

# Due Process: Where the OCC and Title Converge

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# Agenda

- ▶ Due Process
- ▶ Instruments of Record (Oklahoma Recording)
- ▶ Ownership Reports/Drilling Title Opinions
- ▶ Title issues affecting notice
- ▶ Affidavits of pooling
- ▶ Notice Requirements for OCC Applications
- ▶ Omitted Respondent
- ▶ Poolings
- ▶ Questions

# Due Process

# Due Process

- ▶ No person shall . . . be deprived of life, liberty or property, without due process of law . . .
  - ▶ 5<sup>th</sup> Amendment - Only restricts Federal Government
- ▶ No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, *without due process of law*; nor deny to any person within its jurisdiction the equal protection of the laws.
  - ▶ 14<sup>th</sup> Amendment - applies to state government
- ▶ No person shall be deprived of life, liberty, or property, without due process of law.
  - ▶ Oklahoma Constitution, Section II-7

# Due Process - Two Types

## ▶ Substantive Due Process

- ▶ Principle that the due process clause protects certain fundamental rights from governmental interference.
  - ▶ Example: right to privacy

## ▶ Procedural Due Process

- ▶ Addresses which legal procedures are required to be followed.
  - ▶ Based on principles of fundamental fairness.

# Procedural Due Process - Requirements

- ▶ A fundamental requirement of due process of law in any proceeding which is to be accorded finality is notice *reasonably calculated* under all circumstances to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections . . .
  - ▶ Mullane V. Central Hanover Bank & Trust, 339 U.S., 70 S.Ct
- ▶ Before jurisdiction may be exercised over a person in proceedings that may directly and adversely affect his legally protected interests, the minimum standards of due process require notice that is calculated to provide knowledge of the proposed exercise of jurisdiction and an opportunity to be heard.
  - ▶ Union Texas Petroleum v. Corporation Commission of Oklahoma, Okl. 651 P.2d 652, 658 (1982)
- ▶ Core Requirements of procedural due process:
  - ▶ (1) Notice
  - ▶ (2) An Opportunity to be heard

# Procedural Due Process & the OCC

When the Commission acts in an adjudicative capacity, it functions as a court. The general norms of law which govern the quality of notice that must be given in proceedings conducted by judicial tribunals apply with the same force and effect to the Commission.

*Monson V. State, 673 P.2d (1983).*

The minimum standards of federal and state due process must hence govern in spacing proceedings.

*C.F. Braun & Co. v. Corporation Commission, 609 P.2d 1268 (1980). See also, Wolfenbarger v. Hennessee, Okl., 520 P.2d 809 (1974).*

# Notice



# Notice

## ▶ Actual Notice:

- ▶ Actual Notice consists in express information of fact
  - ▶ 25 O.S. § 11

## ▶ Constructive Notice:

- ▶ Constructive knowledge is notice imputed by the law to a person not having actual notice.
  - ▶ 25 O.S. §12

## ▶ Inquiry Notice:

- ▶ A person has actual knowledge of facts which would lead a reasonable person to inquire further

# Notice in the context of the OCC

- ▶ Interest owners need to provide notice to the world that they are the rightful owners.
- ▶ OCC Applicants need to provide notice to interest owners of proceedings that will affect their rights.

# Instruments of Record

# Instruments of Record

- ▶ Every conveyance of real property acknowledged or approved, certified and recorded as prescribed by law from the time it is filed with the register of deeds for record is constructive notice of the contents thereof to subsequent purchasers, mortgagees, encumbrances or creditors.
  - ▶ 16 Okla. Stat. § 16
- ▶ Recording of instrument affecting title to realty in county where land is situated, in compliance with [16 O.S. § 16] constitutes notice of such instrument and all subsequent purchases are charged with notice thereof.
  - ▶ Knowles v. Freeman 649 P.2d 532 (Ok Supreme Court 1982) (citing Johnson v. Farmers' Union Co-op Royalty Co. and Berryman v. Producers Corp.)
- ▶ “Prescribed by Law”
  - ▶ every document offered for recording “shall by its own terms describe the property by its specific legal description, and provide such information as is necessary for indexing as required in Sections 287 and 291 of this title . . .”
    - ▶ 19 Okla. Stat. § 298

# Instruments of Record

- ▶ What if I do not record...
  - ▶ Not placing an instrument of record does not invalidate it between the parties. However, it does not provide constructive notice and therefore, will not protect against bona fide purchasers.
  - ▶ The recording system is set up to provide “constructive notice” of ownership. This creates the chain of title used to determine current owners.

WHO TO USE!?

