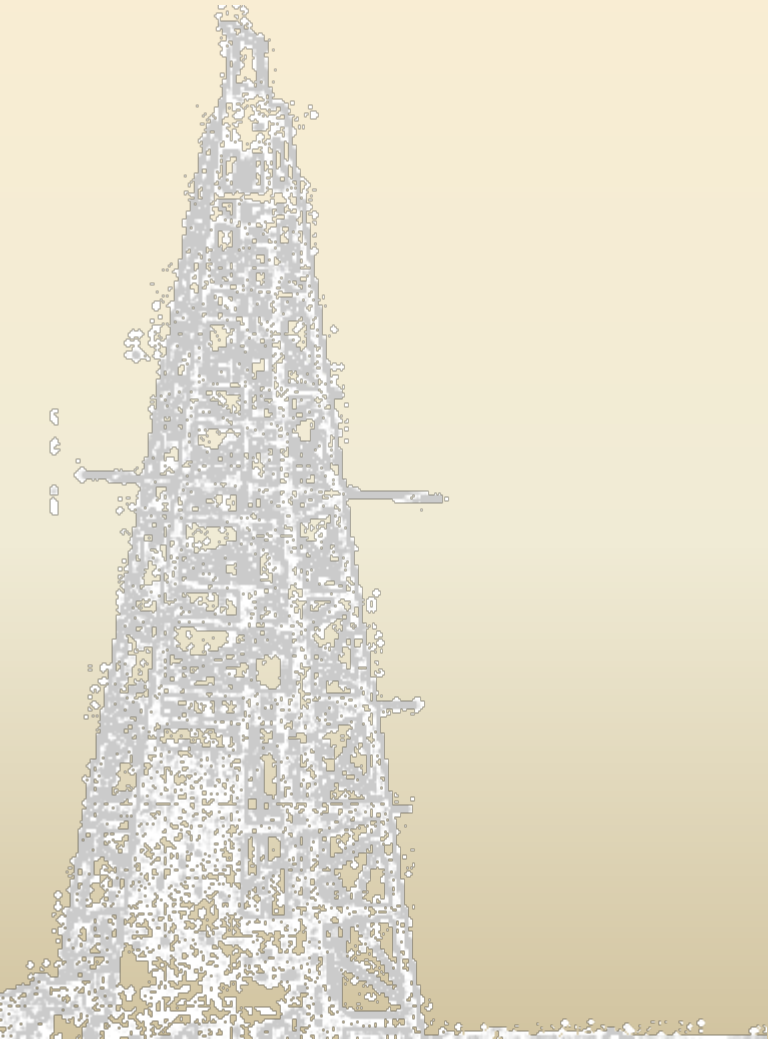


The Mineral Interest Pooling Act:



I. Introduction.

Envelope No. 1

Envelope No. 2

Envelope
No. 3

Parallel universes?

Regulatory World versus Non-regulatory World?

The Railroad Commission is the Texas regulatory agency which regulates the production of oil and gas. It does NOT, however, have the authority to adjudicate contract.

When the Railroad Commission is faced with adjudicating a contract it...

... *“Punts”*

One may envision the Railroad Commission as a parallel universe with the contract universe.

These worlds typically co-exist peacefully; however, there are occasions when somebody tries to get creative and attempts to cross worlds.

So what happens when worlds collide?



I. Background of Railroad Commission Rules and Regulations.

- ✦ Created in 1891 under a constitutional and legislative mandate.
- ✦ Originally created to prevent discrimination in railroad charges.
- ✦ Railroads = large amounts of land = the Commission regulating the emerging oil and gas industry in the late 1800's.

Purpose: The Commission's primary mission is to regulate the orderly production of oil and gas, to prevent the waste of the State's natural resources, and to protect the correlative rights of its citizens.

Historically, two of the main weapons in the RRC's arsenal have been :

- 1) Allowables and
- 2) Field Rules.

Field Rules in Texas

Special Field Rules

An operator may request designation of Special Field Rules for a particular field which vary from the previously discussed requirements. Special Field Rules require a Railroad Commission application where the correlative interval is identified via well logs on file with the Railroad Commission.

Application for Special Field Rules may prove useful for an operator because, among other things, it provides for:

- Creating larger pooled units if your lease correctly incorporates a “governmental authority” pooling provision;
- Assuring orderly and proper development of a field, thereby reducing unnecessary wells and risk of lessor claims of “failure to develop”;
- Increasing or decreasing your allowable; and,
- Force pooling under the Mineral Interest Pooling Act.

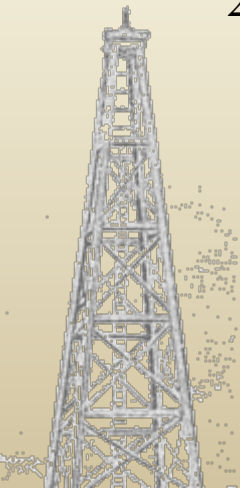
Pooling

There are essentially two types of pooling in the State of Texas:

- 1) Voluntary Pooled Units, where a lessee's authority to pool is “.... derived solely from the terms of the lease” and “a lease has no power to pool absent express authority.” *Browning Oil Company v. Luecke*, 38 S.W.3d 625, 634 (2000).

