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Oil and Gas: *Unit v. Borehole Pooling*: Where Do We Stand After *Amoco Production Co.* And Its Progeny?

Some of the most significant issues in oil and gas law today surround the *Amoco Production Co. v. Corporation Commission* decision.¹ *Amoco* addressed the issue of whether the Oklahoma Corporation Commission (the “Commission”) has the authority to force pool² the owners of the right to drill by the borehole³ rather than by the drilling and spacing unit.⁴ This issue is significant when owners of the right to drill, who elect not to participate in the drilling of the initial well in the unit, demand to participate in increased density wells⁵ drilled in the unit. The Oklahoma Court of Appeals opinion, as modified by the Oklahoma Supreme Court,⁶ concluded that “[p]ooling by the wellbore is not just and reasonable”⁷ and that “granting a second election [for an increased density well] is a deprivation of a property right of the initial risk capital investors,” i.e., the participants in the original well.⁸ The court also concluded that this deprivation of property rights was a violation of substantive due process as guaranteed by the state and federal constitutions.⁹ The Court of Appeals also stated that the Commission exceeded its jurisdiction because it was attempting to try title to the land.¹⁰

*Amoco* is significant because the Oklahoma Supreme Court, for the first time, adopted the position that a forced pooling order binds the rights of the owners of the right to drill, who elected not to participate in the drilling of the initial well, for all the wells drilled in the unit. Before *Amoco* was decided, most parties to forced pooling orders treated the forced pooling orders as if the orders only pooled the original borehole. In other words, when a well operator¹¹ wanted to drill an increased density well within the unit, an

1. 751 P.2d 203 (Okla. Ct. App. 1986), modifying 57 Okla. B.J. 1961. The opinion, as modified by the Oklahoma Supreme Court Order on certiorari dated Dec. 16, 1987, was expressly adopted by the Oklahoma Supreme Court. *Id.* The modification limited the holding in this case as prospective in all matters where the order of the Corporation Commission was not final as of the date of mandate, which was Feb. 19, 1988.
2. See infra text accompanying notes 21-29.
3. Pooling by the borehole has been defined as “[p]ooling limited and designed to cover only one bore hole and the production from those formations tested or established to be productive of hydrocarbons within the unit, as distinguished from pooling of an entire drilling and spacing unit for all formations.” 8 H. WILLIAMS & C. MEYERS, OIL AND GAS LAW 728 (1987) [hereinafter *OIL AND GAS LAW*].
4. See infra text accompanying notes 22-31.
5. See infra text accompanying note 42.
8. *Id.* at 207.
9. *Id.* at 207-08.
10. *Id.* at 208.
11. A well operator has been defined as “[a] person, natural or artificial (e.g., corporate) engaged in the business of drilling wells for oil and gas.” 8 *OIL AND GAS LAW* at 662.
additional application for a forced pooling order was again made. Although Amoco effectively ended this practice, many unanswered questions remain.

This note addresses three of the most pressing questions presented by Amoco. First, this note analyzes the basis upon which the court reasoned that the forced pooling statute, equity, and substantive due process dictated that the original forced pooling order binds the rights of the owners of the right to drill, who elected not to participate in the drilling of the initial well, for all subsequent wells drilled in the unit. Second, this note discusses the jurisdictional limits of the Commission in reviewing forced pooling orders. Finally, consideration is given to whether there are circumstances under which a court might find it equitable to pool by the borehole.

The Historical Significance of the Pooling Statute

Because of the migratory nature of oil and gas, a mineral owner usually cannot produce oil and gas from a common source of supply without draining some of the oil and gas underlying an adjacent owner's property. Based on this phenomenon, the early courts adopted the "rule of capture" to govern oil and gas property law. Under the rule of capture mineral owners have the right to use reasonable means to produce the oil and gas under the land, even though it is being drained from beneath the land of another owner, provided the producing owners remain within their vertical boundaries. Correspondingly, once mineral owners have leased their mineral interests, the lessee (commonly known as the working interest owner or leasehold owner) steps into the shoes of the mineral owner and has the same right to utilize the rule of capture to extract the oil and gas.

Although the rule of capture grants an owner the right to capture, the owner's rights must be exercised with due regard for the rights of the other

12. Ohio Oil Co. v. Indiana, 177 U.S. 190, 201 (1900). See also 1 E. Kuntz, Oil and Gas §§ 2.2, 2.3 (1962) (general discussion of the physical characteristics of oil and gas).
13. The rule of capture has been defined as "[t]he legal rule of non-liability for (1) causing oil or gas to migrate across property lines and (2) producing oil or gas that was originally in place under the land of another, so long as the producing well does not trespass." 8 Oil and Gas Law at 869.
15. See generally 1 E. Kuntz, supra note 12, §§ 4.1-4.2. See, e.g., Rich v. Donehey, 71 Okla. 204, 177 P. 86 (1918). In Rich, the court stated that oil and gas constitutes "a sort of subterranean female naturae," meaning that the owner of the land overlying the oil and gas reserve does not have an absolute right or title to the oil and gas lying below the land. Id., 177 P. at 89. However, the owner does have the exclusive right to explore for oil and gas by drilling wells and reducing to possession the hydrocarbons which are discovered. Once the owner reduces such oil and gas to possession, absolute title is acquired. Id. See, e.g., Ohio Oil Co. v. Indiana, 177 U.S. 190, 208 (1900); Alphonzo E. Bell Corp. v. Bell View Oil Syndicate, 24 Cal. App. 2d 587, 76 P.2d 167, 175 (1938).
16. A mineral owner is an owner of the property interest created in oil and gas or other minerals after a severance of the minerals from the surface. "The prime characteristic of a mineral interest is the right to enter the land to explore, drill, produce and otherwise carry on mining activities." 8 Oil and Gas Law at 562.
mineral owners within the common source of supply. These reciprocal rights and duties among the owners are known as correlative rights. Correlative rights include the right against waste of extracted substances, against spoilage of the common source of supply, against malicious depletion of the common source of supply and the right to a fair opportunity to extract oil or gas. Courts adopted the doctrine of correlative rights to regulate the rights of mineral owners overlying a common source of supply and to ensure that unbridled application of the rule of capture would not result in waste and injury to the common source.

