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THE UNIT OPERATION OF OIL AND GAS FIELDS: III*

D. The Federal Government

The Federal Government is the largest landowner in the western states and its holdings increase by the purchase and acquisition of lands for governmental purposes in the West and in other sections of the United States. The continued exploration for oil in the older producing states, and in those areas which are just now coming into production for the first time, brings into sharp focus the problem of dealing with the country's number one landowner. Deposits of oil and gas, and the lands which contain these deposits owned by the United States are subject to lease under certain conditions; one of these conditions deals with compulsory unit operation.

The Federal Statutory Law

Back in 1930 the first measure was adopted to cover the unit operation of oil and gas fields which included federal leases and lands. This proposal was made a permanent part of the law in 1931, and after going through the process of amendment, became solidified in 1946 into one

* This is the third of three installments of this article. The first appeared in the Spring Issue of Volume XXVII, the second appeared in the Summer Issue of Volume XXVII of the NOTRE DAME LAWYER. [Editor's note.]  
86 3 INTERSTATE OIL COMPACT Q. BULL. 62-7 (April 1944). At the end of the fiscal year 1950 there was under lease by the Federal Government 23,555,075 acres of public lands. DEPT. INT. ANN. REP. 207 (1950).  
87 60 STAT. 950, 30 U.S.C. § 181 (1946): "Deposits of . . . oil, oil shale, or gas, and lands containing such deposits owned by the United States, including those in National forests, but excluding lands acquired under sections 513-519 of Title 16, and those in incorporated cities, towns, and villages and in national parks and monuments, those acquired under other Acts subsequent to February 25, 1920, and lands within the naval petroleum and oil-shale reserves . . . shall be subject to disposition . . ." See Ely, The Government in the Capacity of Land Owner in CONSERVATION OF OIL AND 73
component of the federal statutes. Under the existing enactment the Secretary of the Interior includes in the terms of oil and gas leases a provision which requires the lessee to operate under a unit plan. The Secretary is authorized to prescribe the plan under which the lessee is to operate. The power of the Secretary of the Interior in connection with unit operation is delegated within the Department. Lands which are under the control of the Bureau of Land Management and the Bureau of Indian Affairs are subject to unit operation.

The Bureau of Land Management, the successor to the General Land Office, regulates the issuance of mineral permits, leases and licenses, while the Geological Survey of the Department promulgates the operating regulations. The Federal Mineral Leasing Act of 1920 in its latest amendment is the charter of the Federal Government in the issuance of oil and gas leases upon the public domain.

Mineral rights in lands purchased by the Federal Government...
ment come under the mineral leasing laws.91

The Federal Public Domain and Acquired Lands92

On this land the Secretary of the Interior is authorized to require leases which provide that the lessees operate under a plan of unit operation. The Bureau of Land Management has issued regulations which concern unit operation under which all applications for unit operation are made the concern of the Geological Survey.93 The pro-

91 61 Stat. 913 (1947), 30 U.S.C. § 351 (Supp. 1952) provides: "As used in this chapter 'United States' includes Alaska. 'Acquired lands' or 'lands acquired by the United States' include all lands heretofore or hereafter acquired by the United States to which the 'mineral leasing laws' have not been extended, including such lands acquired under the provisions of sections 480, 500, 513-519, 521, 552, and 563 of Title 16. . . . 'Mineral leasing laws' shall mean sections 432-438 and 439-452 of Title 48; sections 181-184, 185-188, 189-194, 201, 202-209, 211-214, 223, 224-226, 226d, 226e, 227-229a, 241, 251, 261-263, 271-276, and 281-286 of this title, and all Acts heretofore or hereafter enacted which are amendatory of or supplementary to any of the foregoing sections." 61 Stat. 914 (1947), 30 U.S.C. § 352 (Supp. 1952) provides: "Except where lands have been acquired by the United States for the development of mineral deposits, by foreclosure or otherwise for resale, or reported as surplus pursuant to the provisions of sections 1611-1614, 1615-1630, and 1632-1646 of Appendix to Title 50, all deposits of . . . oil, oil shale, gas . . . which are owned or may hereafter be acquired by the United States and which are within the lands acquired by the United States (exclusive of such deposits in such acquired lands as are (a) situated within incorporated cities, towns and villages, national parks or monuments, (b) set apart for military or naval purposes, or (c) tidelands or submerged lands) may be leased. . . . No mineral deposit covered by this section shall be leased except with the consent of the head of the executive department, independent establishment, or instrumentality having jurisdiction over the lands containing such deposit, or holding a mortgage or deed of trust secured by such lands which is unsatisfied of record, and subject to such conditions as that official may prescribe to insure the adequate utilization of the lands for the primary purposes for which they have been acquired or are being administered. . . ."

92 Ely, The Government in the Capacity of Land Owner in CONSERVA-
TION OF OIL AND GAS, A LEGAL HISTORY—1948 599 (Murphy ed. 1949). During fiscal year 1950 the Department of the Interior approved 32 unit agreements. There were in effect 181 approved plans and some 53.61 per cent of the oil, 47.65 per cent of the natural gas and 74.29 per cent of the gasoline and butane obtained from the public lands were produced on lands covered by units. DEPT. INT. ANN. REP. 208 (1950).

