

## An In-Depth Analysis of Texas Pooling Issues

**Katy Wehmeyer**

Santoyo Wehmeyer P.C.  
IBC Highway 281 North Centre Bldg.  
12400 San Pedro Avenue, Suite 300  
San Antonio, Texas 78216

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### **Pooling Basics**

- Voluntary pooling
- Requires express authority of the lessor
- Exercise must be in accord with the terms of the lease
- Good faith requirement

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## Methods of Voluntary Pooling

- Community Lease
- Pooling Agreement
- Pooling Provision in Oil and Gas Lease

## Good Faith Pooling

- Not typically an express lease requirement, but judicially implied standard
- Somewhat inconsistent case law
- General factors of consideration
  - How close to end of primary term when unit created;
  - Whether geological factors considered in unit formation;
  - RRC's rejection or approval of unit;
  - Inclusion of known/suspected barren acreage and exclusion of known nearby productive acreage;

## Good Faith Pooling

- General factors of consideration, continued
  - Evidence that primary objective is to hold acreage or leases;
  - Plans for additional development; and
  - Inclusion of acreage not needed for favorable spacing.
- Cases illustrate that good faith determination is almost always a fact issue and not susceptible to a bright line rule.
- Consensus as to factors that bear on factual determination, but not single factor – even lessee’s express statement that it designed the unit to perpetuate as many leases as possible – appears to be dispositive.

## Pooling in Accord with Lease Terms

- Notice and/or recordation requirements
- Surface acreage limitations
- Depth limitations
- Restrictions as to substances pooled
- Contiguous land requirements
- Timing requirements

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First appeared as part of the conference materials for the  
48<sup>th</sup> Annual Ernest E. Smith Oil, Gas and Mineral Law Institute session  
"Voluntary Pooling in Texas: An In-Depth Analysis"