**Steps to Obtaining a Forced Pooling Order**

Today, when an owner of the right to drill, usually an unleased mineral owner or a leasehold owner, decides to drill a well, the owner will first file an application with the Commission to establish drilling and spacing units for the area of the proposed well. These drilling and spacing units cover the common sources of supply that the applicant believes are potentially productive. The Oklahoma legislature has given the Commission the power to establish drilling and spacing units covering common sources of supply. The purpose of a drilling and spacing unit is to prevent waste and to protect the correlative rights of interested parties. The power to establish drilling and

17. Ohio Oil Co. v. Indiana, 177 U.S. 190, 209-10 (1900). See also 1 E. Kuntz, supra note 12, at § 4.3.

18. Ohio Oil Co. v. Indiana, 177 U.S. 190, 209-10 (1900). See also 1 E. Kuntz, supra note 12, at § 4.3.

19. 1 W. SUMMERS, OIL AND GAS § 63 (1954). Professor Summers recognizes that the doctrine of correlative rights was a necessary result of the law of capture in order to prevent injury to the common source of supply and to ensure that no owner took an undue proportion. The doctrine was summarized in Kingwood Oil Co. v. Corporation Comm'n, 396 P.2d 1008 (Okla. 1964) as follows:

'[C]orrelative rights' has been defined as a convenient method of 'indicating that each owner of land in a common source of supply of oil and gas has legal privileges as against other owners of land therein to take oil and gas therefrom by lawful operations conducted on his own land limited, however, by duties to other owners not to injure the source of supply and by duties not to take an undue proportion of the oil and gas.'

*Id.* at 1010 (quoting 1 W. SUMMERS, OIL AND GAS § 63 (1954)).


21. This statute provides:

To prevent or to assist in preventing the various types of waste of oil or gas prohibited by statute, or any of said wastes, or to protect or assist in protecting the correlative rights of interested parties, the Corporation Commission, upon a proper application and notice given as hereinafter provided, and after a hearing as provided in said notice, shall have the power to establish well spacing and drilling units of specified and approximately uniform size and shape covering any common source of supply, or prospective common source of supply, of oil or gas within the state of Oklahoma.

22. *Id.*
spacing units is found in the state's police power to protect public interest through prevention of waste and protection of correlative rights.\textsuperscript{23}

In exercising this power, the Commission conducts a hearing after proper notice of the spacing application has been given to the mineral and leasehold owners. At the hearing, parties present the proposed well spacing plan for the common source(s) of supply. Evidence is also presented as to the depth at which production has been or is expected to be found, the nature and character of the producing or prospective producing formations, and any other geological or scientific data which would be probative in determining the drilling and spacing units.\textsuperscript{24} After the hearing the Commission issues an order establishing the drilling and spacing units for the common source(s) of supply. The order sets forth the formations spaced by the order; the outside boundaries of the surface area included in the order; the size, form and shape of the unit; the drilling pattern for the area and the location of the permitted well on each unit.\textsuperscript{25}

Unless the Commission grants permission, only one well may be drilled in an established unit.\textsuperscript{26} This one-well-per-unit determination protects the public interest by restricting initial development activity within the unit to those conditions which exist and are known at the time the unit is created. In this manner, unnecessary wells are not drilled. In addition, further development of the unit is conditioned on whether information obtained from the initial well which shows that additional wells are needed for proper drainage of the common source of supply.\textsuperscript{27}

In exercising its authority under the spacing statute, the Commission must also recognize the rights of all interest owners to drill the unit well or otherwise


\textsuperscript{24} The Oklahoma legislature has provided that, in establishing a drilling and spacing unit for a common source of supply, the following evidence shall be material:

(1) The lands embraced in the actual or prospective common source of supply; (2) the plan of well spacing then being employed or contemplated in said source of supply; (3) the depth at which production from said common source of supply has been or is expected to be found; (4) the nature and character of the producing or prospective producing formation or formations; and (5) any other available geological or scientific data pertaining to said actual or prospective source of supply which may be of probative value to said Commission in determining the proper spacing and well drilling unit therefor, with due and relative allowance for the correlative rights and obligations of the producers and royalty owners interested therein.

\textsuperscript{25} Okla. Stat. § 87.1(c) (Supp. 1988).

\textsuperscript{26} Okla. Stat. § 87.1(c) (Supp. 1988).

\textsuperscript{27} Corporation Comm'n v. Union Oil Co., 591 P.2d 711 (Okla. 1979).
share in the production therefrom. These rights attach when the Commission establishes the drilling and spacing unit.28 Thus, before owners develop a drilling and spacing unit, the owners of the right to drill should first agree on how they will develop the unit and on how they will determine their proportionate share of the production.

If an agreement cannot be reached, owners may seek recourse under the provisions of the pooling statute.29 Any owner of the right to drill may apply


29. See supra note 26. The remainder of the section provides, in relevant part, that:

When two or more separately owned tracts of land are embraced within an established spacing unit, or where there are undivided interests separately owned, or both such separately owned tracts and undivided interests embraced within such established spacing unit, the owners thereof may validly pool their interests . . . and where one such separate owner has drilled or proposes to drill a well on said unit to the common source of supply, the Commission, to avoid the drilling of unnecessary wells, or to protect correlative rights, shall, upon a proper application therefore and a hearing thereon, require such owners to pool and develop their lands in the spacing unit as a unit . . . . All orders requiring such pooling shall be . . . upon such terms and conditions as are just and reasonable and will afford to the owner of such tract in the unit the opportunity to recover or receive without unnecessary expense his just and fair share of the oil and gas. The portion of the production allocated to the owner of each tract or interests included in a well spacing unit formed by a pooling order shall, when produced, be considered as if produced by such owner from the separately owned tract or interest by a well drilled thereon. Such pooling order of the Commission shall make definite provisions for the payment of cost of the development and operation, which shall be limited to the actual expenditures required for such purpose not in excess of what are reasonable, including a reasonable charge for supervision. In the event of any dispute relative to such costs, the Commission shall determine the proper costs after due notice to interested parties and a hearing thereon. The operator of such unit, in addition to any other right provided by the pooling order or orders of the Commission, shall have a lien on the mineral leasehold estate or rights owned by the other owners therein and upon their shares of the production from such unit to the extent that costs incurred in the development and operation upon said unit are a charge against such interest by order of the Commission or by operation of law. Such liens shall be separable as to each separate owner within such unit, and shall remain liens until the owner or owners drilling or operating the well have been paid the amount due under the terms of the pooling order. The Commission is specifically authorized to provide that the owner or owners drilling, or paying for the drilling, or for the operation of a well for the benefit of all shall be entitled to production from such well which would be received by the owner or owners for whose benefit the well was drilled or operated, after payment of royalty, until the owner or owners drilling or operating the well have been paid the amount due under the terms of the pooling order or order settling such dispute. No part of the production or proceeds accruing to any owner of a separate interest in such unit shall be applied toward payment of any cost properly chargeable to any other interest in said unit.