93 43 Code Fed. Regs. § 192.20 (1949) authorizes lessees and their representatives to unite with each other in collectively adopting and operating under a unit plan of development or operation of any oil or gas pool, field, or like area for the purpose of more properly conserving the natural resources of any such oil or gas pool, field, or area determined and certified by the Secretary of the Interior to be necessary or advisable in the public interest. Section 192.21 states that the procedure for obtaining approval of a unit plan acceptable to the department is contained in 30 Code Fed. Regs. §§ 226.1-226.15 (1949).
ceedings necessary to obtain the approval of an agreement for the unit operation on federal land commence with the filing of the proponent's application in the office of the Oil and Gas Supervisor for the region in which the proposed unit area is located.\footnote{The Regional Oil and Gas Supervisors are located in five regions: (1) The California Region—California, with offices in the U. S. Post Office and Courthouse, Los Angeles, California. (2) The Southwestern Region—Arizona, New Mexico and that part of Texas west of the 100th meridian, with offices in the Federal Building, Roswell, New Mexico. (3) The Mid-Continent Region—Alabama, Arkansas, Louisiana, Mississippi, Missouri, Oklahoma and that part of Texas east of the 100th meridian, with offices in the Federal Building, Tulsa, Oklahoma. (4) The Northwestern Region—Colorado, Idaho, Montana, Nebraska, Nevada, North Dakota, Oregon, South Dakota, Utah, Washington and Wyoming, with offices in the Federal Building, Casper, Wyoming. (5) The Eastern Region—Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, Vermont, West Virginia and Wisconsin, with offices in the General Services Administration Building, Washington 25, D. C.}

1. \textit{The Application}.\footnote{\textbf{30 Code Fed. Regs.} § 226.3 (Supp. 1951). \textbf{30 Code Fed. Regs.} § 226.9(b) (Supp. 1951) requires the filing of the application in triplicate and § 226.9(e) requires four counterparts of the geologic report.} Any proponent of an agreement for the unit operation of an area may file his application for the development of the area as a unit. Geologic information, which includes the results of geophysical surveys, and other available information, demonstrating that unit operation is necessary and advisable in the public interest is to be included in the application. Attached should be a map or diagram scaled not less than one inch to the mile which outlines the area to be designated as the unit area. Federal, state and privately owned lands are indicated by distinctive symbols and colors. Federal oil and gas leases, and lease applications, are identified upon the map by serial number. The application and its accompanying data will be considered by the Director of the Geological Survey, a decision made, and the information transmitted to the applicant.
2. The Unit Agreement. (a) Parties. The owner of any right, title, or interest in the oil and gas deposit to be operated as a unit is regarded as a proper party to the agreement and must be asked to join the unit. Where a party fails or refuses to join the agreement, the proponent of the agreement at the time he files his application for approval must submit evidence of reasonable efforts to obtain joinder, and the reasons for the non-joinder. The parties to the agreement must sign it. The signatures should be attested by one witness in the absence of notarization. Signatures made in a representative capacity, or for a corporation, must bear evidence of the authority of the persons to sign if this is not a matter of record in the Department of the Interior. The address of each signer must be set out beneath his signature. Any number of counterparts of the agreement may be executed, or the ratification or consent executed in a separate instrument.

(b) The Unit Operator. The unit operator must qualify as to citizenship in the same manner as do those persons holding interests in oil and gas leases. The operator may be the owner of a working interest in the unit area, or he may be selected by the owners of the working interests. He is to execute an acceptance of the duties of the operator which are imposed by the agreement. No unit operator may be designated or changed without the approval of the

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96 43 Code Fed. Regs. § 192.42 (a) (2) (1949): "A statement as to the citizenship; in case of an individual, whether native born or naturalized and, if naturalized, date of naturalization, court in which naturalized, and number of certificate, if known; if a woman, whether she is married or single, if married, the date of her marriage and the citizenship of her husband; if a corporation, by certified copy of the articles of incorporation and a statement of its duly authorized officers listing the names of all stockholders known to be non citizens or whose addresses are not within the United States, its territories or possessions, giving the amount of stock held by each, if 20 per cent or more of the stock of any class if owned or controlled by any one stockholder, a separate showing of his citizenship and holdings."

97 30 Code Fed. Regs. § 226.2 (j) (Supp. 1951): The interest held in unit substances or in lands which contain them by virtue of a lease, operating agreement, fee title, or otherwise under which, except as agreed in the unit agreement, the owner of such interest is vested with the right to explore for, develop and produce such substances. The right delegated to the unit operator as operator is not a working interest.
Secretary of the Interior. Approval is withheld unless the operator is qualified to fulfill the duties and obligations of the unit agreement.

(c) Inclusion of State-Owned Lands. Where state owned lands are included within the unit area, approval of the unit agreement must be secured from appropriate state officials before submitting the agreement to the Department.