# Ownership Reports vs. Title Opinions

## Broker Ownership Reports

### Advantages

- ▶ Cost efficient
- ▶ Faster turn around

### Disadvantages

- ▶ Usually not prepared by a licensed attorney
- ▶ May not provide as much details as a certified title opinion

## Drilling Title Opinion

### Advantages

- ▶ Licensed attorney - more liability coverage
- ▶ More detailed

### Disadvantages

- ▶ Likely more expensive
- ▶ Slow turn around

# TITLE ISSUES



# Affidavits of Death & Heirship

- ▶ 16 O.S. § 67 - allows an owner of a severed mineral interest in real estate to potentially claim marketable title pursuant to Affidavit recorded pursuant to 16 O.S. §§ 82-83
- ▶ Often times not properly executed or proper documentation is not provided rendering the Affidavit ineffective to claim marketable title
- ▶ Name the estate in OCC applications

# Affidavits of Death & Heirship

- ▶ Applies to “severed mineral interest”
- ▶ The affidavit . . . must state that the decedent died without a will, or if the decedent has a will, that the will was never probated in Oklahoma and a copy of the will is attached . . .
  - ▶ 16 Okla. Stat. §67 (c)(1) (emphasis added).
- ▶ Out of caution....name the estate in OCC applications

# Mis-indexed instruments

- ▶ “when the holder of an instrument, entitled to be recorded, deposits the same with the proper officer for record, he has done his full duty, and his rights are not to be defeated by the failure of the recording officer to properly record and index the same.”
  - ▶ *Terrell v. Scott*, 262 P. 1071 (Okla. 1927) (citing *Guaranty State Bank of Fort Worth v. LaHay*, 224 P. 189 (Okla. 1924))

# Overly Broad Legal Description

- ▶ Example: John Smith records an instrument that conveys “all my land in Canadian County.”
- ▶ A recorded conveyance provides constructive notice when it is “recorded as prescribed by law.”
  - ▶ 16 Okla. Stat. § 16. and 1

# Overly Broad Legal Description

- ▶ A recorded conveyance provides constructive notice when it is “recorded as prescribed by law.”
  - ▶ 16 Okla. Stat. § 16.
- ▶ “Prescribed by Law” - requires every document offered for recording “shall by its own terms describe the property by its specific legal description, and provide such information as is necessary for indexing as required by Oklahoma law”
  - ▶ 19 Okla. Stat. § 298
- ▶ A recorded blanket grant of security interests does not constitute constructive notice to subsequent buyers because it lacks a specific legal description sufficient for indexing in a county tract index
  - ▶ *In re Cornerstone E & P Company, L.P.*, 435 B.R. 390 (2010)

# Lease Expiration Date

Eagle Energy Production, LLC v. Corporation Com'n of State 351 P.3d 750 (2015 Civ App 51)

- ▶ Lease was in primary term when hearing for force pooling was held.
- ▶ Lease expired prior to the issuance of the pooling order.
- ▶ The Corporation Commission found that the lessor/owner was not bound by the force pooling order.
- ▶ On appeal, the Oklahoma Court of Civil Appeals, held that:
  - ▶ Pooling order did not bind owner under oil and gas lease that had expired prior to the issuance of order;
  - ▶ Notice to lessee did not constitute sufficient notice to owner; and

# Miscellaneous - Title Issues

- ▶ Life estates and remainderman
  - ▶ If you have a Life tenant execute a lease, but did not get ratifications from remaindermen - list the remaindermen as respondents
- ▶ Term Interests
  - ▶ If you have fixed term interests, name reversionary interest owners as respondents
- ▶ Mergers/Name Changes/Acquisitions
  - ▶ Be careful relying on 3<sup>rd</sup> party sources such as “Who’s who” or websites.

# AFFIDAVITS OF POOLING



## 52 Okla. Stat. § 87.4 - Affidavit of Pooling

- ▶ An affidavit evidencing any election for the drilling of a well under a pooling order issued pursuant to the proceeding . . . shall constitute constructive notice of the rights under the election claimed by the affiant when the affidavit is filed of record in the office of the county clerk for the county in which the lands described in the pooling order are located
- ▶ The Affidavit shall set out the name, address, if known, and the election or deemed election for each pooled respondent included in the affidavit and shall have a copy of the pooling order attached.
- ▶ . . . May be filed by the operator . . . or by any other interested party with knowledge of any election made.

# Affidavit of Pooling

## ▶ NON-OPERATORS

If you elect to take your share of force pooled acreage.....Make sure you are properly assigned the correct acreage, and the assignment is properly placed of record!

# Affidavit of Pooling

## ▶ APPLICANTS vs. OPERATORS

- ▶ Make sure the acquired force pooled acreage is vested in the proper entity.



