Compulsory pooling in the Appalachian Basin: Maximizing precious resources

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Prior to the Utica and Marcellus Shale plays, oil wells in the Appalachian Basin of Ohio, Pennsylvania, and West Virginia were drilled vertically and only able to produce oil from the leased premises. These wells produced oil on units containing 20 to 40 acres thanks to the enactment of oil and gas conservation statutes regarding well spacing to curb excessive drilling. These regulations encouraged the formation of a "pooled unit" – combining smaller tracts together to create sufficient acreage to receive a well permit. Prior to regulating well spacing, this was a common scene:

Oil Creek Valley, Pennsylvania circa 1865 / photo via Wired.com

With the dawn of horizontal drilling and fracking, advancements in technology allowed units to balloon to anywhere from 640 acres to 1,000+ acres, covering 50-150+ separately owned parcels to form a drilling unit with the objective of maximizing production efficiency from a reservoir of gas and/or oil. As you can imagine, it is difficult to aggregate that many parcels, especially when one or more owners refuse to enter into a lease. Rather than force an oil and gas driller to abandon its plans to drill their unit, most producing states have statutorily allowed for compulsory pooling to complete the unit.

Compulsory pooling is a statutory mechanism that compels holdout landowners' land to be included in an oil and gas drilling unit in an effort to promote the conservation of natural resources. Compulsory pooling statutes compensate the unleased owner for their minerals while allowing the oil and gas company (E&P) to continue on with their unit and recoup the cost of their investment. A compulsory pooling order is only issued after several attempts have been made by an E&P to legitimately and fairly lease an owner's land and requires an application process that details this effort. The application process takes several months to complete and affords the unleased owner both notice of the E&P's intent to include their land in the unit and an opportunity to be heard. Ohio (ORC 1509.27), Pennsylvania (79.33) and West Virginia (22C-9-7) all have some form of compulsory pooling. While compulsory pooling might seem unfair to the non-consenting landowner, the process that the E&P must endure before being allowed to pool the unleased lands ensures that compulsory pooling is a last resort.

Opponents of forced pooling argue that it amounts to an unconstitutional taking under the due process clause. They argue that the minerals under their property are being taken not for a public good, but for the economic benefits of a private E&P which basically amounts to eminent domain for oil and gas drillers. The topic of oil and gas drilling and forced pooling can divide a crowd at a social gathering about as quickly as talking about politics and religion. I always flash back to a scene from the 2007 movie *There Will Be Blood*, which addresses the choice faced by a landowner who does not want to enter into a lease. In the scene, the operator not-so-gently explains the "rule of capture," which is the right to capture the oil and gas on a neighbor's property that flows underground into a well on an adjacent property:

While Hollywood portrays the harsh rule of capture rather effectively, the fact is that states (through their compulsory pooling statutes) protect landowners from E&Ps just taking their minerals through wells or wellbores located on neighboring property. The states weigh the rights of individual landowners through a takings clause analysis vs. the rights of the surrounding landowners and the public interest not to waste natural resources. Ultimately, the "taking" is for the common good of the public – ensuring that the resources are conserved and not wasted by drilling from excessive wells.

The main benefit to statutory pooling is that it effectively regulates waste and allows E&Ps to build fewer wells and harvest the limited natural resources in a more efficient manner. Rather than having multiple wells that cover a smaller amount of land, statutory pooling allows E&Ps to have one drilling parcel from which several horizontal wells are drilled, thereby avoiding waste and conserving natural resources. By drilling fewer wells, the chance for environmental issues related to drilling operations significantly decreases. While the United States claims to have enough natural gas to last 100 years, other experts think that we have as few as 11 years of natural gas left accessible with the current technology. Regardless of what projections you believe, it is important that we drill efficiently and effectively to conserve the natural resources we have left.

While there will always be some critics to a compulsory pooling statute, compulsory pooling prevents waste and limits potential environmental issues while maximizing the withdrawal of natural resources, which benefits, in turn, the public at large.