98 Hinkle, Some Legal Aspects of Unitization of Federal and State Public Lands, 11 INTERSTATE OIL COMPACT Q. BULL. 21 (1952) (available in mimeograph form). ALA. CODE ANN. tit. 8, §§ 253, 254, 259, 263 (Supp. 1952), tit. 8, §§ 219, 232, 236 and tit. 47, § 50 (1940) authorize leases by the Director, Department of Conservation, with the approval of the Governor. ARIZ. CODE ANN. c. 11, § 1326 (Supp. 1952) authorizes the State Land Commission to lease state lands and to participate in unit or cooperative agreements. The 1951 Act took effect June 2, 1951 under the terms of Pub. L. No. 44, 82d Cong., 1st Sess. c. 120 (June 2, 1951). ARK. STAT. ANN. c. 10, § 1008 (4) (1947) authorizes the Commissioner of Revenues to lease state land and to participate in unit or cooperative development agreements. CAL. PUB. RES. CODE § 6215 (Deering 1944) authorizes the State Land Commissioner to lease state lands and to participate in a unit or cooperative agreement. CAL. PUB. RES. CODE § 6832 (Deering 1944) relates to unit or cooperative development of state lands. COLO. STAT. ANN. c. 134, § 59 (2) (1949) authorizes the State Board of Land Commissioners to lease and to participate in a unit or cooperative plan. FLA. STAT. c. 253, § 51 (1951) authorizes (a) the Board of Trustees of the Internal Improvement Fund of Florida, (b) the Board of Commissioners of State Institutions of Florida, (c) the State Board of Conservation of Florida, (d) the State Board of Education of Florida and (e) any state board, department, or agency having title to any lands, or the control and management of lands within the ownership of the State of Florida, to execute leases upon such terms and conditions as are agreed upon. IDaho CODE ANN. tit. 47, c. 8, § 1 (Supp. 1951) authorizes the State Board of Land Commissioners to lease state and school lands; IDaho CODE ANN. tit. 47, c. 8, § 11 (Supp. 1951) authorizes participation with the United States, its lessees and others in unit and cooperative plans. ILL. STAT. ANN. c. 93, §§ 90, 102 (Jones Supp. 1951) authorizes the Illinois Department of Finance to lease public lands of Illinois and to participate in unit or cooperative plans. IND. ANN. STAT. tit. 26, c. 6, § 43 (Burns Supp. 1951) authorizes the Board of County Commissioners to lease and pool lands into spacing units. IND. ANN. STAT. tit. 48, c. 5, § 15 (Burns Supp. 1951) authorizes the Township Trustee, Board of Town Trustees, or the Common Council to do likewise. IND. ANN. STAT. tit. 46, c. 16, §§ 1 (7), 2, 7, 8, 13-15 (Burns 1952) designate the Indiana Department of Conservation to lease state lands and to compel unit operation. IOWA CODE ANN. c. 84, § 10 (1949) authorizes the leasing of state land upon agreed terms subject to the approval of the district court of the county in which the land is located. KAN. GEN. STAT. ANN. c. 74, § 3315 (Corrick 1949) authorizes the State Forestry, Fish and Game Commission to lease its lands upon such terms as it may prescribe. KAN. GEN. STAT. ANN. c. 76, § 112 (Corrick 1949) authorizes the State Board of Administration to lease lands, the title to which is vested in Kansas, upon the usual standard form of lease. KAN. GEN. STAT. ANN. c. 76, § 164 (Corrick 1949) authorizes the State Board of Regents to lease lands under its control upon prescribed conditions. KAN. GEN. STAT. ANN. c. 76, § 1924 (Corrick 1949) authorizes the Board
THE UNIT OPERATION OF OIL AND GAS FIELDS

of Managers of State Soldiers’ Home and the Mother Bickerdyke Home Annex to lease lands under its control upon the usual form of lease. KAN. GEN. STAT. ANN. c. 12, §§ 1654, 1659 (Corrick 1949) authorize cities of the second or third class to lease lands. KAN. GEN. STAT. ANN. c. 55, § 211 (Corrick 1949) provides that the School-District Board of any School District may lease its lands. KAN. GEN. STAT. ANN. c. 55, §§ 211 a-b (Corrick 1949) permit Municipal Corporations, Townships and Cemetery Associations to lease their lands for oil. LA. REV. STAT. ANN. tit. 30, § 124 (West 1951) authorizes the State Mineral Board to lease lands belonging to the state, or lands the title to which is in the public. LA. REV. STAT. ANN. tit. 30, § 129 (West 1951) authorizes entrance into units for cycling, recycling, pressure maintenance or repressuring in fields producing oil, gas and gas from which condensate or distillate may be extracted. MONT. REV. CODE ANN. § 2892-01 (Supp. 1950) authorizes counties and municipalities to lease and to participate in unit development and operation. MISS. CODE ANN. § 5948 (1942) authorizes the State Mineral Lease Commission to lease state lands upon proper conditions. MISS. CODE ANN. § 6485 (Supp. 1950) authorizes leases by agricultural high schools and junior colleges; MISS. CODE ANN. §§ 6726-02, 6726.3 (Supp. 1950) authorize the board of trustees of state institutions of higher learning to enter into leases. MISS. CODE ANN. § 6152-51 (Supp. 1950) authorizes leases for unit agreements by public officers. MONT. REV. CODES ANN. tit. 81, c. 17, § 1 (1947) authorizes the State Board of Land Commissioners to lease state lands, and MONT. REV. CODES ANN. tit. 81, c. 17, § 2 (4) (1947) authorizes participation in unit and cooperative agreements. NEB. REV. STAT. c. 57, § 218 (1943) authorizes the governing boards of all lands in the state, except the Board of Educational Lands and Funds, to make leases upon lands under their control. NEB. REV. STAT. c. 72, § 901 (1950) authorizes the Board of Educational Lands and Funds to lease their lands. N. M. STAT. ANN. c. 8, § 1101 (1941) authorizes the Commissioner of Public Lands to issue leases for oil and gas purposes upon state lands. N. M. STAT. ANN. c. 8, § 1138 (Supp. 1951) authorizes participation in unit or cooperative operation in development of any oil or gas pool, field, or area. N. D. REV. CODE tit. 15, c. 5, § 9 (1949) authorizes the Board of University and School Lands to lease lands under its control. N. D. REV. CODE tit. 38, c. 9, §§ 2, 3 (1943) authorize the governing body of any township, city, village, school district, or park district to lease its lands and to permit the consolidation of its leased lands as a unit for development and operation. OKLA. STAT. tit. 52, § 287.11 (1951) authorizes the Commissioners of the Land Office, or officers of other boards controlling and managing state lands to consent to and to participate in a program of unitization. For other statutory provisions in Oklahoma, see note 68 supra. ORE. COMP. LAWS ANN. tit. 106, c. 1, § 6 (1940) authorizes leases by the State Land Board. S. D. CODE § 15.0502 (1939) authorizes the Board of School and Public Lands to make rules and regulations governing the duty of its Commissioner to execute leases, and § 15.0507 authorizes the Commissioner to execute leases. S. D. CODE § 42.0815 (Supp. 1952) authorizes the Board of School and Public Lands and the Rural Credit Board to enterinto unit agreements. TEX. STAT., REV. CIV. art. 5421 c. (Vernon 1948) governs the leasing of lands owned by the State of Texas. TEX. STAT., REV. CIV. art. 2603a (Vernon 1948) governs the leasing of lands owned by the University of Texas. TEX. STAT., REV. CIV. art. 2613a-3 (Vernon 1948) covers the leasing of lands belonging to the Texas A. and M. College. TEX. STAT., REV. CIV. art. 5382d (Vernon Supp. 1952) permits unit operation, under specified conditions, of lands owned by any other department, board, or agency of the state, through an agreement executed by the Commissioner of the General Land Office. TEX. STAT., REV. CIV. art. 6006b, § 2 (Vernon Supp. 1950) authorizes the Commissioner of the General Land Office to execute contracts which commit the state’s royalty interest in “lands set apart by the Constitution and laws of this State for the Permanent Free School Fund and the several asylum funds, in river beds, inland lakes, and channels, and the area within tidewater limits, including islands, lakes, bays, inlets, marshes, reefs, and the bed of the sea, [provided that the agree-
(d) The Application of State Law to Non-Federal Lands in a Unit. Where authorized by laws of the state in which the unit area is located, a provision may be inserted in the agreement which accepts the state laws to the extent that they are applicable to the non-federal lands in the unit.

