

Arkansas Law Review Symposium: 75th Anniversary of the Arkansas Conservation Act



STATUTORY UNITIZATION: AN UNDER-UTILIZED CONSERVATION TOOL

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we're in it together

INTRODUCTION

- Unitization/unit operations –
 - “. . . the consolidation of mineral or leasehold interests covering all or a part of a common source of supply.”
 - 1 Patrick H. Martin & Bruce M. Kramer, *The Law of Pooling and Unitization* 1-3 (3d ed. 2014)

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



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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



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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
- R.E. Hardwicke, Antitrust Laws, et al. v. Unit Operation of Oil or Gas Pools (1961)



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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
 - 54 Rep. A.B.A. 739-40 (1929)
 - Maurice Merrill, Stabilization of the Oil Industry and Due Process of Law, 3 S.Cal.L.Rev. 396 (1930)



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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)



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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



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STATE UNITIZATION STATUTES



- Oklahoma Unitization Statute – Enacted in 1945 (1945 Okla. Sess. Laws 162-170) – Introduced in 1941
 - 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



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STATE UNITIZATION STATUTES



- Palmer Oil Corp. v. Phillips Petroleum Co., 1951 OK 78, app. dismissed, 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



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STATE UNITIZATION STATUTES



- Arkansas
 - Dobson v. Arkansas Oil & Gas Commission, 235 S.W.2d 33 (1950) – AOGCC lacks authority to issue unitization order
 - Arkansas adopts statutory unitization in 1951 – 1951 Ark. Acts sect. 134

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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
- William F. Carr, Compulsory Fieldwide Unitization, 49 RMMLF Ann. Inst. 733 (2003) (compares language and requirements)

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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

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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

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STATE UNITIZATION STATUTES

- Working interest owners, royalty interest owners, unleased mineral interest owners
- Issues in consent requirement
 - Fractional owners
 - Surface acreage
 - Allocation formula



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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)



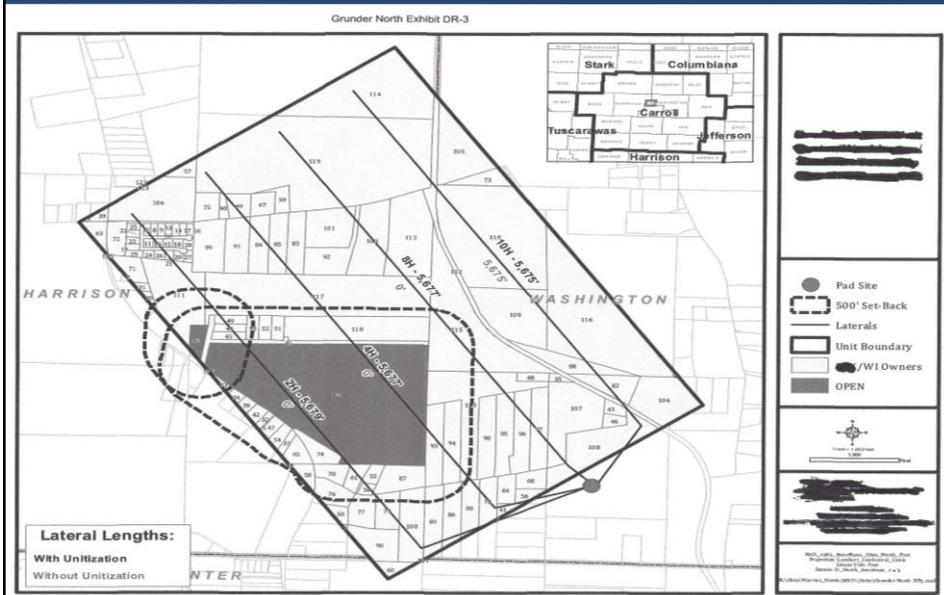
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STATE UNITIZATION STATUTES



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

HYPOTHETICAL



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