# Notice Within the OCC

# Notice Requirements for OCC Applications

- ▶ Spacing: All owners who may have a right to share in production from the spaced unit, including all working interest owners, overriding royalty interest owners, and all royalty interest owners
- ▶ Waiver of Spacing Consent Requirement: All working interest owners in the existing wellbores producing from the same common source of supply sought to be spaced and the owners in the units from which those wellbores produce. Often, for simplicity, the same as spacing respondents.
- ▶ Multiunit: Same as spacing for each unit from which the well will produce

# Notice Requirements for OCC Applications

- ▶ Multiunit: All owners who may have a right to share in production from the spaced units, including all working interest owners, overriding royalty interest owners, and all royalty interest owners
- ▶ Same as spacing for each unit from which the well will produce

# Notice Requirements for OCC Applications

- ▶ Location Exception:
  - ▶ All parties operating a well which produces from the same common source of supply toward which any part of the well is moving, and closer than the required hardlines to which any of the perforations in the wellbore will be; and
  - ▶ All working interest owners in any well the applicant operates which produces from the same common source of supply toward which any part of the well is moving, and closer than the required hardlines to which any of the perforations in the wellbore will be
  - ▶ Exception to 600' Rule: Same as Location Exception

# Notice Requirements for OCC Applications

- ▶ Increased Density:
  - ▶ All parties who may have the right to share in production from the unit (same as spacing); and
  - ▶ All parties operating a well in any adjoining or cornering unit which produces from or is open to the same common source of supply for which the increased density is sought; and
  - ▶ All working interest owners in any well the applicant operates in any adjoining or cornering unit which produces from or is open to the same common source of supply for which the increased density is sought



# Notice Requirements for OCC Applications

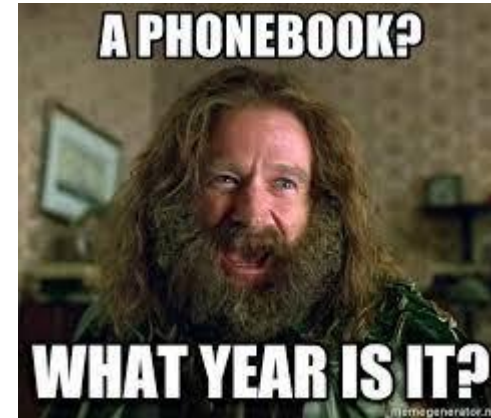
- ▶ Pooling: All unleased mineral owners and uncommitted working interest owners
- ▶ Unique circumstances for how notice is provided compared to other reliefs sought through OCC
  - ▶ 52 O.S. 87.1

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"><li>■ Complete Items 1, 2, and 3. Also complete Item 4 if Restricted Delivery is desired.</li><li>■ Print your name and address on the reverse so that we can return the card to you.</li><li>■ Attach this card to the back of the mailpiece, or on the front if space permits.</li></ul>	A. Signature <b>X</b> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee
1. Article Addressed to:	B. Received by (Printed Name) C. Date of Delivery
	D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No
2. Article Number (Transfer from service label)	3. Service Type <input type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.
	4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

# Notice Requirements for OCC Applications

- ▶ Common places to check for addresses:
  - ▶ County Clerk's Office: Deed and Conveyancing Records;
  - ▶ Civil Appearance and Probate Dockets
  - ▶ Ad Valorem Tax Records
  - ▶ Online Directory Assistance - Yellow and White Pages
  - ▶ Social Security and Death Indices
  - ▶ Internal records maintained by the Applicant
  - ▶ Online Search Engines - Accurint, Pangaea, Google, etc.
  - ▶ OSCN, Oklahoma Department of Corrections, Oklahoma Secretary of State
  - ▶ OCC Records





# Notice Requirements for OCC Applications

- ▶ Curative Parties
  - ▶ Curative pooling is available to attempt acquire or “cure” all potentially unleased interests in and to the subject area, or parties who may or may not own an interest
  - ▶ *Steinkuehler v. Hawkins Oil and Gas, Inc.*, 728 P.2d 520 (OK CIV APP 1986)
    - ▶ Primarily concerned with lease cancellations after an operator plugged a well and commenced new operations; however, appeals court provided recognition that curative pooling filings are an appropriate function of the OCC
    - ▶ Worth noting this case was not decided by Oklahoma Supreme Court so less authority, but still extremely helpful to operators

