, known or unknown, claiming any right, title, interest or claim in or to the lands or any part thereof.

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BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

APPLICANT: DEVON ENERGY PRODUCTION COMPANY, L.P. CAUSE CD NO. 202200987 ORDER NO. 720842

POOLING ORDER

LEGAL DESCRIPTION:
The W/2 of Section 18 and the E/2 of Section 19, Township 17 North, Range 4 West, Blaine County, Oklahoma

FORMATION: Woodford **SPACING UNIT:** 320-acre

RESPONDENTS:

1. Devon Energy Production Company, L.P.
2. XTO Energy Inc.
3. Continental Resources, Inc.
4. EOG Resources, Inc.
5. Cimarex Energy Co.
6. Mewbourne Oil Company
7. Coterra Energy Inc.
8. Paloma Permian AssetCo, LLC
9. Franklin Mountain Energy, LLC
10. Red Rock Petroleum, LLC
11. Meridian Energy Partners, LLC
12. Black Mesa Energy, LLC
13. Alta Mesa Holdings, LLC
14. Scissortail Energy, LLC
15. Great Western Oil & Gas Company, L.P.
16. Bison Oil & Gas II, LLC
17. WPX Energy Permian, LLC
18. 3R Operating, LLC
19. RKI Exploration & Production, LLC
20. HKN Petroleum Company
21. Mustang Fuel Corporation
22. Lilis Energy, Inc.
23. Tamarack Energy, LLC
24. Strata-X Energy, LLC
25. Ironhorse Energy Partners, LLC
26. Oak Valley Resources, LLC
27. Falcon Energy Partners III, LLC
28. TC Energy, LLC
29. Radius Operating, LLC
30. White Star Petroleum, LLC
31. Stepstone Energy, LLC
32. Birch Resources, LLC
33. Crownquest Operating, LLC
34. Colgate Operating, LLC
35. EnerVest Operating, LLC
36. Terra Exploration, LLC
37. Red Mountain Resources, LLC
38. AEC Operating, LLC
39. Basis Energy Services, LLC
40. Intrepid Energy, LLC
41. Southwind Energy, LLC
42. Velo Resources, LLC
43. Quorum Resources, LLC
44. Native Trails Energy, LLC
45. Durrant Oil & Gas, LLC
46. Riviera Operating, LLC
47. Painted Pony Operating, LLC
48. Prodigy Operating, LLC
49. OK Operating, LLC
50. All other working interest owners
51. Heirs, devisees and successors
52. Unknown heirs, devisees and successors
53. Unknown owners
54. Unknown assignors
55. Unknown successors and assigns
56. All other persons, owners, claimants or parties, known or unknown, claiming any right, title, interest or claim in or to the lands or any part thereof.

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Election options – 2012 vertical well

2. a. That costs of the initial well are:

Completed as a dry hole:	$263,600.
Total completed well costs:	$458,350.

b. **$250 per acre cash bonus, with a 1/8th total royalty, as set forth below, delivering an 87.5% net revenue interest.** That $250 per acre cash bonus is a fair, reasonable and equitable bonus to be paid unto each owner who elects not to participate in said development by paying such owner's proportionate part of the cost thereof; such cash bonus, when paid by the Applicant, as set out in this Order, is satisfaction in full for all rights and interests of such owner in the drilling and spacing unit and common sources of supply covered hereby, except for any normal 1/8 royalty interest, as defined in 52 O.S., §87.1(e).

c. **$200 per acre cash bonus, with a 3/16ths total royalty, as set forth below, delivering an 81.25% net revenue interest.** That $200 per acre cash bonus, plus an excess or overriding royalty of 1/16th of 8/8ths, is a fair, reasonable and equitable bonus to be paid unto each owner who elects not to participate in said development by paying such owner's proportionate part of the cost thereof; such cash bonus plus overriding or excess royalty, when paid by the Applicant, as set out in this Order, is satisfaction in full for all rights and interests of such owner in the drilling and spacing unit and common sources of supply covered hereby, except for any normal 1/8 royalty interest, as defined in 52 O.S., §87.1(e).

