STATUTORY UNITIZATION: AN UNDER-UTILIZED CONSERVATION TOOL

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INTRODUCTION

• Unitization/unit operations –
  – “... the consolidation of mineral or leasehold interests covering all or a part of a common source of supply.”
INTRODUCTION

• Ark. Code 15-72-308 to 314 – Statutory unitization
• Ark. Code 15-72-315 to 322 – Statutory unitization – Salt water disposal units
• Ark. Code 15-72-323 to 234 – General provisions

INTRODUCTION

• Benefits of unitization
  – Prevents waste
  – Prevents overdrilling
  – Prevents wasteful dissipation of natural reservoir pressure
  – Allows for secondary and tertiary recovery projects
  – Efficiencies of scale
  – Surface use minimized
INTRODUCTION

• H.L. Doherty – Led a crusade for a federal unitization statute in the 1920’s
  – Persuaded President Coolidge to create the Federal Oil Conservation Board
  – Disbanded by President Roosevelt


STATE UNITIZATION STATUTES

• 1929 ABA Section of Mineral Law
  – Adopted policy statement in favor of statutory unitization
  – Many of the principles contained in statement served as foundation for later state regulatory actions

– Maurice Merrill, Stabilization of the Oil Industry and Due Process of Law, 3 S.Cal.L.Rev. 396 (1930)
STATE UNITIZATION STATUTES

• Voluntary unitization statutes
  – California (1929 Cal. Stat. Ch. 534, p. 293)
  – New Mexico (1929 N.M. Laws p. 132)

Failure of industry efforts to voluntarily unitize
  Two voluntary units in Arkansas by 1930 (Amer. Inst. of Min. & Metallurgical Eng’rs (1930)
  North Dome Kettleman Hills Field – CA (federal lands)

STATE UNITIZATION STATUTES

• Louisiana – Limited purpose statutory unitization provision enacted in 1940 (Act 157 of 1940)

• Cycling Operations/Secondary Recovery

• Other states followed: Arizona; Florida, Georgia, Illinois, Indiana
STATE UNITIZATION STATUTES

  – Unitize all or a portion of a common source of supply
  – Not limited to gas cycling or recycling
  – 50% consent requirement
  – Veto provision – 15% - later repealed

STATE UNITIZATION STATUTES

• Palmer Oil Corp. v. Phillips Petroleum Co., 1951 OK 78, app. dism’d, 343 U.S. 390 (1952)
  – Upholds constitutionality of statutory unitization
  – Both facially and as applied to order for West Cement Medrano Unit
  – Delegation of legislative power
  – Due process/regulatory taking
  – 5-4 decision
STATE UNITIZATION STATUTES

• Arkansas
  – Dobson v. Arkansas Oil & Gas Commission, 235 S.W.2d 33 (1950) – AOGCC lacks authority to issue unitization order

STATE UNITIZATION STATUTES

• Most oil and gas producing states have a statutory unitization provision – Kramer & Martin, sect. 18.01
• Pennsylvania and Texas are the major exceptions
STATE UNITIZATION STATUTES

• Procedures
  – Similar to procedures for statutory pooling/integration in most cases
  – Applications – Detailed laundry list of requirements
  – Notice – General conservation statute provisions augmented by agency regulations
  – Hearing – Agency regulations

STATE UNITIZATION STATUTES

• Orders
  – General findings
  – Laundry list approach/tied into application requirements
  – Consent
    • Most states require minimum consent prior to issuance of order
    • Application stage – Ark. Code 15-72-305
    • Order stage
STATE UNITIZATION STATUTES

– Working interest owners, royalty interest owners, unleased mineral interest owners

– Issues in consent requirement
  • Fractional owners
  • Surface acreage
  • Allocation formula

STATE UNITIZATION STATUTES

• Participation/Allocation Formula
  – Proposed by unit operator and contained in Unit Agreement or Unit Operating Agreement
  – Single factor formula
    • Common for pooled units (surface acreage)
    • Uncommon for unitization
  – Multi-factor formula
    • Gilmore v. Oil & Gas Conservation Commission, 642 P.2d 773 (Wyo. 1982)
STATE UNITIZATION STATUTES

- Participation/Allocation Formula
  - Post-execution adjustments
  - Exploratory versus enhanced recovery units
  - Horizontal wells
  - Drainage patterns

HYPOTHETICAL
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