(e) Approval of the Unit Agreement. The unit agreement is to be approved by the Secretary of the Department of the Interior upon a determination that it is necessary or advisable in the public interest, and is for the purpose of more properly conserving natural resources. Any modification of the agreement must be approved. The agreement may not be approved unless at least one of the parties to the pact is a federal lease holder within the proposed unit area, nor unless the parties hold sufficient interests within the proposed area to give a reasonably effective control of the operation. The approval of the Secretary is incorporated within a certificate which is appended to the agreement.
(f) **Inapplicability of Federal Operating Regulations.** When federal land included in the unit agreement amounts to less than fifty per cent of the acreage of the proposed unit, or when the field to be unitized is fully developed and the federal land included amounts to less than fifty per cent of the acreage of the proposed unit, the agreement may, with the approval of the Secretary, make portions of the Operating Regulations inapplicable to the federal land.

(g) **The Form of the Unit Agreement for Unproven Areas.** A form of unit agreement for unproven areas is provided in the regulations applicable to unit operation, but its use is not mandatory. Modification is necessary in areas in which oil and gas has been discovered previously. It is advisable to submit variations and departures from the official form to the Department for its preliminary consideration prior to the execution of the agreement.

3. **The Contents of the Unit Agreement for Unproven Areas.** The unit agreement for unproven areas proposed in the regulations contains these clauses:

(a) **The Unit Area.** The land description of the unit area is given by legal subdivisions of the public survey. Exhibit A attached to the agreement is a map showing the unit area, its boundaries and the identity of tracts and leases within the area to the extent known. Exhibit B is a schedule attached to the agreement showing the acreage, percentage and kind of ownership of oil and gas interests in land within the proposed unit area to the extent known. The unit area may be contracted or expanded by the

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99 Care must be taken not to confuse the unit agreement with the unit operating and accounting agreement. The latter is a private agreement similar to the unit plan of operation and is arrived at by agreement between the interested parties. Malone, *Oil and Gas Leases on United States Government Lands in Institute on Oil and Gas Law* 203, 344 (1951); Terrill, *Unit Agreements in Unitized Operations: A Review of Their Past and Some Speculations as to Their Future; With Particular Comments on Federal Unit Agreements in Institute on Oil and Gas Law* 1, 35-40 (1950); 30 Code Fed. Regs. § 226.12 (Supp. 1951).

unit operator upon his own motion, or at the demand of the Director of the Geological Survey, where necessary or desirable. A notice of the proposed contraction or expansion setting out the change contemplated, the reasons for the change and the effective date of the action is to be prepared by the operator and distributed to the Regional Oil and Gas Supervisor, and to the last known address of the working interest owners, lessees and lessors whose interests are affected. The notice must inform these persons that they have thirty days in which to object to the proposed action. At the expiration of this period proof of notice is filed with the Supervisor with the objections. The expansion or contraction becomes effective as of the date set out in the notice when approved by the Director.

(b) *Unitized Substances.* The unit substances are oil and gas in all formations of the land within the unit agreement. The federal unit agreement thus proposes unit operation of all common sources of supply rather than the one common source of supply in the state statutes.

(c) *Unit Operator.* The agreement designates the unit operator. The operator agrees to accept the duties of unit operator for the discovery, development and production of unitized substances. The operator may resign prior to the establishment of a participating area but his resignation does not become effective for a period of six months after giving notice to the owners of the working interests and to the Director, unless a new operator is selected, approved and assumes the duties. The operator may resign under the same conditions after the establishment of a participating area in which event the working interest owners are jointly responsible for his duties until a successor is selected, approved and assumes the duties. The resignation of the operator does not release liability for default incurred prior to the effective date. An operator in default, or failing in his obligations, may be removed by a majority vote...
of the working interest owners. Such removal is final upon notice to the Director. Upon resignation or removal the operator is to deliver to his successor, or to the working interest owners, all equipment, materials and appurtenances used in the operation of the unit.