For the purpose of this section, the owner or owners of oil and gas rights in and under an unleased tract of land shall be regarded as a lessee to the extent of a seven-eighths (7/8) interest in and to said rights and a lesser to the extent of the remaining one-eighth (1/8) interest therein. Should the owners of separate tracts or interests embraced within a spacing unit fail to agree upon a pooling of their interests and the drilling of a well on the unit, and should it be established by final,
to the Commission for a forced pooling order. After proper notice is given to the owners of the right to drill, the Commission conducts a hearing. At the hearing evidence is presented as to the value of the interests of the owners in the drilling and spacing unit. Evidence is presented as to the value of the oil and gas leases in the area of the proposed well. The value of the leases is usually specified in terms of a bonus paid for the lease and a royalty to be given the mineral owner if production is obtained. Evidence is also heard as to the terms of any farmout agreement between leasehold owners.

An unappealable judgment of a court of competent jurisdiction that the Commission is without authority to require pooling as provided for herein, then, subject to all other applicable provisions of this act, the owner of each tract or interest embraced within a spacing unit may drill on his separately owned tract, and the allowable production therefrom shall be that portion of the allowable for the full spacing unit as the area of such separately owned tract bears to the full spacing unit.

In the event a producing well or wells are completed upon a unit where there are, or may thereafter be, two or more separately owned tracts, the first purchaser or purchasers shall be liable to any royalty owner or group of royalty owners holding the royalty interest under a separately owned tract included in such drilling and spacing unit for the payment of proceeds from the sale of production from the drilling and spacing unit. Each royalty interest owner shall share in all production from the well or wells drilled within the unit, or in the gas well rental provided for in the lease covering such separately owned tract or interest in lieu of the customary fixed royalty, to the extent of such royalty interest owner's interest in the unit. Each royalty interest owner's interest in the unit shall be defined as the percentage of royalty, including the normal one-eighth (1/8) royalty, overriding royalties or other excess royalties owned in each separate tract by the royalty owner, multiplied by the proportion that the acreage in each separately owned tract or interest bears to the entire acreage of the unit. The first purchaser or purchasers shall also be jointly and severally liable for the payment to each royalty interest owner of any production payments or other obligations for the payment of monies contained within the leases covering any lands lying within the drilling and spacing unit . . . .


It should be noted that before the Corporation Commission will have jurisdiction to force pool the interests of any owners, a drilling and spacing unit must exist as to the formations which the applicant wishes to force pool. Id.

30. A Primer on Force Pooling at 650. The author notes that little consideration is given to evidence of transactions outside a nine section area of which the subject section is the center. Id.

31. Bonus is usually cash consideration given in lieu of the right to participate in the working interest of the well. Bonus may also take the form of an overriding royalty (or excess royalty). For a definition of royalty, see infra note 32. The amount and elements of the bonus are intended to equal the current fair market value of an oil and gas lease. A Primer on Forced Pooling at 650.

32. Royalty has been defined as "[t]he landowner's share of production, free of expense of production." 8 Oil and Gas Law at 856. The Oklahoma legislature has determined that all mineral/land owners are entitled to a statutory 1/8 royalty interest which is unaffected by a forced pooling. 52 Okla. Stat. § 87.1(e) (Supp. 1988). An overriding royalty has been defined as "[a]n interest in oil and gas produced at the surface, free of the expenses of production, and in addition to the usual landowner's royalty reserved to the lessor in an oil and gas lease." 8. Oil and Gas Law at 674.

33. A farmout agreement has been defined as "[a]n agreement between operators, whereby a lease owner not desirous of drilling at the time agrees to assign the lease, or some portion of it, . . . to another operator who is desirous of drilling the tract. The assignor in such a deal may or may not retain an overriding royalty or production payment." 8 Oil and Gas Law at 342.
in the area of the proposed well. Additionally, evidence is heard as to the

cost of drilling the well. Ordinarily, the cost is expressed in two terms: an

estimated dry hole cost and an estimated completed well cost.\textsuperscript{34}

After the hearing, the Commission issues a forced pooling order, imposing

a forced election on the uncommitted owners as to the disposition of their

interests in the unit. The forced election gives each owner two basic options.

The owner may either participate in the proposed well by paying the owner's

proportionate part of the completed well costs,\textsuperscript{35} or not participate, accept a

bonus and, if production is obtained, a royalty. Usually, the forced pooling

order will provide an option between receiving a higher royalty with less or

no bonus, or a smaller royalty with a higher bonus. The forced pooling order

typically gives the owners fifteen days in which to choose the terms under

which they desire to proceed. If owners do not make an election, the forced

pooling order specifies the terms under which they will be bound.\textsuperscript{36}

The forced pooling order also designates which owner will be the operator

of the well. Often, the applicant owns the majority interest in the spacing

unit and is named the operator. However, there may be a disagreement

between lessees over operations, in which case the Commission will hear

evidence as to the qualifications of the lessees.\textsuperscript{37} The Commission considers

the percentage of working interest held by each contender. The owner of the

largest share of working interest has the best chance of being appointed

operator; however, other factors are considered. These factors include actual

exploration activity in the area, the number of wells operated in the area,

the extent of developed and undeveloped land each contender has leased in

the area, the availability of operating personnel and facilities, a comparison

of proposed costs of drilling and operating the well, and the relative experience

and competence of the contenders for operating rights.\textsuperscript{38}

A forced pooling order also specifies the date by which the operator must

commence the well. Usually, an order gives the operator 120 days from the

date of the order to commence the well. The order will provide that if the

well has not been commenced within the period provided, the order will be

null and void by its own terms. An expired order cannot be reinstated. If an

applicant wishes to drill a well after the original order has expired, the pooling

process must be repeated from the beginning, including the payment of

bonuses.\textsuperscript{39}

Once the initial unit well is drilled, geological data\textsuperscript{40} may indicate that one

or more additional wells is needed for proper drainage of the common source

\begin{footnotesize}
\begin{enumerate}
\item A Primer on Forced Pooling at 649-50.
\item The well cost contained in the pooling order is an estimate only and a party, by electing

to participate in the well, assumes an obligation to pay his or her proportionate share of the

actual costs of the well. The Oklahoma Corporation Commission retains jurisdiction to determine

proper costs in the event there is a dispute as to the actual costs. If a dry hole is drilled, the

operator is required to return any money a participating party has paid that has not been spent

on the well. \textit{Id.}
\item Id. at 652.
\item Id. at 653.
\item Id.
\item Id.
\item When a well is drilled, a record is kept of the formations penetrated by the well, including
\end{enumerate}
\end{footnotesize}
of supply. If such data is present an owner of the right to drill, usually the operator, may apply to the Commission for permission to drill one or more increased density wells.\textsuperscript{41}

The drilling of these wells is provided for by the increased density statute.\textsuperscript{42} This statute gives the Commission jurisdiction to "permit additional wells . . . within the established unit, upon proper proof . . . that such modification or extension of the order establishing drilling or spacing units will prevent or assist in preventing . . . [waste], or will protect or assist in protecting the correlative rights of persons interested in said common source of supply . . . ."\textsuperscript{43} Case law has established that before the Commission can permit additional wells in the unit, a party requesting to drill an additional well must prove there has been a change in condition or new knowledge of a condition since the unit was established.\textsuperscript{44}