3. That each owner subject hereto may choose any of the following elections as to all or any part of the interest of such owner in the unit and must give notice as to which of the elections stated in Paragraphs 3a, 3b or 3c below such owner accepts:

a. To participate in the development of the unit and common sources of supply by agreeing to pay such owner's proportionate part of the actual cost of such development and by paying, as set out herein, to Applicant, Fractal Oil and Gas, LLC, such owner's proportionate part of the estimated completed for production cost of the proposed well as set out in Paragraph 2a above, or by securing or furnishing security for such payment satisfactory to the Applicant; in all events, such owner's cost in said well shall not exceed its proportionate part of the actual or the reasonable cost thereof which shall be determined by the Commission in the event there is a dispute as to such costs; the payment of such owner's proportionate part of the estimated completed for production costs of said well, or the securing of such costs, or the furnishing of security therefor, as aforesaid, shall be accomplished within twenty-five (25) days from the date of this order; such owner's proportionate part of the costs of, and of the production from, such well and unit, to be in proportion to the number of acres such owner has in the 160-acre unit.

b. To receive the cash bonus as set out in Paragraph 2b above, which cash bonus shall be paid or tendered by Applicant, Fractal Oil and Gas, LLC, if same can be paid or tendered, within 35 days from the date of this Order.

c. To receive the cash bonus plus excess royalty as set out in Paragraph 2c above, which cash bonus shall be paid or tendered by Applicant, Fractal Oil and Gas, LLC, if same can be paid or tendered, within 35 days from the date of this Order.

Election options – 2012 horizontal well

2.1 Participate:

a. **Initial Unit Well: To participate in the development of the unit and Upper Meramec common source of supply by agreeing to pay such owner's proportionate part of the actual cost of the well covered hereby and by paying, as set out herein, to Applicant, Citizen Energy III, LLC, such owner's proportionate part of the completed for production cost thereof, as set out below**, or by securing or furnishing security for such payment satisfactory to the Applicant, as aforesaid, shall be accomplished **within 25 days from the date of this Order**, such owner's proportionate part of the costs of, and of the production from, such well and units, to be in proportion to the number of acres such owner has in the unit.

APPLICANT: Citizen Energy III, LLC
Cause CD No. 201904221T
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Completed as a dry hole	-	N/A
Completed for production[1]	-	$13,017,047.00

in all events, such owner's cost shall not exceed its proportionate part of the actual or the reasonable cost thereof which shall be determined by the Commission in the event there is a dispute as to such costs; such owner's proportionate part of the costs of, and of the production from, any wells drilled hereunder shall be in proportion to the number of acres such owner has in the unit.

2.2 **$2,000.00 Per Acre Cash Bonus and a 1/8 Total Royalty in Lieu of Participation and Allocation of Same to Common Sources of Supply- Unit Interest:** The testimony in this case was that a cash bonus of $2,000.00 per mineral acre is a fair, reasonable, and equitable bonus to be paid unto each owner who elects not to participate in said development of the units and all common sources of supply by paying such owner's proportionate part of the costs thereof. The cash bonus herein is allocated as stated above.

2.3 **$1,500.00 Per Acre Cash Bonus and a 16.5% Total Royalty in Lieu of Participation and Allocation of Same to Common Sources of Supply- Unit Interest:** The testimony in this case was that a cash bonus of $1,500.00 per mineral acre plus an overriding or excess royalty of 4.00% of 8/8 is a fair, reasonable, and equitable bonus to be paid unto each owner who elects not to participate in said development of the units and all common sources of supply by paying such owner's proportionate part of the costs thereof. The cash bonus herein is allocated as stated above.

2.4 **$1,000.00 Per Acre Cash Bonus and a 3/16 Total Royalty in Lieu of Participation and Allocation of Same to Common Sources of Supply- Unit Interest:** The testimony in this case was that a cash bonus of $1,000.00 per mineral acre plus an overriding or excess royalty of 1/16 of 8/8 is a fair, reasonable, and equitable bonus to be paid unto each owner who elects not to participate in said development of the units and all common sources of supply by paying such owner's proportionate part of the costs thereof. The cash bonus herein is allocated as stated above.

Why pooling elections matter

- Elections give mineral owners and working interest owners the opportunity to choose whether to participate in unit development.
- If parties elect to not participate, then they must choose one of the stated elections.
  - If no election is made within the stated timeframe, the owner will be deemed to have elected.
    - This surrenders rights the same as an election.
- Only owners who elect to participate in the initial development of the unit preserve the right to participate in future development of that unit.
  - Bound by original election. A deferred election in an Oklahoma Corporation Commission (OCC) pooling order delays a mineral owner's deadline to choose whether to participate in drilling, lease their interest, or take a royalty. This pause allows the owner to wait for more information on the well's viability.
- Pooling elections have become increasingly important because prior elections may determine whether an owner has the right to participate in a later horizontal well.