(d) **Successor to the Unit Operator.** A successor to an operator who resigns or is removed is chosen by the working interest owners in a participating area\(^1\) upon an acreage basis, or, if no participating area is established, by the working interest owners in the unit area\(^2\) upon an acreage basis. A majority vote is required. If a majority, but less than seventy-five per cent, of the working interest is owned by one party, a concurring vote of at least one additional working interest owner is required to select a new operator. The selection is not effective until the operator chosen accepts in writing the duties and responsibilities of operator and is approved by the Director. If no successor qualifies, the Director at his election may terminate the agreement.

(e) **The Accounting Provisions of the Unit Agreement.**\(^3\) The costs and expenses of unit operation are apportioned among the working interest owners and paid by them under the terms of the agreement entered into between them, which is referred to as the unit operating agreement. This agreement is to provide the manner in which the working interest owners are entitled to receive their share of the benefits in conformity to their underlying operating agreements, leases, or contracts, and such other agreements as may have been made between the working interest owners and the operator. This operating agree-

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\(^1\) 30 Code Fed. Regs. § 226.2 (i) (Supp. 1951). A participating area is that part of the unit area to which production is allocated. It is a part of the unit area determined to be productive of unit substances.

\(^2\) 30 Code Fed. Regs. § 226.2 (c) (Supp. 1951). The area logically subject to development as a unit is the unit area.

\(^3\) Terrill, *supra* note 99, at 1, 35-40.
ment does not modify the terms of the unit agreement, nor
does it relieve the operator of any obligations under the
unit agreement. In the case of inconsistency between the
agreements, the unit agreement is to control. Three copies
of the operating agreement must be filed with the Super-
visor.

(f) Rights and Obligations of the Unit Operator. The
exclusive right and duty of exercising the rights of the
parties to the unit agreement which relate to prospecting,
producing, storing, allocating and disposing of the unit
substances is vested in the unit operator. Evidence of title
to the rights to unit substances deposited with the operator,
together with the agreement, define the rights of the
operator. No transfers of title to land, leases, or operating
agreements are required. The operator exercises the rights
of possession and use for the purposes of the unit operation.

(g) Drilling to Discovery. Within six months after the
effective date of the unit agreement, the operator is to drill
an adequate test well at a location approved by the Super-
visor, and continue to drill it until a designated formation
has been tested, unless at a lesser depth paying quantities
of unit substances are found which can be produced in
quantities sufficient to repay the cost of drilling and pro-
ducing operations together with a reasonable profit. The
first well may have a maximum depth limitation imposed
by the agreement. Until a deposit of unit substances
capable of production in paying quantities is located, the
operator is to continue to drill one well at a time, allowing
not more than six months to elapse from the completion of
one well until the beginning of another well, until a well
with paying quantities of unit substances is found, or until
the unit lands are reasonably proven incapable of produc-
tion in the formations drilled. The drilling requirements
do not limit the operator’s right to resign nor do they re-
quire him to commence or continue drilling pending the effective date of his resignation.

The Director may modify the drilling requirements by granting reasonable extensions of time. Failure to comply with the drilling requirements subjects the unit agreement to termination at the option of the Director after reasonable notice to the working interest owners, lessees and lessors.

(h) Plan of Further Development and Operation. Within six months after the successful completion of a well capable of producing unit substances in paying quantities, the unit operator is to submit, for the Supervisor's approval, an acceptable plan of development and operation for the unit lands. When approved, this plan constitutes the further drilling and operating obligations of the unit operator. The Supervisor is authorized to grant a reasonable extension of the six month period because of unusual circumstances or conditions. At the expiration of the time period established in the approved plan, the operator is to submit a further plan for drilling and operation which covers a specified period. The plan submitted is to provide for the exploration of the unit area and for the determination of the commercially productive areas in the formations. It is to be complete, adequate for timely development and designed for the proper conservation of the area's oil and gas resources. The plan must specify the number and the locations of the wells to be drilled, the order and time of drilling and the operating practices necessary for conservation. Separate plans may be provided for separate productive zones. The plan may be modified or supplemented. After the completion of one commercial well, no further wells may be drilled except to protect against drainage from operators not parties to the agreement, or as are specifically approved by the Supervisor.

(i) Participation After Discovery. Upon the comple-
tion of a well capable of producing paying quantities of unit substances, or as soon thereafter as the Supervisor requires, the operator is to submit to the Director for approval a schedule based upon subdivisions of the public land survey, or aliquot parts, of the unit land then reasonably proved as productive. The lands in the schedule, upon the Director's approval, become a participating area effective as of the date of the first production. The schedule is to establish the percentage of allocation for each tract which governs the allocation of production as of the date the participating area becomes effective. Separate participating areas are established for separate pools or deposits of unit substances, produced as a single pool or zone, and any two or more participating areas may be combined into one with the consent of the working interest owners and the approval of the Director. A participating area may be revised from time to time, subject to approval, to include added land regarded as reasonably productive in paying quantities, or to exclude land not productive; the percentage of allocation may also be revised. The effective date of a revision is the first day of the month which follows the date of the knowledge or information upon which the revision is predicated. No land may be excluded from a participating area because of the depletion of the unit substances.

The participating area is that area known or reasonably estimated to be productive of paying quantities of unit substances. Regardless of a revision of the participating area, there is to be no retroactive adjustment of production obtained prior to the effective date of revision.

In the absence of agreement between the operator and the Director as to the definition or redefinition of a participating area, or until an area has been established, the portion of all payments affected may be impounded in a manner which has the mutual approval of the operator and the working interest owners, except royalties due to
the United States. The Supervisor is to determine the amounts due, and these are to be deposited and held as unearned money until an area is approved and thereafter returned or applied as earned in accord with the federal royalty due in the area.

