



Colorado Court Rules State Pooling Order Negates Trespass

By [Bill Sparks](#)

The Denver District Court recently ruled that a Colorado Oil and Gas Conservation Commission (“COGCC”) order—pooling all interests in previously established wellbore spacing units—negates a claim for common law trespass. A copy of this Order can be viewed [here](#). The Court also made significant rulings regarding eminent domain and the due process provided by the COGCC’s mineral pooling procedures.

In this case, the Plaintiffs challenged the pooling order issued by the COGCC under the Administrative Procedure Act (“APA”) (First and Second Claims), alleged private causes of action against the operator for trespass (Third Claim) and implied eminent domain (Fourth Claim), stated claims against the COGCC that the pooling order effectively amounted to a taking of their mineral interest without due process (Fifth Claim), and alleged that the COGCC deprived Plaintiffs of the use of their minerals without just compensation (Sixth Claim). Order at 8-9.

The majority of the Plaintiffs’ claims centered on the allegation that the mineral owner had leased to a third party (after the deadline for election under the COGCC pooling statute) and the COGCC’s failure to recognize this oil and gas lease deprived the mineral owner of certain rights. Order at 6. In other words, the Plaintiffs maintained that they should not be considered “unleased” mineral owners. The Court, however, recognized that the Plaintiffs did not record their oil and gas leases, nor did they make them available to the COGCC or the operator until six weeks before the hearing and eight months after the operator filed its pooling applications (and made offers to lease the Plaintiffs’ minerals). Order at 6.

In response to the Complaint, the operator and the COGCC filed motions to dismiss the Plaintiffs’ Claims for Relief; the Court dismissed four of the six Claims for Relief. Order at 7-8. The Court denied the motions to dismiss as they related to the First and Second Claims for Relief.

In the Third Claim for Relief, Plaintiffs sought a judicial determination that: (1) the operator did not possess eminent domain authority; and (2) that the pooling order and the relevant oil and gas wells amounted to a taking of the minerals without compensation. However, the Court held that the statutory and regulatory scheme for the pooling of oil and gas is “neither a deprivation of property rights, a condemnation of property, or a governmental taking” Order at 7.

Plaintiffs’ Fourth Claim for Relief alleged that the drilling of the oil and gas wells through their minerals without their consent constituted a trespass under common law. Order at 7. The operator maintained in its motion to dismiss that the Colorado Oil and Gas Conservation Act (the “Act”) that authorizes the COGCC to space, pool, and regulate oil and gas negates Plaintiffs’ common-law claim of trespass. The Court agreed and held that the Act is a reasonable and valid exercise of

the state's police power which may "circumscribe an individual's property rights" in furtherance of the Act. Order at 7. The Court also held that the Act grants the COGCC jurisdiction over private property and persons and allows the pooling of nonconsenting unleased minerals after the operator drills the well. Order at 7-8. Thus, the Court ruled, the Act when applied to the facts here, "abrogate a common law claim of civil trespass."

This holding is significant in that Colorado has now followed several other state courts in holding that the state's statutory scheme in regulating oil and gas, including pooling nonconsenting unleased mineral owners, negates common law trespass. *See, e.g. Continental Res. Inc. v. Farrar Oil Co.*, 559 N.W.2d 841 (N.D. 1997) and *Texas Oil and Gas Corp. v. Rein*, 534 P.2d 1277 (Okla. 1974).

On Plaintiffs' due process claims (Fifth and Six Claims for Relief), the Court construed the Fifth Claim as a facial challenge to the pooling statute and held that it lacked merit and was dismissed. Order at 9. Likewise, the Court dismissed the Sixth Claim for Relief, which alleged that the COGCC's refusal to acknowledge Plaintiffs' oil and gas leases deprived them of the use and disposition of their property without just compensation. Order at 9. The Court held that pooling is a reasonable use of the state's police power and does not constitute any constitutional violations.

In sum, the Court upheld the state's pooling authority under the Act and expressly held that pooling negates common law trespass and is a constitutional statute allowing for the reasonable regulation of oil and gas, including over private property rights.

For further information about the effect of the Order, please contact [Bill Sparks](#) or [Jill Fulcher](#).