SKZ, Inc. v. Petty

- **Facts:** The Corporation Commission created a 640-acre drilling and spacing unit in Caddo County, Oklahoma, naming thirteen (13) common sources of supply, including the Marchand Formation. Towner Petroleum Company, predecessor to SKZ, Inc., filed an application to pool the interests of leasehold owners, resulting in Orders Nos. 224432 and 231312, which pooled the interests in the unit. Leaseholders were given the option to participate in the development of the unit by sharing costs or to accept a bonus and/or overriding royalty. The appellees elected not to participate in the initial test well, Stevens No. 13-1, and instead accepted bonuses or royalties. After the successful completion of Stevens No. 13-1, Towner applied for and received permission to drill three increased density wells. The appellees later sought to participate in the increased density wells, leading to the issuance of Orders Nos. 306469, 307103, and 307104, which allowed their participation despite their earlier election not to participate.
- **Issue:** Whether the Corporation Commission has statutory authority to force pool by the wellbore instead of by the drilling and spacing unit. "Second bite at the apple?"
- The Commission erred by issuing pooling orders allowing owners who had previously accepted bonuses in lieu of participation to participate in subsequent increased density wells because pooling orders applied to the entire unit rather than the wellbore.

Important amendments to 52 O.S. 87.1

- In 2017, this statute was amended. The amendment included various changes the most important being the addition of subsections 52 O.S. § 87.1(g) and 52 O.S. § 87.1(h)
- 52 O.S. 87.1(g) provides (1) a horizontal spacing unit may be established for a common source of supply for which there is already established nonhorizontal drilling and spacing units; (2) the horizontal unit and nonhorizontal unit may be developed separately; and (3) a working interest owner in a producing nonhorizontal drilling and spacing unit will relinquish its nonparticipating working interest in the horizontal spacing unit while retaining all other rights, including the right to concurrently develop the producing nonhorizontal unit.
- 52 O.S. 87.1(h)(1): For a new multiunit horizontal well, an owner with existing production in the affected area gets a chance to elect whether to participate. If they choose not to participate, they only give up the nonparticipating working-interest rights tied to the targeted reservoir drilled by that horizontal well. They keep their other rights, including rights in existing wells.
- 52 O.S. 87.1 (h)(2): For large horizontal spacing units, or units made up of more than one governmental section, an owner with existing production in the affected area must be given a separate election for each common source of supply covered by the pooling order. If the owner elects or is deemed not to participate, the owner only relinquishes the nonparticipating working interest in the common source drilled and completed by the horizontal well. The owner keeps all other rights, including rights in existing wells where the owner already participated.
- **52 O.S. § 87.1(h)(3)** as to any well which is subject to a pooling order which was entered prior to the effective date of this act, in order to be entitled to the rights and benefits of this subsection, the owner must have been vested with the right to participate in the subject well as of the effective date of this act.

52 O.S. § 87.1(h)(3)

- "[T]he owner must have been vested with the right to participate in the subject well as of the effective date of this act."
- As stated, prior, the Forced Pooling in Oklahoma is done on a unit-wide basis rather than on an individual wellbore basis.
- If Party A elected to not participate under an old pooling order. Those rights were surrendered as to the new pooling order.
  - This this constitutional? Taking?
  - Retroactive application. In general, laws do not have retroactive capability. This appears to be different since this law applies to pre-existing pooling orders.
  - Argument: An election under a Pooling Order covering an 80-acre drilling and spacing is not the same as an election under a new Pooling Order, covering a 640-acre drilling and spacing unit (insofar as it covers the 80-acre tract)
    - Is this a "second bite at the apple?"

52 O.S. § 87.4

- “[1] An affidavit evidencing any election for the drilling of a well under a pooling order issued pursuant to the proceedings set out in subsection (e) of Section 87.1 of Title 52 of the Oklahoma Statutes shall constitute constructive notice of the rights under the election claimed by the affiant when the affidavit is filed of record in the office of the county clerk for the county in which the lands described in the pooling order are located. [2] The affidavit shall set out the name, address, if known, and election or deemed election for each pooled respondent included in the affidavit and shall have a copy of the pooling order attached. [3] The affidavit may be filed by the operator designated in the pooling order or by any other interested party with knowledge of any election made. Filing of the affidavit shall not affect notice provided by virtue of pooling proceedings conducted by the Commission.“
- Rarely filed with records of the County Clerk’s Office.
- Purpose is to provide public notice of elections under a certain pooling order.
- No penalty for not filing.

Affidavit of election

- What does it do?
- Where can you find it?
- What should it include?
- Who may file one?
- What is it missing?