When it has been concluded, subject to the approval of the Supervisor, that a well is not capable of producing paying quantities, and that the inclusion of the land upon which it is located within a participating area is unwarranted, production from the well is allocated to the land upon which it is located so long as that land is not within a participating area for the pool or zone from which the production comes. Settlement for working interest benefits is made as provided in the unit operating agreement.

(j) Allocation of Production. The unit substances produced from the participating area, except that part used in conformity with good operating practices within the unit area for drilling, operating, camp and other drilling and operating purposes, for repressuring or recycling under a plan approved by the Supervisor, or unavoidably lost are produced equally upon an acreage basis from the tracts within the participating area. The production is allocated to each tract of land in the percentage that the tract’s acreage bears to the total acreage of the participating area, regardless of whether or not one or more wells are drilled upon any part of the tract or upon the tract. Where gas produced from one participating area is used to repressure or to recycle in another participating area, the first gas withdrawn from the second area for sale is to be considered to be the transferred gas until an amount equal to that sent over is produced for sale. The gas is to be allocated to the area from which it was transferred as it is constituted at the time of production.

(k) Development or Operation of Non-Participating Land or Formations. A party to the unit agreement who
owns or controls the working interest in any unit land which has a regular location may, at his own risk and expense, and with the approval of the Supervisor, drill a well to test a formation for which no participating area exists, or drill a well to test a formation within a formation for which such an area exists if the location is not within the boundaries of the area, unless within ninety days after notice of intention to drill to the operator, the operator elects and commences to drill such a well. If the well drilled results in production entitling the well to be included within a participating area, such an area is to be established or enlarged and the well thereafter is to be operated by the unit operator. Where the well drilled obtains production in quantities which do not justify its inclusion in a participating area, it may be operated by the party drilling, subject to the conservation requirements of the agreement, and the royalty paid as specified in the lease.

(1) Royalty Settlement. The United States, any state and all royalty owners are entitled to the right to take in kind their share of the unit substances allocated to the tract. The operator, and the working interest owner operating a well in special cases, are to make deliveries in kind in conformance with the contracts, laws and regulations applicable. Settlement for royalties not taken in kind is to be made by the working interest owners responsible therefor under existing contracts, laws and regulations, on or before the last day of the month for unit substances produced during the preceding calendar month. Where gas obtained from lands not subject to this agreement is introduced into any participating area for use in repressuring, stimulation of production, or increasing ultimate recovery in conformity with a plan approved by the Supervisor, a like amount of gas (after settlement for any gas transferred from another participating area and with due allowance for
loss or depletion) may be withdrawn free of royalty as to dry gas but not as to the products which may be extracted. The withdrawal of such gas must be at times either provided for in the unit operating agreement, or consented to by the Supervisor as conforming to good engineering practices. The right of withdrawal terminates upon the termination of the unit agreement.

Royalty due to the United States is computed as provided in the operating regulations and paid in kind or in value upon the basis of the amounts allocated the federal unit lands at the rates set in the federal lease, or at such lower rate authorized by law or regulation. In leases in which the royalty rate depends upon daily average production, this production is determined as though each participating area was a single consolidated lease.

(m) Rental Settlement. Rentals or minimum royalties due on leases committed to the unit are paid by the working interest owners responsible therefor under existing contracts, laws and regulations. Rentals or minimum royalties for lands of the United States included in the unit are paid at the rate specified in the leases unless suspended or reduced by law or upon approval of the Secretary and his authorized representatives.

With respect to non-federal land included within the unit subject to leases which provide for termination unless drilling operations are commenced or rentals paid for the privilege of deferring drilling, these rentals accrue and are payable until the time the required drilling is commenced or the land is included within a participating area.

(n) Conservation. Operations under the agreement and the production of unit substances are conducted to provide for the economical and efficient recovery of the substances without waste as defined by state or federal law or regulation.
(o) **Drainage.** The unit operator is to prevent drainage of unit substances from the unit land by wells on lands not subject to this agreement, or to pay a fair and reasonable compensatory royalty determined by the Supervisor.

(p) **Leases and Contracts Conformed and Extended.** The terms and conditions of all leases, subleases and contracts which relate to the exploration, drilling, development, or operation for oil or gas on lands committed to the unit agreement are expressly modified and amended to conform to the agreement. The parties to the unit agreement consent to the alteration, change, establishment, or revocation of the drilling, producing, rental, minimum royalty and royalty requirements of federal leases committed to the unit agreement.

Leases, contracts and subleases are modified: (a) to the extent that development and operation under the agreement are development and operation with respect to each separately owned tract irrespective of actual development and operation upon the tract; (b) to the extent that drilling and producing operations upon any tract in the unit are accepted and deemed to be performance upon each tract and no lease expires by reason of failure to drill or produce on any certain tract; (c) to the extent that suspension of drilling or producing operations at the direction or consent of the Secretary operates to constitute suspension as to each tract in the unit; (d) to the extent that each lease, sublease, or contract which might expire prior to the termination of the unit agreement is extended and continued in full force and effect for the term of the agreement; (e) to the extent that a federal lease with a fixed term of twenty years is to continue in force until the termination of the agreement, and all other federal leases committed continue so long as the land remains in the unit, provided unit substances in paying quantities are found prior to the expiration of the primary term of such a lease; (f) to the
extent that each sublease or contract which relates to the operation and development of unit substances on lands of the United States which would expire prior to the time at which the underlying lease in (e) expires is continued until the expiration of such lease as extended; and (g) to the extent that any lease under which but a portion of its lands are committed is to be segregated as to that part committed and the terms of such a lease applied separately to the segregated and non-segregated parts from the effective date of the unit agreement. Lump sum rentals under such leases are prorated upon an acreage basis.

