

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

Pooling Basics

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

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

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: An In-Depth Analysis of Texas Pooling Issues

Also available as part of the eCourse

[2022 Ernest E. Smith Oil, Gas and Mineral Law eConference](#)

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