\textit{Amoco Production Co. v. Corporation Commission}

In \textit{Amoco Production Co. v. Corporation Commission},\textsuperscript{45} Amoco challenged a Commission ruling\textsuperscript{46} which held that an original forced pooling order of the Commission\textsuperscript{47} applied only to the drilling of the initial well and not the subsequent increased density wells in the unit. According to the Commission, the parties who elected not to participate in the original well had the oppor-
tunity to make new elections and participate in the subsequent wells in the unit. Amoco argued that once the Commission issued a forced pooling order it applied to the initial well and all subsequent increased density wells in the unit, and therefore no new elections to participate should be permitted.48

In Amoco, R & R Exploration Company applied to the Commission to force pool the interests of the owners in a 640-acre drilling and spacing unit. The Commission pooled sixteen common sources of supply. Among these were the Springer and Red Fork formations. Amoco was appointed as the operator of the well. The other owners of the right to drill were given the option to: 1) participate by rendering their share of the drilling costs, or 2) elect not to participate and receive either; a) cash with an excess royalty interest of 1/16 of 8/8 plus the statutory 1/8 of 8/8; or b) no cash with an excess royalty of 1/8 of 8/8 plus the statutory 1/8 of 8/8.49 Ladd Petroleum Company, a mineral owner, and R & R Exploration, a leasehold owner, elected not to participate and chose the third option of receiving the excess royalty.50

After R & R elected not to participate, it assigned its interest in the unit to Bartex Exploration, Inc. After Ladd made its election, it executed an oil and gas lease covering its interest in favor of Berexco, Inc.51 Amoco drilled and completed the well in the Springer formation within the time prescribed by the Commission. The well, known as the Hunnicutt No. 1, was then shut-in52 for fourteen months awaiting a pipeline connection.53 Immediately after the Hunnicutt No. 1 well was connected to the pipeline, Amoco commenced operations on the Hunnicutt No. 2 well as a proposed Red Fork test well54 within the same 640-acre unit as the Hunnicutt No. 1. After learning of the second well, Bartex and Berexco informed Amoco that they would elect to participate in the Hunnicutt No. 2.

Amoco informed Bartex and Berexco that they did not have the right to make such an election because their predecessors in interest elected not to participate in the drilling of the Hunnicutt No. 1 well.55 Amoco argued that once an election has been made not to participate in the exploration and development of the drilling and spacing units and common sources of supply covered by a Commission order, no new elections may be made in wells

52. A shut-in well has been defined as "[a] producing well that has been closed down temporarily for [lack of a pipeline connection], repairs, cleaning out, building up pressure, lack of a market, etc." 8 OIL AND GAS LAW at 909.
54. A test well has been defined as "[a]n exploratory well drilled to determine whether a particular horizon will be productive of minerals." 8 OIL AND GAS LAW at 998.
which are a part of such exploration and development. Amoco asserted that the Hunnicutt No. 2 was a part of the exploration and development of the Commission order covering the Hunnicutt No. 1.  

Bartex requested the Commission enter an order determining the rights and equities of Bartex under the original pooling order as to the common sources of supply and drilling and spacing units. Berexco intervened to support Bartex and requested that the Commission make the same determination for it.  

The Commission entered an order granting Bartex and Berexco the right to participate in the working interest in the Hunnicutt No. 2 and any other subsequent wells drilled in the unit. The Commission found that the fourteen month period which elapsed between the drilling of the wells was "more than sufficient in which to attempt a completion or evaluation by testing any of the formations above the Springer [of which the Red Fork is one] and having failed to do so, [Amoco] exceeded a 'reasonable period of time' [in which to drill]." The Commission stated that the fourteen month period "clearly separate[d] the two wells in such a fashion so that the Hunnicutt No. 2-29 could not be construed as a continuation of [the] drilling operations" for the Hunnicutt No. 1. Amoco appealed the Commission's order.  

On appeal, Amoco argued that the original pooling order gave it the right to explore all the common sources of supply named in the order. Amoco based its argument on the theory that its rights to explore all the other formations named in the order vested and were no longer vulnerable to extinguishment once it drilled the Hunnicutt No. 1. Amoco claimed that the Commission's second order, giving Bartex and Berexco the right to participate in the subsequent wells, improperly extinguished its vested rights in the common sources and violated the force pooling statute and the substantive due process clauses of the United States and Oklahoma Constitutions.  

57. Id. at 5-6.  
59. Id. at ¶ 14.  
60. Id. at ¶ 19.  
See also infra text accompanying notes 65-66.  
64. U.S. Const. amend. XIV, § 1.  
65. OKLA. CONST. art. II, § 7. Both the United States and Oklahoma constitutions provide that "[n]o person shall be deprived of life, liberty or property, without due process of law." Id.; U.S. Const. amend. XIV, § 1.  
The Oklahoma constitution further provides that:  
No private property shall be taken or damaged for private use, with or without compensation, unless by consent of the owner, except for private ways of necessity, or for drains and ditches across lands of others for agricultural, mining, or sanitary purposes, in such manner as may be prescribed by law.  
OKLA. CONST. art. II, § 23.  
The Court of Appeals accepted Amoco’s argument and focused on four areas in reversing the Commission. The court reasoned that:

(1) The order allowing a second election to participate in the unit was not consistent with the plain meaning of the forced pooling statute.
(2) The order allowing a second election to participate in the unit was not consistent with the forced pooling statute’s requirement of equity.
(3) The action by the Commission violated the principles of substantive due process.
(4) The Commission exceeded its jurisdiction.67

The Amoco court concluded that vesting of the right to explore all common sources named in the pooling order occurred once the time for elections under the pooling order passed.68 According to the court, to hold otherwise would be inequitable.69 The court reasoned that the participating parties had invested risk capital in drilling the initial well, and this investment would be lost if the option to participate in the increase density wells was given to those who had not taken the risk of drilling the initial well.70

In addition, the Amoco court held that the Commission exceeded its jurisdiction when it determined that the fourteen month period between the completion of the Hunnicutt No. 1 and the commencement of operations on the Hunnicutt No. 2 clearly separated the two wells so that the Hunnicutt No. 2 fell outside the perimeters of the original pooling order.71 The court stated that the Commission’s finding was an attempt to determine title in a vested property interest which is clearly beyond the scope of the Commission’s jurisdiction.72

Is Unit Pooling Mandated by the Plain Meaning of the Statute?