I-L2019-003637 Book 1478 Pg 66
07/25/2019 9:57 am Pg 0066-0082
Fee: $ 45.00 Doc: $ 0.00
Tamala Bible - Hughes County Clerk
State of Oklahoma

Affidavit of Pooling

I, Jim Slade, Land Manager of Bravo Arkoma, LLC, do certify that on the 20th day of November, 2017, the Oklahoma Corporation Commission executed an Order No. 670227 in CD 201703013-T pooling the interests in the Mississippian, Woodford and Hunton and Sylvan formations in all Section 12, T08N, R11E, Hughes County, Oklahoma, a copy of which is attached hereto as Exhibit A.

The following respondents have elected under Paragraph 7.1 of the Pooling Order to participate in the development of the unit and common source of supply by agreeing to pay such owner's proportionate part of the actual cost of the unit well covered:

1. Corterra Energy, LLC
2. Kaiser-Francis Oil Company
3. Six S Energy Group, LLC

The following respondents have elected or have been deemed to have elected under Paragraph 7.2 of the Pooling Order to accept $600 per acre and a 1/8th royalty to wit:

1. Ann Williams Bender
2. Brenda Shawn Caldwell
3. C.C. Harwell
4. D.L. Wenrick
5. F.C. Manning
6. F.W. Glass
7. J.W. Howard
8. John K. Skaggs, Jr.
9. John Nosal and Juliana Louise Nosal
10. Johnny Wayne Sanders
11. Julia Stacy Caldwell
12. L. W. Sipple

Pooling order elections and title examination

- Title issues:
  - OCC orders are separate records and not kept with the County Clerk's Office. The OCC website is not very user friendly.
  - Title opinions are a crucial step when determining which parties should be named in the pooling.
    - Unleased mineral owners, working interest owners, and parties for curative measures
  - Subsequent operations as to the same formation or formations. What do you do if you do not have the original elections? Rely on the actions of the parties?
  - New horizontal drilling and spacing units overlap traditional vertical well units covering the same formation(s) and same tract(s) of land. Who owns the operative rights? How would you know without an Affidavit of Elections? Operator's internal records?
  - Current owners are bound by the election(s) of the prior owner. How do they know the election?
  - Acquisition of interests under prior pooling orders? If a party is assigned pooled interests, how do you determine what interests are pooled? How can a title examiner determine the elections of an owner under a prior pooling order? Is the title marketable?
    - Affdavits of Elections are rarely filed. Almost appears to be discretionary. 52 O.S. § 87.4 is more than an affidavit. **It can be a title examiner's lifeline**.

Assignment of pooled interests

- Very broad and unable to determine the elections. This merely conveys all of Assignor's interest acquired under Pooling Order No. 702345.
- What were the elections of the parties?
- If record title does not contain an Affidavit of Elections, how is a title examiner to determine which interests were pooled and which interests elected to participate?
- What if the formations under Order No. 702345 are also included in a new Pooling Order covering a separate drilling and spacing unit? Without an Affidavit, who would you pool?

EXAMPLE: ASSIGNMENT OF POOLED INTERESTS – OKLAHOMA

STATE OF OKLAHOMA)
) ss.
COUNTY OF OKLAHOMA)

ASSIGNMENT OF POOLED INTERESTS

FOR AND IN CONSIDERATION of Ten Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned ABC Energy, LLC, hereinafter called "Assignor," does hereby sell, assign, and transfer unto XYZ Minerals, LLC hereinafter called "Assignee," all of Assignor's right, title and interest in and to the oil, gas and other hydrocarbons and all of Assignor's rights under that certain Order No. 702345 of the Oklahoma Corporation Commission covering the following described lands:

E/2 Section 14, Township 5 North, Range 8 West, Canadian County, Oklahoma

which Order created the MERIDIAN 14-5-8 UNIT and pooled the said lands for the development and operation of the Mississippian common source of supply.

This assignment includes, but is not limited to, all of Assignor's right, title and interest in and to the oil, gas and other hydrocarbons produced and to be produced from the said unit area, and all of Assignor's rights to receive payments therefrom, including royalties.

TO HAVE AND TO HOLD the same unto Assignee, its successors and assigns forever.

This assignment is effective as of the 1st day of May, 2024.

ASSIGNOR:
ABC Energy, LLC

By: John Doe
Name: John Doe
Title: Managing Member

STATE OF OKLAHOMA)
) ss.
COUNTY OF OKLAHOMA)

Before me, the undersigned Notary Public, on tı 1st day of May, 2024, personally appeared John Doe, to me known to be the identical person who executed the within and foregoing instrument as Managing Member of ABC Energy, LLC and acknowledged to me that he executed the same as his free and voluntary act and deed and as the free and voluntary act and deed of said limited liability company for the uses and purposes therein set forth.