(q) **Covenants Run With Land.** The covenants in the agreement are construed as running with the land with respect to the interests of the parties to the agreement and their successors in interest until the agreement ends. Any grants, transfers, or conveyances of an interest in land or in leases are conditioned upon the assumption of all of the privileges and obligations of the agreement by the grantee, transferee, or other successor in interest. No assignment or transfer of a working interest or royalty is binding upon the operator until the first day of the calendar month following the month in which the original, photostatic, or certified copy of the instrument is received by the operator.

(r) **Effective Date and Term.** The agreement becomes effective upon approval by the Secretary and ends not more than five years from such a date unless (1) the date of expiration is extended by the Director; (2) it is reasonably determined before the expiration date that the land is incapable of the production of unit substances in paying quantities in the tested formations, in which event, after notice of termination upon such a ground to parties in interest at their last known address, the agreement ends with the approval of the Director; (3) a valuable discovery of unit substances has been made on the unit land during the initial term or any extension, in which event the agree-
ment or extension is to remain in effect for such a time and so long as unit substances are produced in paying quantities, and, should production cease, so long as diligent operations are in progress to restore production or to discover new production and to produce such new production; or (4) it is terminated as provided otherwise in the agreement. Seventy-five per cent, on an acreage basis, of the working interests signing the agreement may terminate it at any time upon approval of the Director. Notice of approval must be given by the operator to all parties to the agreement.

(s) **Rate of Prospecting, Development and Production.** The Director is authorized to alter or to modify in his discretion the quantity and rate of production under this agreement where these factors are not fixed under federal or state law, or where they do not conform to any statewide voluntary conservation or allocation program, established, recognized and generally adhered to by a majority of operators in the state. The alteration or modification is limited to the public interest which must be stated in any order which alters or modifies the agreement.

Without regard to the foregoing, the Director is vested with authority to alter or to modify, in his discretion, the rate of prospecting and development and the rate of production in the interest of conservation objectives stated in the agreement, provided his order is not in violation of state or federal law. The Director may exercise his power only after notice to the operator and a hearing held not less than fifteen days after such notice.

(t) **Determinations by the Unit Operator and Their Review.** Where a determination is required to carry out the terms of this agreement, and the agreement does not specify by whom that determination is to be made, the operator is authorized to make the determination subject to the approval of the Director. Notice of such a determina-
tion, together with the data upon which it is based, is furnished to the Director through the Supervisor. The Director notifies the operator of any incorrect determination and thereafter it is of no force or effect. The operator then may make a new determination or appeal to the Secretary as provided by the Operating Regulations. Any determination made is effective unless altered, modified, or rescinded.

A party to the agreement has the right to request the Director (supporting the request with appropriate evidence) to review a determination by the operator. The request may be granted or denied at the Director's discretion within sixty days after its receipt. If denied the party may appeal to the Secretary. If the request is granted the Director notifies the operator who then complies with the change or appeals to the Secretary.

(u) **Appearances.** The operator, after notice to the parties, has the right to appear for such parties before the Department, to appeal from orders issued under the regulations of the Department, and to apply for relief from the regulations or proceedings which relate to operations before the Department or other legally constituted authority. A party has a right to be heard at his expense in any proceeding.

(v) **Notices.** All notices, demands, or statements required are given if supplied in writing and personally delivered to the party, or if sent by postpaid registered mail to the address given in connection with signing the agreement, or such other address furnished in writing.

(w) **No Waiver of Certain Rights.** The agreement does not waive the right to assert any legal or constitutional right of defense as to the validity or invalidity of any law of the state in which the unit is located, or of the United States, or regulations thereunder which affect the party, or of any right beyond his authority to waive.
(x) **Unavoidable Delay.** The obligations under the agreement which require the operator to commence or to continue the drilling, operating, or producing of unit substances are suspended so long as the unit operator, despite care and diligence, is prevented from compliance due to strikes, acts of God, federal, state, or municipal laws or agencies, unavoidable accidents, uncontrollable delays in transportation, inability to obtain necessary materials in the open market, or other matters beyond the reasonable control of the operator whether similar to the enumeration or not.

(y) **Fair Employment.** The operation is not to discriminate against any employee or applicant for employment because of race, creed, color, or national origin; a like clause is to be included in all subcontracts.104

(z) **Loss of Title.** In the event title to a tract of land in the unit fails and the true owner cannot be induced to join the unit agreement, the tract is automatically regarded as not committed and a readjustment of future benefits and costs is made. In the event of a dispute as to title to royalty, working interests, or other interests, payment or delivery is withheld without liability until the dispute is settled, except that relative to federal land or leases, in which case the funds are deposited as directed by the Supervisor as unearned money pending disposition of the dispute, and then applied as earned or returned. The operator has no responsibility for failure or defect of title.

(aa) **Non-Joinder and Subsequent Joinder.** Where the owner of a substantial interest in a tract within the unit fails or refuses to subscribe to the agreement, the owner

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of the working interest in that tract may withdraw from the agreement as to the tract by written notice to the Director and to the operator before the Director approves the agreement.

Any oil or gas interest in lands within the unit area not committed before the submission of the agreement for final approval thereafter may be committed by the owner signing or consenting to the agreement, even though the interest is a working interest.

