

**The MEC's Compulsory Pooling Study Group met in Sanford, January 11, 2013**  
**Ray Covington, Chair** [919-775-5227](tel:919-775-5227) [raycovington@triad.rr.com](mailto:raycovington@triad.rr.com)

Next Meeting: February 8, 2013, 9 am, McSwain Agricultural Center, 2420 Tramway Road, Sanford

The study group task is to provide recommendations to the Legislature by October on forced/compulsory pooling in order to update the existing 1945 laws, which do almost nothing to protect landowners.

Ray Covington denied the accusation he was a "landman." He said he was approached several years ago by "landmen" on his property (tree farmer) in Lee County, and after talking with DENR's Division of Land Resources, understood that natural gas exploration was in NC's future. He said he and a group of Lee County landowners formed NC Oil and Gas LLC in order to have a voice in the process of natural gas exploration on their property, learn about leases and their rights, and get involved since they would be affected.

The meeting was packed, and Covington did allow comments and questions, much to the dismay of James Womack, the MEC Chair and Lee County Commissioner.

1. Pooling and Unitization Laws, by state. NCSU student Allison Saito reviewed ALL state laws on how they handle pools and deal with property owners who do not consent. The State can require pooling; local challenges have not been upheld in court. State laws vary: Missouri requires 75% of surrounding landowners to consent; Kentucky, Ohio, and West Virginia require consent of all surface owners; Colorado requires proof that "reasonable" offers have been made to landowner. Stakeholders in a "pool" must agree based on a percentage of interest in drilling. All owners in the unit, whether consensual or non-consensual have an obligation to cover production costs in the pool, but new law should address how they are allocated, the length of time for a unitization order, and royalty payments. Those who sign leases often get bonus payments; none, to the those forced into a pool.

Other complications, mentioned by Atty. Ted Feitshans, Assoc. Prof at NCSU (and Allison's faculty advisor)

- (a) Bankruptcy of operator. The disposition of lease becomes part of the estate, therefore no remediation.
- (b) If surface owner has USDA loan and the landowner receives any royalties, MUST pay all but the first \$5,000 to Dept. of Agriculture to fulfill loan obligations.
- (c) Indemnify surface owners; SB 820 requires operator to indemnify all landowners.
- (d) Federal lands must approve their inclusion in a pool.
- (e) Liens on property if operator gets into financial mess.
- (f) Conserved land? If state money involved, controlled by state law. Private land trusts: Might be difficult to match up ancient severed rights estates with some of these lands.
- (g) Pooling is based on eminent domain: It serves public purpose and owner receives "just" compensation.
- (h) Water on property may not be used (ponds, creeks), and no roads, or cutting of trees on "compulsory" property. However, gathering pipelines might be OK.

## 2. Lifecycle of Mineral Rights Lease.

*[NOTE: There is a difference in these temporary mineral rights leases and "severed estate" leases. A "severed estate" lease means the mineral rights have been permanently separated from the surface owner (by registered deed). See G.S. 1-42.9. Beginning in 1986 the "severed" leaseholder had to show an unbroken chain of title (30 years in Lee Co; 50 years in Chatham Co), and then register and identify his property area AND pay annual ad valorem taxes to the County. All ancient mineral claims were extinguished unless the above conditions were met. Lee County has more "severed estate" leases than Chatham County. Further, Lee County GIS has ability to overlay the "severed estate" deeds onto current parcel ownership.]*

This discussion by Atty. John Humphrey (formerly with DENR) and James Robinson (RAFI) focused on the differences between "severed estate" leases, new mineral leases, and "compulsory" pooling.

More landowner protections for voluntary leases were included when Senate bill 820 became law in 2012. Many provisions of the law are NOT retroactive to earlier leases.

If sign a lease now: Negotiate lease (self, or with counsel, or create voluntary pool); Lease signing; 7-day Cooling off; Assignment of lease to another company; Bonus payment/royalties audit.

This main discussion reviewed existing 1945 law on Compulsory Pooling. There are few protections for "compulsory pooled" landowners; these issues should be addressed:

- Forces all members of group to share production costs.
- State can compel owners to grant surface and subsurface easements.
- No baseline testing and monitoring.
- Law does not cover reclamation, just inadequate closure bond.
- Current law has no limitations on vegetative impacts.
- Damages to structures are negotiated in court.
- No rules on bore holes.
- No shifting of risk to operator.
- No insurance liability, and surface owner needs to be indemnified against claims resulting from operation
- No dispute resolution.
- Surface owner gets no timeline or written plan for construction.
- No restrictions on lease transfer, and 30-day notice of lease assignment.
- No agreement on mitigation of light and noise. *[NOTE: drills operate 24/7]*
- No compensation schedule, except for a 12.% % royalty, but no way to determine if forced pool "share" is accurate because have no legal right to audit
- No right of inspection.
- Allows water use not in conflict with landowner's water usage , must pay fair market value for water.
- No provisions/limits on infrastructure development on the pooled property by the operator.
- No "retained acreage" clause to accommodate hunting leases, or even other extraction processes, like sand mining.