NOTARY PUBLIC
STATE OF OKLAHOMA
Commission # 21012345
My Commission Expires 04/12/2026

Jane Smith
Notary Public

1. IDENTIFIES THE POOLING ORDER AND UNIT

which Order created the MERIDIAN 14-5-8 UNIT and pooled the said lands for the development and operation of the Mississippian common source of supply.

2. ASSIGNS ALL RIGHTS UNDER THE POOLING ORDER

This assignment includes, but is not limited to, all of Assignor's right, title and interest in and to the oil, gas and other hydrocarbons produced and to be produced from the said unit area, and all of Assignor's rights to receive payments therefrom, including royalties.

3. CONVEYS TO ASSIGNEE

This assignment is effective as of the 1st day of May, 2024.

ASSIGNOR:
ABC Energy, LLC

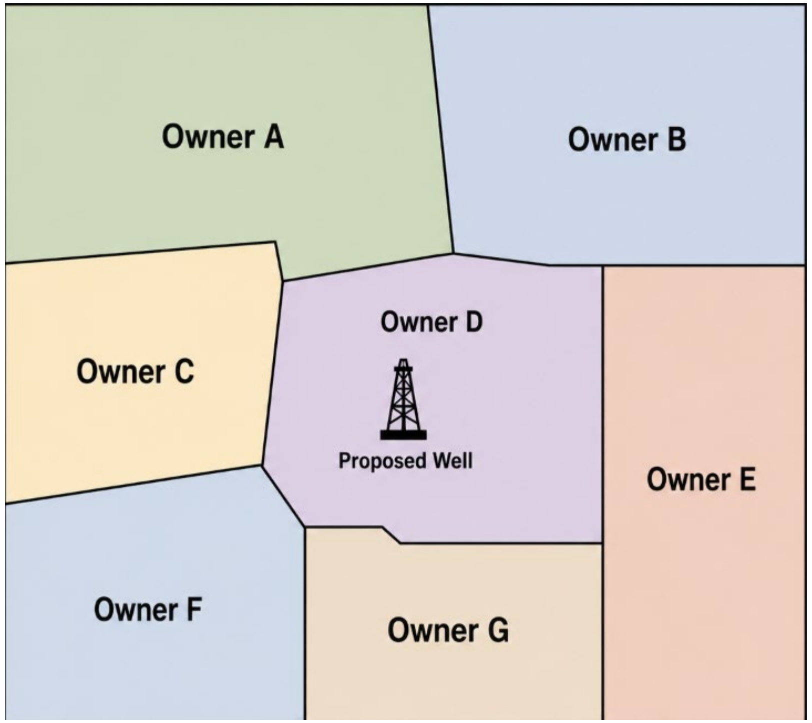
By: John Doe
Name: John Doe
Title: Managing Member

Transfers all of the assignor's rights under the pooling order, including the right to receive production and payments from the unit.

PRACTICAL EFFECT:
The assignee "steps into the shoes" of the assignor with respect to the pooled unit and acquires all rights to production and payment attributable to the assignor's interest in the unit.

Hypothetical

- In 2012, the Oklahoma Corporation Commission entered a pooling order for a vertical well in Section 12. At the time, the section was divided among several mineral owners, including Owner A, Owner B, Owner C, Owner D, Owner E, Owner F, and Owner G. The pooling order gave each owner the option to participate in the vertical well or elect one of two bonus-and-royalty options: $250 per acre and 1/8 royalty, or $200 per acre and 3/16 royalty.
- A, B, and C elect to participate in the well. D and E elect the first option, a $250/acre bonus and a 1/8th royalty on oil and gas. F and G elect the second option, a $200/acre bonus and a 3/16th royalty on oil and gas. No Affidavit of Election is filed of record. The well produces.
- Now consider, ten years later, a new horizontal well is proposed in a horizontal spacing unit that overlaps the older vertical unit. A, B, C are going to have the option to participate in the horizontal well or receive the new bonus and royalty options and D, E, F, and G are bound by their elections in the old pooling order. When there is no affidavit of election, it is nearly impossible for a title examiner to determine ownership of title to election rights.
- Even if information is provided, what if the elections are not the same? What if Party D carved out an overriding royalty interest under the prior pooling order? How is that reflected under the new pooling elections?



Questions

- When is an old election binding on a new pooling order?

- How should a title examiner treat an interest when no Affidavit of Election has been recorded pursuant to 52 O.S. § 87.4?
- Does a prior election under a pooling order operate as a surrender of the owner's executive rights in the pooled formation(s), or do those rights remain with the owner absent a subsequent conveyance?

- What if an owner elected to participate under the initial well but elected to not participate in a subsequent well under a prior pooling order? Does the second election under the subsequent well relinquish their rights, or does the party have a right to participate under a subsequent pooling order?

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