In holding the opportunity for a second election to be inconsistent with the Oklahoma pooling statute, the Amoco court emphasized the legislature’s use of the word “unit” in the pooling statute.73 The pooling statute provides that owners are required to “pool and develop their lands in the ‘spacing unit as a unit,’”74 Focusing on this language, the court concluded that the statute mandates unit pooling rather than borehole pooling.75

68. Id. at 207.
69. See id. at 206-07.
70. Id. at 207.
71. Id. at 208.
72. Id.
73. 52 Okla. Stat. § 87.1 (e) (Supp. 1988). For the text of the pertinent parts of this provision, see supra notes 26 & 29.
Bartex and Berexco contended that the legislature intended pooling to be by the borehole because the statute refers to "a well" being drilled or proposed.76 Bartex and Berexco pointed to three cases in which they contended the Oklahoma Supreme Court and the Court of Appeals condoned pooling by the borehole.77 One of the cases Bartex and Berexco relied on was Woods Petroleum Corp. v. Sledge.78 In Woods, the court stated in dicta that "[w]hen Woods applied to increase the density and drill three additional oil wells, it was within the purview of the Commission to adjust the equities on the three proposed wells"79 and require new pooling orders and elections for each well. The Amoco court pointed out that the issue of whether the Commission’s order was a proper adjustment was not the issue on appeal in Woods, and the quoted response was dicta.80 Similarly, the Amoco court distinguished the other two cases cited by Bartex and Berexco by determining that pooling by the wellbore was not at issue in those cases.81

In support of its decision in Amoco, the court pointed to Helmerich & Payne, Inc. v. Corporation Commission.82 In Helmerich & Payne, the owners of the right to drill appealed a Commission order which required them to make their participation election83 on a unit which covered nine governmental sections. The Oklahoma Supreme Court held that the pooling statute84 is restrictive in that the pooling is limited within a drilling and spacing unit of 640 acres.85 The Amoco court focused on the language in Helmerich & Payne which stated that pooling statute is restrictive. The Amoco court stated "[t]his rule applies not only when the Corporation Commission pools more than a single drilling and spacing unit but also when the Corporation Commission tries to limit pooling to a single wellbore."86 Therefore, according to the Amoco court, pooling by the borehole was not permitted.87

However, just as in the three cases relied on by Bartex and Berexco, the issue in Helmerich & Payne was not whether it is proper to pool by the borehole. Thus, the case should not carry any more weight than the other cases presented on the point. Looking at the plain language of the statute and the cases discussed by the court in Amoco, the one clear point is that neither the statute nor the case law directly addresses the issue of whether a forced pooling order covers the unit or the borehole.

76. *Id.* See also 52 Okla. Stat. § 87.1(a) (Supp. 1988).
79. *Id.* at 396.
81. *Id.*
82. 532 P.2d 419 (Okla. 1975).
83. See *supra* text accompanying notes 29-36.
87. *Id.* at 208.
Is Unit Pooling Mandated by Equity?

Because the pooling statute does not directly address the issue of whether a forced pooling order covers a unit or a borehole, the Amoco court emphasized the need for fairness to the parties as the principal reason for determining that a forced pooling order covers increased density wells in a unit. The court focused on the forced pooling statute requirements that a pooling order be on terms which are "just and reasonable" and which will afford "the owner of [a] tract in the unit the opportunity to recover or receive . . . his just and fair share of the oil and gas." The court determined that "[i]t is not reasonable to strip a prudent operator of the property rights he has purchased." Therefore, the court concluded "[p]ooling by the wellbore is not just and reasonable."

Bartex and Berexco argued that the only rights Amoco acquired were the rights to operate the Hunnicutt No. 1 and recover production from those formations tested or established to be productive in that borehole. Therefore, according to Bartex and Berexco the formations not tested within a reasonable time after the pooling order was issued were no longer subject to the forced pooling order and were not purchased by the operator. The Commission found that the fourteen month period Amoco delayed after drilling the Hunnicutt No. 1 to the Springer formation was more than enough time in which to test the formations above the Springer formation. Therefore, according to Bartex and Berexco, because Amoco failed to test the formations above the Springer formation within a reasonable period of time, these formations were no longer subject to the original forced pooling order. Thus, Bartex and Berexco argued a new forced pooling order with new elections was necessary.

The Amoco court rejected this argument and declared that "[r]equiring an operator to complete in every potentially productive formation in the initial well or lose those formations not tested is not just and reasonable and often impossible." Citing Crest Resources v. Corporation Commission, the Amoco court concluded that once the time for elections under the pooling order passed, the interests of the affected parties vested in the operator and were no longer vulnerable to extinguishment. Therefore, ac-

88. Id. at 206-07.
89. Id. at 206 (quoting 52 Okla. Stat. § 87.1(e) (1981)).
91. Id.
96. 617 P.2d 215 (Okla. 1980).
cording to the Amoco court, the right to drill was no longer vulnerable to extinguishment and no new elections were permissible.97 In other words, the Amoco court's interpretation of Crest Resources established the basis on which it could find that there was no need to pool the Hunnicutt No. 2 well because it was included in the original pooling order.98

In Crest Resources, the issue was whether a forced pooling order could be vacated because the Commission-designated operator transferred his managerial responsibilities for the unit to another party by a private contract agreement and because the estimated cost of the well subsequently increased.99 The court held that the managerial responsibility of a Commission designated unit operator is not delegable.100 Therefore, according to the Crest Resources court, the unapproved assignment of an operator's managerial responsibilities does not, per se, constitute a ground for vacating the pooling order because the original operator is still responsible for the operation of the well. Furthermore, according to the court, the estimated costs in the forced pooling order were a projection of the reasonable expenses to be charged and were subject to adjustment.101 Therefore, according to the Crest Resources court, neither an unapproved change of an operator nor a change in the estimated cost of the well is grounds for the Commission to vacate a prior pooling order.102 As part of its rationale for this ruling, the court stated that once the time for elections has passed, the property interests of the affected parties vest in the operator. Therefore, these parties can no longer challenge the forced pooling order's validity based on the unapproved appointment of the operator nor the increase in the cost of the well.103

The Crest Resources court's determination that vesting occurs at the end of the election period must be interpreted in light of the issue in the case. The court in Crest Resources was determining whether the pooling order could be vacated because of an unauthorized delegation of the operator's managerial responsibilities and the subsequent increase in the estimated cost of drilling the well. The case should not be interpreted as holding that property rights to all named formations are not vulnerable to extinguishment at the end of the election period.

In order for a forced pooling order to be applicable to a subsequent well, the initial well must produce in paying quantities.104 Thus, the interest which

98. Id.
100. Id. at 218.
101. Id. at 218.
102. Id.
103. Id.
104. See Nilsen v. Ports of Call Oil Co., 711 P.2d 98, 102 (Okla. 1985) (interpreting Southern Union Prod. Co. v. Corporation Comm'n, 465 P.2d 454 (Okla. 1970)). Production in paying quantities has been defined as "[p]roduction in such quantity as to enable the operator to realize a profit." There are a number of different theories as to what "profit" entails. See 8 OIL AND GAS LAW at 760-61.
vests in the operator at the end of the election period is at most a defeasible fee.\textsuperscript{105} Because a forced pooling order is in the nature of a defeasible fee, it was incorrect for the Amoco court to interpret Crest Resources as holding that an operator's rights to the formations named in a forced pooling order are not vulnerable to extinguishment.

