Potential Issues for Consideration by Compulsory Pooling Study Group

1. Recommendation 1: Access to surface above pooled gas and oil rights only will be available through voluntary agreement between surface owner and party granted access to subsurface.
2. Indemnification of subsurface and surface owners by gas operator when gas and oil rights below surface are pooled; bonding sufficient to cover injury to surface and subsurface property; and operator capitalization adequate to complete development
    a. Damage to property
    b. Damage to neighbor's property
    c. Lost value
    d. Loss of future profits
    e. Clarify whether S. 820 §4(c) covers injuries of surface and subsurface owners where there is no there is no surface disturbance
3. Pooling of special lands
    a. Government lands generally – federal, state, and local
    b. Government lands designated for conservation purposes
    c. Lands with conservation easements
4. Adequacy of future generally applicable buffers, setbacks, and well spacing rules to protect property of surface owners when gas and oil rights below surface are pooled
5. Territorial scope of pooling order
    a. Vertical Pugh terms (limiting pooling to particular vertical strata)
    b. Horizontal Pugh terms (limiting pooling to particular lateral boundaries)
    c. Retained acreage and depth terms (frees unaccessed acreage and depth pooled but not developed)
    d. Habendum clause (terminating access to subsurface gas and oil when continuous operations cease)
6. Time limitations
    a. Period of time for which access is granted
    b. Date by which development must begin or rights extinguished to allow oil and gas rights owner to lease rights to others
    c. Terms of renewal of right of access to subsurface gas and oil
    d. Applicability of equivalent to force majeure clause
7. Groundwater, water, soil, and air testing and monitoring

   a. Baseline
   b. Ongoing monitoring

8. Transfers of right to access gas and oil resource
   a. Ban or limitation on transfer (If not a property right, cannot transfer license granted under police powers; if a property right, what restrictions should be in place to ensure that transferee can meet obligations.)
   b. If transfers allowed, notice of transfers
9. Costs to pooled entities
   a. What share of exploration and production costs must pooled entities bear?
   b. Under what terms and schedule will costs be paid?
   c. Will risk penalties be assessed if gas and oil rights owners cannot or choose not to participate in fronting or guaranteeing their share of the costs of exploration and development?
   d. Will gas and oil rights owners be able to choose what cost payment regime they wish as Oklahoma allows?
   e. What role will lienholders have in determining how costs and risk penalties will be assessed?
   f. Should gas and oil rights owners have option at point of pooling order to choose how they want to assessed costs? Should the question of how costs will be assessed by a decision made as part of the pooling order with each party arguing how it believes it should be paid?
10. Payment structure and rates
    a. Per acre bonus
    b. Royalty rate and basis (market value or gas proceeds)
    c. Shut-in payment
11. Required reporting of production to landowner
    a. Royalty statement to include at minimum pool operator name; pool operator ID number; terms of payment; well and property name; operator's API ID number; oil, gas, and natural gas liquids volumes; price per barrel or MMBtu; subsurface owner's interest share, share of sale, deductions, and codes (with key) describing deductions
    b. Right of audit
12. Prerequisites for pooling application

a. Who may apply to create pool – operators, other landowners?
b. If operator, is a good faith lease required? What constitutes "good faith"?
c. What degree of evaluation of alternatives to pooling should be required?
d. Should there be minimum requirements for acreage under lease in pool by common operator or agreement to?
e. Should there be minimum requirements for the number of distinct owners in the pool who want to pool an unwilling owner?

13. What due process should be afforded parties subject to pooling petition?
    a. Roles of DENR, MEC, and DOJ
    b. Notice of proceedings
    c. Schedule of proceedings
    d. Rules of evidence and procedure
    e. Right of representation by counsel
    f. Who has standing to participate or intervene (surface owner, subsurface owner, lienholders, adjoining landowners) and what rights in the process do they have
    g. Standard for determination that pooling should be compelled
    h. Required findings for decision (need for pooling, boundaries of pooled area)
    i. Requirement of written decision of inclusion of specific content (territorial scope of order; time limitations on order; limitations on access rights; terms of payments; assessment of production costs and risk penalties; requirements for indemnification; adjudication of rights of all interests including lienholders; finding of no financial harm to surface and subsurface owner or assessment of compensation due to damages, loss of use of property, loss of ability to obtain insurance or financing, loss of ability to alienate property)
    j. Right of appeal
14. Costs to landowners of representation
    a. Should landowners or party seeking pooling bear cost of legal representation for subsurface or surface owner brought into pooling process?
    b. If petitioners for pooling bear cost, on what basis should legal fees be determined and by whom? What costs should be allowable (experts, land surveys).
15. Process for being released from pool
16. Opportunity to negotiate terms prior after pooling application

17. How should pooling rules differ for conventional and unconventional gas?
18. Disclosure of chemicals used in subsurface operations to subsurface and surface owners and to lienholders
19. Notice to surface and subsurface owners of entry to property through drilling, of initiation of hydraulic fracturing process below property, of beginning of production, of interruptions of operations, and of termination of operations.
20. Effect of compulsory pooling on land appraisal and tax valuation
21. Compelling pooling of gas and oil rights leased to different operators
22. Alternative of authorizing drill-through access to access isolated properties without allowing development of gas and oil in drilled-through acreage
23. No compulsory pooling