*A pooled unit at the Railroad Commission (Form P-12) is **NOT** the same thing as a Unit Declaration filed in the county records!*

- 2) “Forced Pooling”, where, under Chapter 102 of the Texas Natural Resources Code, also known as the Mineral Interest Pooling Act or “MIPA”, the Railroad Commission is authorized to “force pool” adjacent tracts and interests to achieve proration units of the size specified in the applicable field rules.

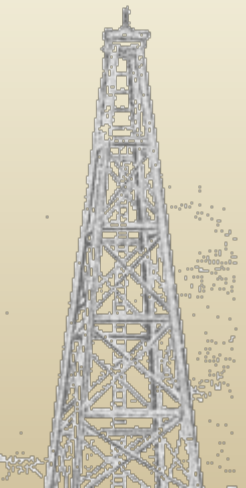


Define Your Units!

- ✦ Under 16 TAC §3.38, a “drilling unit” is “the acreage assigned to a well for drilling purposes.” It is the acreage submitted with the Form W-1 drilling application and is meant to show that the operator has sufficient remaining acreage to meet the density provisions of 16 TAC §3.38. It is a regulatory term of art. Drilling Units are no longer required on the Form W-1 for vertical wells.
- ✦ Under 16 TAC §3.38, a “proration unit” is “the acreage assigned to a well for the purpose of assigning allowables and allocating allowable production to the well.” A proration unit is *only applicable if there are Special Field Rules* which use acreage in the allocation formula. If the field is governed by Statewide Rules, proration units are not applicable.
- ✦ A “pooled unit” is “the acreage formed by joining separately owned tracts, usually to constitute a drilling or prorationing unit”. Ernest E. Smith & Jacqueline Lange Weaver, Texas Law of Oil and Gas, §10.1(B). This is the Unit Declaration filed in the official public records of the county where the land is located.

“Mineral Interest Pooling Act” as a bargaining tool.

- ❖ MIPA, as referenced above, authorizes the Commission to force pool adjacent tracts and interests under limited circumstances, to achieve proration units of the size called for in the applicable field rules.
- ❖ However, the circumstances are indeed “limited”. To make a long story short, a forced pooled unit in Texas is like a child’s vision of...





You suspect that they exist, but the odds are you'll never see one. The MIPA is difficult at best, so why is it a "tool"?

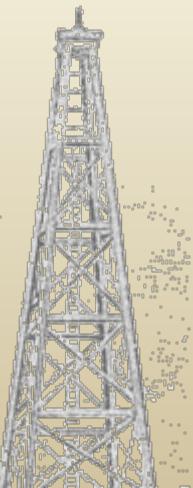
Because it may be used to increase an operator's bargaining power and to bring parties to the table!

Purposes of MIPA under Commission rules.

Pursuant to the Texas Natural Resources Code, §§102.001 - 102.112, the MIPA may be employed for the purposes of:

1. Avoiding the drilling of unnecessary wells,
2. Protecting correlative rights, or
3. Preventing waste of hydrocarbons.

- It is REQUIRED under MIPA that the applicant must have first made a fair and reasonable offer to voluntarily pool, and that this offer was turned down.
- For this reason, MIPA has been referred to as a “compulsory voluntary pooling act” which is effective because “it compels fair and reasonable offers to pool, which are usually accepted.” Ernest E. Smith & Jacqueline Lange Weaver, Texas Law of Oil and Gas, §12.1(B). If the offer is not considered fair and reasonable, the Commission is required to dismiss the application.



Who may apply under MIPA?

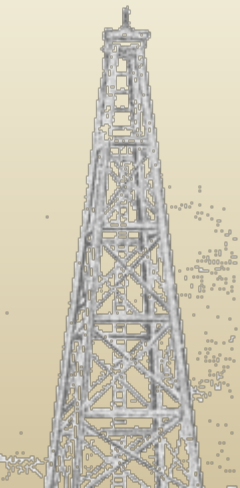
The Commission asserts that the following persons may apply for forced pooling:

- 1) In an existing unit, any mineral interest owner, including royalty owners; and,
- 2) In a proposed unit, any working interest owner or owner of an unleased tract (but not a royalty interest).

However, the Railroad Commission is not authorized to compel pooling on its own motion.

What are some of the limitations under MIPA?

- 1) Forced pooling is unavailable if the reservoir was discovered and produced prior to March 8, 1961.
- 2) Forced pooling is unavailable for land owned by the State of Texas or land in which the state has a direct or indirect interest.
- 3) MIPA may not be used to force pool an unleased mineral owner of a tract by a leased mineral owner of the same tract or his lessee.



Limitations under MIPA (Continued)

- 4) Forced pooling is unavailable in wildcat areas or in fields which are subject to Statewide Rules. The field in question must be subject to Special Field Rules. However, the Commission does allow applications for Special Field Rules to be filed simultaneously with a MIPA application.
- 5) Units under MIPA are limited to individual well proration units. The largest that a unit under MIPA may be is 160 acres for oil wells and 640 acres for gas wells, plus tolerance acreage allowed under the field rules.
- 6) The Commission may only pool acreage that reasonably appears to be within the productive limits of the reservoir. The burden is upon the applicant to show that all the proposed acreage is productive. If this burden is not met, the Commission may order the pooling of a smaller amount of acreage than that requested by the applicant.

*Thank you for your time! If you have any questions, please feel free to
contact me via e-mail at:*

SPetry@PettrySinex.com