The defeasible fee requires the operator to discover at least one formation that is capable of production in paying quantities. Therefore, one can argue, as Bartex and Berexco did, that only formations tested within a reasonable time after the pooling order issues are purchased. There are also other ways of determining which formations are purchased. For example, one can argue that only the producing formation(s) are purchased, or that only those formations shown to be capable of producing in paying quantities should be considered purchased, or that the formations tested which show capacity to produce are purchased, or that only formations which appear on the geological well log\textsuperscript{106} are purchased, or that all formations named in the forced pooling order are purchased.

The Amoco court continued with its equitable analysis by focusing on the benefits and risks involved in oil and gas exploration. The court directed attention to the fact that elections to participate are made prior to the first well. At that point, the parties make their elections based on certain information or lack of information about possible production in the unit. The court found that “[i]t is not fair or just to alter the positions of the interest owners after the initial well is drilled.”\textsuperscript{107} In other words, according to the court, it is not fair to give those who chose not to participate in the first well the option to participate in future wells, once more information is obtained about the likelihood of production in the unit.

The Amoco court concluded that “new elections deprive the original risk capital investors of rights earned by taking the risk of the initial well.”\textsuperscript{108} According to the court, the right earned by this initial investment was the right to receive a just and fair share of the oil and gas.\textsuperscript{109} The court reasoned that if a second election were given to those who chose to not participate in the initial well, the owners who chose to participate would not be able to receive their just and fair share of the production. In other words, according to the court, by participating in the initial well and taking the risks associated with that well, the owners earned the right to receive a greater share of the production in the increased density wells. The court realized that drilling the initial well gives everyone more geological data

\textsuperscript{105} But see Nesbitt, The Forced Pooling Order: How Long? How Wide? How Deep?, 52 Okla. B.J. 2799, 2804-05 (1981). The author contends that because a forced pooling order contains no definite provision for the termination of the order, the life of the order could include “a temporary cessation of production, or even resumption of drilling after the initial well ceased production and was plugged.” \textit{Id}.

\textsuperscript{106} A defeasible fee is an estate in fee that may be defeated by some future contingency. BLACK'S LAW DICTIONARY 376 (5th ed. 1979).

\textsuperscript{107} See supra note 40.


\textsuperscript{109} \textit{Id}. 
about the formations in the unit, thus increasing the likelihood of successful increased density wells. Therefore, according to the court, those who paid for the data should be able to reap the benefits from it without having to share the profits with those who did not take the risks.\textsuperscript{110}

Because the \textit{Amoco} decision is based in part on equalizing the benefits and risks involved in oil and gas exploration, and because the benefits and risks are different for each well drilled, many questions have arisen concerning the proper balance between the benefits and risks under facts distinguishable from \textit{Amoco}. Therefore, the question remains whether borehole pooling would be appropriate under circumstances distinguishable from \textit{Amoco}.

\textbf{The Requirements of Substantive Due Process}

The \textit{Amoco} court also held that the Commission’s finding of borehole pooling violated federal\textsuperscript{111} and state\textsuperscript{112} substantive due process requirements. The court found that the Commission ruling resulted in an “arbitrary forfeiture of property rights”\textsuperscript{113} which violates both constitutions.\textsuperscript{114}

The Commission derives its authority from the police power of the state. This power extends to protecting correlative rights of owners in a common source of supply and may be exercised by regulating the drilling of the wells.\textsuperscript{115} Due process requires the Commission’s actions to have a “fair and reasonable impact”\textsuperscript{116} on the property rights in question.\textsuperscript{117}

The \textit{Amoco} court previously determined that the Commission’s second ruling did not have a fair and reasonable impact on the vested property rights of the owners participating in the initial well.\textsuperscript{118} Therefore, according to the court, substantive due process was violated.\textsuperscript{119}

Clearly, substantive due process protects vested property rights, and the police power of the Commission is subject to substantive due process limitations.\textsuperscript{120} However, because the \textit{Amoco} court based its decision in part on equitable grounds of fairness and the reasonable actions of a prudent operator, the issue of whether borehole pooling violates substantive due process is also based on the equities involved. Therefore, if the court ever finds that equity dictates that a forced pooling order is applicable to a single borehole then vesting of property rights would occur only in that borehole. Thus, substantive due process would not be violated by

\begin{footnotes}
\item[110] \textit{Id.}
\item[111] \textit{Id.}
\item[112] See supra note 64.
\item[113] See supra note 65.
\item[115] \textit{Id.}
\item[116] \textit{Id.} at 207. See also Patterson v. Stanolind Oil & Gas Co., 182 Okla. 155, 77 P.2d 83, 89 (Okla. 1948); Helmerich & Payne, Inc. v. Corporation Comm’n, 532 P.2d 419 (Okla. 1975).
\item[118] \textit{Amoco Prod. Co.}, 751 P.2d at 207.
\item[119] \textit{Id.} at 206-07.
\item[120] \textit{Id.} at 208.
\end{footnotes}
giving a second election to those who did not participate in the first well.

Jurisdiction of the Corporation Commission

In *Amoco*, the court held that the Commission exceeded its jurisdiction when it determined that the fourteen-month period, between the completion of the Hunnicutt No. 1 and the commencement of the Hunnicutt No. 2 exceeded a reasonable period of time in which to attempt a completion or testing of other formations.\(^{121}\) The Commission held that, because Amoco exceeded a reasonable time period, the same forced pooling order did not govern both wells.\(^{122}\) This ruling allowed the nonparticipating owners in the first well to make new elections on the second well. The *Amoco* court determined that this finding by the Commission was a determination of title in vested property rights.\(^{123}\)

A well-settled rule is that the Commission may not determine title to vested property rights.\(^{124}\) The Commission may amend or modify its pooling orders as to subsequent wells drilled under the orders if it is shown there is a change of conditions or a change in knowledge of conditions.\(^{125}\) The Commission may also clarify or interpret previous orders to determine whether specific operations are within the scope of the order or if the parties have complied with an order.\(^{126}\) The disputes arise over defining these terms and applying them to specific facts.