# Notice Requirements for OCC Applications

- ▶ Physical addresses will not always be sufficient
  - ▶ Some businesses have physical and mailing - P.O. Boxes are common
  - ▶ Be sure to double check entity receives mail at address
  - ▶ Multiple addresses? Include them all
- ▶ Regularly update addresses throughout OCC matters
  - ▶ Common to have multiple changes before the final hearing on merits
  - ▶ Work with OCC attorney staff to be sure better addresses are noted on Respondent Lists

# Notice Requirements for OCC Applications

- ▶ Publication notice - for parties that cannot be located
- ▶ AFSBP - Affidavit for Service by Publication
  - ▶ Not preferred method
  - ▶ Constitutionally permissible *only* when all other means of giving notice are unavailable
  - ▶ Must show *diligent but unsuccessful* efforts to reach affected parties by better process
  - ▶ *Harry R. Carlile Trust v. Cotton Petroleum Corp.*, 732 P.2d 438 (Okla. 1986)



# Omitted Respondents

- ▶ Reopen - limited timeline
- ▶ Confirmations
  - ▶ Spacing; Multiunit Horizontal Well; Location Exception
- ▶ Amend Applications
- ▶ Waiver of Notice
- ▶ Cleanup Pooling





# Poolings



# Pooling

- ▶ Where owners have *not agreed* to pool their interests and where one such separate owner has drilled or proposes to drill a well on the unit to the common source of supply, the Commission . . . shall, upon a proper application therefor and a hearing thereon, require such owners to pool and develop their lands in the spacing unit as a unit. 52 O.S. § 87.1(e).

# Pooling

- ▶ Give all the owners whose addresses are *known or could be known* through the exercise of due diligence at least fifteen (15) days' notice by mail, return receipt requested.
- ▶ Notice by one publication, at least fifteen (15) days prior to the hearing, in some newspaper of general circulation published in Oklahoma County, and by one publication, at least fifteen (15) days prior to the date of the hearing, in some newspaper published in the county, or in each county, if there be more than one, in which the lands embraced within the spacing unit are situated.
  - ▶ 52 O.S. § 87.1(e)

# Pooling

- ▶ Constitutional rights are viewed as personal and generally may not be asserted by others
  - ▶ *Forest Oil Corp. v. Corporation Com'n of Oklahoma*, 807 P.2d 774 (Okla. 1990)
- ▶ Only those persons, or the duly authorized agent, representative or attorney of those persons, who are mineral owners or owners of the right to drill a well for oil and gas on the lands embraced within the subject area of an application or the owners of correlative rights within the common source of supply or supplies embraced within an application to the extent such owners are directly affected by such application, shall be proper parties to (1) protest any application; present testimony or evidence
  - ▶ 52 O.S. § 87.2

# Pooling

- ▶ The Oklahoma pooling statute does not intend that all owners of right to drill must be joined in a pooling action
- ▶ Pooling statutes states that an action *may* be brought against those owners who have not agreed to develop as a unit
  - ▶ *Marathon Oil Co. v. Corporation Com'n of State*, 651 P.2d 1051 (Okla. 1982)

# Pooling

- ▶ “Right to drill” - not just anyone can file an application for relief through the OCC
  - ▶ Oklahoma Statutes require a party to own the “right to drill” into and produce from such common source of supply
  - ▶ Must own an interest in minerals or hold right to drill
    - ▶ *Leede Oil & Gas, Inc. v. Corporation Com’n of State of Okla.*, 747 P.2d 294 (Okla. 1987);  
*May Petroleum, Inc. v. Corporation Com’n of State of Okla.*, 663 P.2d 716 (Okla. 1982)
  - ▶ Determination of ownership of minerals or the right to drill is a finding of fact to be made by the Commission, whose findings must be supported by substantial evidence
    - ▶ *Samson Resources Co. v. Okla. Corp. Com’n*, 859 P.2d 1118 (1993 OK CIV APP);

# Pooling

- ▶ Operator v. Applicant
  - ▶ Does not have to be the same party—oftentimes can be two separate entities
  - ▶ Applicant just must have the right to drill in subject lands
- ▶ Who will be credited with force pooled interest?

# Pooling

- ▶ 52 O.S. § 87.1
- ▶ Cleanup / Ratification of poolings
- ▶ Reverse poolings

# Pooling

- ▶ Affidavit of Election for Drilling Well Under Pooling Order
- ▶ Affidavit shall constitute *constructive notice* of the rights under the election claimed by the affiant when the affidavit is filed of record in the office of the County Clerk
  - ▶ 52 Okla. Stat. § 87.4
- ▶ Common that operators do not file
- ▶ Statute does not prescribe when OCC Applicant should file affidavit



**ME: I HOPE GAS PRICES DON'T GET ANY HIGHER.  
GAS PRICES:**



# Questions

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