

Compulsory Pooling Study Group

Draft Objectives

12/19/12

1. **Policy goals for compulsory pooling**
2. **Stakeholder participation**
3. **Standards of pooling**
4. **Process for pooling**
5. **Terms of compulsory leases**

1. **Policy goals**

There are a number of policy rationales that have been put forward for compulsory pooling including (a) protection of mineral owner rights where oil or gas can migrate from the owner's estate to another owner's well, (b) ensuring that all recoverable portions of a resource are removed from the ground, (c) facilitating extraction of a resource by a landowner or mineral rights owner who wants to develop a mineral resource but cannot access the means to recover it economically because of an intervening landowner's decision not to develop his resource, and (d) minimizing development costs for gas operators. Likewise, there are policy rationales that have been put forward in opposition to compulsory pooling including (a) protecting the right of individual property owners to control their own mineral resource and not be forced by the government or private industry to develop it and (b) the freedom of individuals to contract for the development of their own resources on their own terms. Which of these policy goals should drive North Carolina's policy on compulsory pooling and how they should be balanced against one another is a critical question that will influence which policies the state should pursue.

2. **Stakeholder participation**

The largest group of stakeholders in the process are landowners, who at this point likely have had little experience or knowledge of the state's pooling laws or the impacts that various policy options under consideration may have on them. This lack of knowledge stems in part from the circumstance that, with the exception of the relatively small number of mineral rights owners who have leased their mineral rights, landowners do not know whether they are likely to be part of a drilling unit that would be the core of a block used by a gas operator to force other landowners into a drilling unit or whether they might be among those who had not reached an agreement with a gas operator and were being forced into a drilling unit by the state. To enable landowners to be able to participate in a meaningful way in the study group process, and for the study group to have the benefit of the views of the largest group of stakeholders in compulsory pooling, it will be important to find ways that the study group can provide opportunities for landowners to become educated about compulsory pooling processes and to provide their views on the issues arising from compulsory pooling.

3. Standards of pooling

There are a wide variety of standards employed across the country that applicants must meet to apply to compel an owner's un-leased mineral rights into a pool with leased rights. Many of these rules were written prior to shale gas or other non-migratory tight gas formations being developed or contemplated, exist in different configurations and concentrations of mineral rights and land ownership, and may have been intended to meet different policy goals than the ones North Carolina determines are appropriate for the North Carolina context. Whether these standards or other standards are appropriate for North Carolina will be an important consideration in developing North Carolina's standards if it decides to create a process for compelling pooling of mineral rights.

4. Process for pooling

Many different processes exist for compulsory pooling and for eminent domain condemnations including both a variety of judicial processes and administrative ones. Other processes including multi-party mediations also could be employed to resolve conflicts between operators, mineral rights owners who have leased their rights, and mineral rights owners in the same proposed drilling unit who have not. In considering whether and how North Carolina implements a compulsory pooling process, the study should evaluate what type of process makes sense for North Carolina and how each mineral rights and surface rights owner's interests and due process rights can be protected in that process.

5. Terms of compulsory leases

A critical question will be what the terms of the mineral rights lease will be for any landowner or rights owner who is compelled into a pool. What will the bonus and royalty payments be? Will the operator also have surface access? Will there be a Pugh clause limiting the strata or portion of the rights that can be developed? Will there be any limits on when the operator can enter the property? Will there be a surface use agreement detailing where infrastructure can be built and accessed and how the landowner will be compensated for that use, and if there will be a surface use agreement, how even are the relative bargaining positions of the parties when it is negotiated after the mineral rights have been pooled? Will the mineral rights owner have audit rights to review the royalty payments? Will there be any disclosure of chemicals used above the statutory minimum? What are the provisions regarding the length of the lease, its renewal, and the rights if the well is shut-in? What is the plan and terms for reclamation? How will conflicting surface and underground uses be resolved? Whether these terms and many other terms for which mineral rights owners typically would negotiate will be included in the compelled leases, as well as what the process will be by which they will be determined, are essential components of any compulsory pooling process.