The *Amoco* court relied on *Nilsen v. Ports of Call Oil Co.*\(^{127}\) in determining that the Commission exceeded its jurisdiction.\(^{128}\) In *Nilsen*, Ports of Call Oil Co. obtained a forced pooling order directing it to begin drilling a unit well within 180 days from the date of the order. Ports of Call commenced a well within the 180 day period, but the borehole was lost after a series of blow outs\(^{129}\) caused by high pressure gas deposits. This borehole was plugged and a second well was commenced. Again the borehole was lost due to blow outs. Ports of Call commenced a third well and completed it as a producing well. The second and third wells were commenced after the 180 day period provided for in the Commission order.\(^{130}\)

121. *Id.* at 207.
122. *Id.* at 208.
130. A blow out is "[a] sudden, violent expulsion of oil, gas and mud (and sometimes water)
The parties who had elected not to participate in the initial well challenged Ports of Call's right to drill the wells commenced after the 180 day period. One of the parties made a challenge in the form of an application to the Commission for a new forced pooling order. Another party made a challenge in district court. In this suit, the petitioner sought to quiet title to the oil and gas leases he acquired in the section.\textsuperscript{131}

The Commission found that a determination of whether Ports of Call's operations had constituted continuous drilling fell outside its authority to "repeal, amend, modify, or supplement"\textsuperscript{132} previous orders. The Commission determined that this was a quiet title action to be decided by the district court. The district court held that it had no jurisdiction over the matter because the suit was an impermissible collateral attack on a Commission order.\textsuperscript{133}

The \textit{Nilsen} court held that the Commission had jurisdiction to determine whether the acts of Ports of Call constituted continuous operations within the terms of the forced pooling order because such a determination was a clarification of its previous order. The court concluded that the Commission had the jurisdiction to determine whether a forced pooling order "ceased by its own terms to be of force and effect."\textsuperscript{134}

The \textit{Nilsen} court stated that the district court had the power to adjudicate the legal effect of the forced pooling order on the private interests involved,\textsuperscript{135} but the Commission had jurisdiction to determine the precise question presented in the case. That question was whether the acts of Ports of Call constituted continuous operations within the terms of the forced pooling order.\textsuperscript{136} The court stated that "where the parties, such as here, are conducting operations under a Commission-imposed pooling order, and the question sought to be litigated arises from the construction of that pooling order, the proper forum to decide the question of construction is the Corporation Commission."\textsuperscript{137}

\textit{Amoco} distinguished \textit{Nilsen} by noting that the issue in \textit{Nilsen} was whether the continuing operations were within the scope of the pooling order. In \textit{Amoco}, according to the court, the Commission was not determining whether there had been compliance with the order, but was determining whether title had vested in Amoco.\textsuperscript{138}

\begin{flushleft}
\textsuperscript{131} Nilsen v. Ports of Call Oil Co., 711 P.2d 98, 100 (Okla. 1985).  \\
\textsuperscript{132} Id.  \\
\textsuperscript{133} Id.  \\
\textsuperscript{134} Id. at 100-01.  \\
\textsuperscript{135} Id. at 102.  \\
\textsuperscript{136} Id. at 103. \textit{See also} Southern Union Prod. Co. v. Corporation Comm'n, 465 P.2d 454 (Okla. 1970).  \\
\textsuperscript{137} Nilsen, 711 P.2d at 103.  \\
\textsuperscript{138} Id.
\end{flushleft}
Bartex and Berexco argued that this case was not a dispute over property rights but rather a request for a clarification of the Commission's original forced pooling order.\footnote{Amoco Prod. Co., 751 P.2d at 208.} According to Bartex and Berexco, the Commission's decision determined that Amoco had not earned the rights to the Red Fork formation (the formation to which the Hunnicutt No. 2 was drilled) because it failed to abide by the conditions under which such rights would vest. Vesting, according to Bartex and Berexco, was conditioned on the completion of the Hunnicutt No. 1 in the Red Fork formation, or at a minimum, for the Hunnicutt No. 1 to have vested in the Red Fork.\footnote{Answer Brief of Bartex, supra note 92, at 16; Rehearing Brief of Berexco, supra note 94, at 12-13.}

The Amoco court's ruling on the jurisdiction of the Commission is valid if it is assumed the property rights to the Red Fork formation vested in Amoco when it drilled the Hunnicutt No. 1. Otherwise, \textit{Nilson} supports Berexco's argument that the jurisdictional issue was whether the drilling of the Hunnicutt No. 2 was within the scope of the pooling order. Because the Amoco decision was based in part on equitable grounds of fairness and the reasonable actions of a prudent operator, if borehole pooling was found to be equitable, Bartex's and Berexco's view of the Commission's jurisdiction could prevail. In other words, the issue of whether a forced pooling order pertains to the unit or the borehole could easily arise from the construction of the pooling order. Therefore, the Commission would be the proper forum for deciding the issue.

\textit{Subsequent Cases Address Issues Raised in Amoco}

Two subsequent decisions of the Oklahoma Supreme Court have addressed some of the questions raised by Amoco.\footnote{Some of the issues raised in Amoco have been addressed in Ranola Oil Co. v. Corporation Comm'n, 752 P.2d 1116 (Okla. 1988), and Inexco Oil Co. v. Corporation Comm'n, 767 P.2d 404 (Okla. 1988), cert. denied, 109 S. Ct. 1943 (1989).} In both cases the appellant attempted to distinguish Amoco and argued that the unit was forced pooled to the borehole and not the unit. In both cases, the Oklahoma Supreme Court held that Amoco was applicable, that the property rights in question were pooled by the original order of the Commission, and that no new election could be made on the drilling of the increased density wells.\footnote{Ranola Oil Co., 752 P.2d at 1118-20; Inexco Oil Co., 767 P.2d at 405.}

In Ranola Oil Co. \textit{v. Corporation Commission},\footnote{752 P.2d at 1116 (Okla. 1988).} the facts were basically the same as in Amoco. After the Commission issued a forced pooling order for the initial unit well, the operator applied to the Commission for permission to drill an increased density well. The operator eventually drilled three increased density wells.\footnote{Id. at 1117.} Ranola is distinguished from Amoco on two grounds. First, the original well and the increased density wells were all drilled to the same formation

\begin{notes}
140. Answer Brief of Bartex, supra note 92, at 16; Rehearing Brief of Berexco, supra note 94, at 12-13.
142. Ranola Oil Co., 752 P.2d at 1118-20; Inexco Oil Co., 767 P.2d at 405.
143. 752 P.2d 1116 (Okla. 1988).
144. Id. at 1117.
\end{notes}
in Ranola. Second, Ranola received its interest from a leasehold owner who had been forced pooled without making an election under the original forced pooling order. Pursuant to the forced pooling statute, the original pooling order stated that if no election was made the nonparticipating lessee would be considered to have elected a cash bonus as consideration. Ranola sought to participate retroactively in the three wells by paying its proportionate part of the drilling costs. Like Bartex and Berexco in Amoco, Ranola argued that the language of the forced pooling order only referred to the initial well.

The issue in Ranola was whether the acceptance of the bonus in lieu of participation pursuant to a forced pooling order operated as an assignment and prevented the taker of the bonus from participating as a matter of right in subsequent increased density wells. Referring to the Amoco decision, the Ranola court stated that a mineral interest owner's election to accept bonus payments in lieu of participation under a forced pooling order acts as a sale of his leasehold rights. Furthermore, according to the Ranola court, a successor in interest to the owner of an oil and gas lease can only assert the same interest as conveyed by the predecessor in interest. Therefore, the court held that the acceptance of the bonus acted as an assignment to the operator of the leasehold interest in the exploratory rights in the formation to which the increased density wells were drilled.

As in Amoco, the Ranola court focused on equalizing the benefits and risks involved in oil and gas exploration. The Ranola court stated that the purpose of forced pooling is to equalize the risk of loss by forcing all the owners of the right to drill to choose in advance whether they will share in both the benefits and risks of oil and gas exploration by participating. The court stated that by not allowing a second election in the increased density wells, the risks between the bonus takers and those who participate in the initial well are properly allocated. According to the court, to allow a successor in interest to the pooled interest "to reap the rewards of development while avoiding the risks would be inequitable."

In Inexco Oil Co. v. Corporation Commission, a dispute arose at the time of the original pooling as to the best location for drilling the proposed well. Inexco's geological interpretation pointed to the southwest quarter of

145. Id.
147. Ranola Oil Co., 752 P.2d at 1117.
149. Ranola Oil Co., 752 P.2d at 1118-19.
150. Id. at 1118-19.
151. Id. at 1118.
152. Id. at 1119.
153. Id. at 1118-20.
154. Id. at 1119.
155. Id.
the section involved, while other leasehold owners argued that the northwest quarter of the section was the best location. Inexco’s view prevailed, and it was appointed as operator of the unit well. This determination prompted the leasehold owners who were in disagreement to elect not to participate in the proposed well.157

Inexco drilled the Wolfe No. 1 well in the center of the southwest quarter of the section, and the completion confirmed the geological interpretation of the other leasehold owners that the well location was less than optimal. The Wolfe No. 1 was only a marginal producer of gas from the Des Moines common source of supply.158

By separate application, Inexco and Ward Petroleum Corporation (one of the nonparticipating leasehold owners) applied to the Commission to drill an increased density well in order to properly recover the hydrocarbons in the Des Moines common source of supply. The Commission held that those who had elected not to participate in drilling the Wolfe No. 1 had surrendered their drilling rights to that well, but they had retained all rights to participate in the increased density well. Ward was appointed the operator of this second well.159

Ward then drilled the Albright Farms No. 1 well in the northwest quarter of the same section. This was the location Ward and the other leasehold owners who had elected not to participate in the Wolfe No. 1 well originally thought to be the best. Completion confirmed their beliefs when the Albright well proved to be a prolific producer of natural gas from the Des Moines common source of supply.160 Inexco appealed the decision of the Commission to allow elections to participate in the increased density well.

The Oklahoma Supreme Court, relying on Amoco and Ranola, held that the Commission’s order allowing borehole pooling was clearly erroneous.161 The court reasoned that the original order required the other owners of the right to drill to participate in the cost of drilling and completing the Wolfe No. 1 or accept a bonus in lieu of participation. The Inexco court stated that once the election period passed, the property interests of the affected parties vested. The court reasoned that by accepting the bonus, Ward assigned its exploratory rights in all subsequent wells drilled in the unit to Inexco, and could assert no right to participate in the subsequent increased density wells.162

Because Amoco, Ranola and Inexco are all based on balancing the benefits and risks involved in oil and gas exploration, it seems logical to hold that under certain circumstances the court could hold that equity requires borehole pooling. However, if pooling by the borehole is ever going to be

158. Id. at 6.
159. Id. at 7.
160. Id. at 8.
161. Inexco Oil Co., 767 P.2d at 405.
162. Id.
upheld by the Oklahoma Supreme Court, the court would have done so in Inexco. As the Inexco facts demonstrate,\textsuperscript{163} it does not seem to be just and reasonable to require an owner of the right to drill to risk his capital in a well he believes will be unproductive when he also believes that another location within the unit would result in a productive well. Thus, the facts in Inexco appear to demonstrate equitable grounds for permitting borehole pooling.

However, assuming borehole pooling was permissible when there was a disagreement as to location, many questions would still remain. Some of these questions include whether borehole pooling would remain the standard for all the increased density wells drilled in the unit, or whether the nonparticipating owners would only be allowed to participate in the well at the location it preferred at the initial pooling. Perhaps, under the latter circumstance, the owners of the right to drill should be required, in advance of any drilling in the unit, to select the locations of the wells in which they would choose to participate. The possibilities for grounds and times for elections are almost unlimited when based on the equities involved in different circumstances. Hence, the better approach may be to have a specific rule which is not based on equity so that all the parties to a forced pooling order will know they must participate in the initial well drilled in the unit or lose their right to participate in any increased density wells.

If the rationale behind the Amoco decision was the court's realization that a standard rule which would apply in all circumstances was needed, then the court should have specifically set forth unit pooling as a rule. Because the Amoco court based its decision at least in part on equitable grounds, the parties in Ranola and Inexco questioned the effect of the forced pooling order to the increased density wells under the facts specific to each of those cases. Similarly, others in the oil and gas industry still question how Amoco will apply in facts distinguishable from Amoco. Today, based on the Ranola and Inexco decisions, the prudent owner of a right to drill should not expect to participate in any increased density wells drilled in the unit if the owner elected not to participate in the initial well in the unit. However, because Amoco was based on equitable grounds, the question of whether borehole pooling will be upheld at some later date remains open.

Conclusion

The purpose of a forced pooling order is to protect the correlative rights of all the owners in a drilling and spacing unit while avoiding the drilling of unnecessary wells. A forced pooling order imposes a forced election on uncommitted interest owners as to the disposition of their interest in the unit.

In Amoco, the court held that "[p]ooling by the wellbore is not just and reasonable"\textsuperscript{164} and that "granting a second election [for an increased density

\textsuperscript{163} See supra text accompanying notes 155-59.

well] is a deprivation of a property right of the initial risk capital investors." Because *Amoco* is based in part on equitable grounds, the question of whether borehole pooling will be upheld at some later date remains open. However, after reading *Ranola* and *Inexco* in light of *Amoco*, it seems reasonable to conclude that the Oklahoma Supreme Court will determine that once an election to participate in the initial well in a unit is made, that election will stand for all wells drilled to any formation which was named in the forced pooling order. Also, the election will bind any subsequent owner of the interest for which the election was made without regard for the reason for such election. In failing to set forth a standard rule which would apply in all circumstances, the *Amoco* court missed an opportunity to conclusively address the issue of unit versus borehole pooling.

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165. *Id.*