After operations commence the right of joinder is subject to requirements or approval provided in the unit operating agreement. After final approval of the unit agreement, joinder by a non-working interest owner must be consented to by the working interest owner in writing. Prior to final approval, both non-working and working interest owners must join for the tract to be regarded as effectively committed.

Subsequent joinder is effective as of the first day of the month which follows the filing with the Supervisor of the papers necessary to establish effective commitment, unless an objection to joinder is made within sixty days by the Director.

(bb) Counterparts. The agreement may be executed in any number of counterparts and is binding upon all those who sign such a counterpart with the same force and effect as if all of the parties had signed the same document.

(cc) Surrender. The section on surrender is omitted at the option of the parties. It operates to permit the exercise of the right to surrender a lease, sublease, or operating agreement as to all or any part of the lands in the unit where the party who is to acquire the surrendered working interest is bound by the terms of the agreement. In the event the party in whom the working interest is vested is

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105 The term surrender includes forfeiture.
not a signatory to the agreement, his rights are forfeited (unless he be the fee owner) if within ninety days he does not execute both the agreement and the unit operating agreement. In the event of forfeiture, title vests in the party next in chain of title who likewise must sign within ninety days.

Where, as the result of a surrender, the working interest vests in the fee owner, three alternatives are open: the owner may (a) execute the agreement and the unit operating agreement, (b) lease the lands but only upon the condition that the lessee execute the agreement and unit operating agreement within thirty days after the lands are leased, or (c) operate independently of the agreement. Where the fee owner does not do (a) or (b) within six months after surrender, he has waived the right to execute the unit operating agreement.

For such period as the working interest is not expressly committed to the unit operating agreement as the result of a surrender, the benefits and the obligations which accrue are shared by the remaining owners of the unit working interests and these owners are to compensate the fee owner through the payment of rentals, minimum royalties and royalties applicable in participating areas. Upon commitment of a working interest to the agreement and the unit operating agreement, an accounting and settlement is made to reflect the retroactive effect of the action; such an accounting and settlement is made within thirty days after recomittal.

The right to become a party to the agreement and to the unit operating agreement as a working interest owner by reason of surrender is not defeated by the nonexistence of such an agreement as the latter; in the event there is no unit operating agreement in being and a mutually agreeable contract cannot be consummated, the Supervisor may prescribe a reasonable and equitable agreement.
(dd) **Payment of Taxes.** The parties may include a section relative to the payment of taxes.

(ee) **Signatures.** The parties are to affix their signatures under the category of working interest owners or other parties. Those parties who are signatory to the unit operating and accounting agreement are to sign as working interest owners. A carried working interest signs as an other party.

(ff) **Certification, Determination.** A form of approval certificate is provided which must be attached to each executed copy of the unit agreement submitted for approval.

A form of a collective corporate surety bond, a form for the designation of a successor operator by the working interest owners, and a form of change in the unit operator by assignment are provided.\(^{106}\)

### The Indian Lands

The oil and gas interests in lands which belong to the Indian, or to the Indian tribe, are the subject of treaties with the Indians, of agreements between the Federal Government and the Indians and of enactments by Congress.\(^{107}\) A pattern of oil and gas leasing has been established within the framework of these agreements.

1. **Operations Upon the Osage Reservation.**\(^{108}\) The Superintendent of the Osage Agency, Pawhuska, Oklahoma, is responsible for enforcing the regulations which govern oil and gas operations upon the Osage Reservation.

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The Secretary of the Interior, or the Commissioner of Indian Affairs, designates an inspector to supervise oil and gas operations under the direction of the Superintendent.

To prevent waste and to promote the greatest ultimate recovery of oil and gas from a common source of supply, a unit operating area is established by the Inspector and delineated upon a map. The development and operation of lands which lie within the unit area are subject to specific requirements and regulations. The Inspector fixes these rules and regulations. Residue gas originating within the area, after the extraction of gasoline and liquid products, must be injected into that sand or horizon from which it was originally drawn to increase the recovery of oil. In no event may less than the full volume of the residue gas, less than used for operation, be injected without the written consent of the Inspector. His consent is obtainable only after a study of the area and a determination of the amount of gas necessary to effect maximum ultimate recovery of oil and gas is made. The Inspector is the sole judge of compliance with his orders.

2. Operations Upon Restricted Lands of Members of the Five Civilized Tribes, Oklahoma. The Area Director of the Five Civilized Tribes, Muskogee, Oklahoma, is in charge of the agency for such tribes. A Supervisor, representing the Secretary of the Interior, and acting under the direction of the Director of the United States Geological Survey, supervises and directs operations under oil and gas leases upon land within the control of the Superintendent.

The Secretary of the Interior imposes restrictions upon drilling and production in the issuance of oil and gas leases. In his judgment the Secretary may consider the

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applicable state and federal laws, the state and federal regulations and lawful agreements among the operators with regard to leases. All leases are subject to a unit plan of development, but no lease is included within any unit plan without the approval of the Secretary and the consent of the lessors.

The restricted lands of the Five Civilized Tribes are subject to the oil and gas conservation laws of Oklahoma. No order of the Oklahoma Corporation Commission which affects these lands is valid until submitted to and approved by the Secretary. The Secretary has approved compulsory unit pooling orders of the Commission which involved Indian and adjacent lands.

3. Operations Upon Tribal Lands. Oil and gas leases issued upon tribal lands are subject to those unit plans required by the Secretary of the Interior. The Secretary must approve the inclusion of tribal leased land in the unit and the consent of the tribe owning such land must be obtained.

4. Mineral Rights in Lands Purchased Under the Emergency Relief Appropriations Act of April 8, 1935. The lands are contiguous or in close proximity to extant Indian reservations; their surface use is administered through the Commissioner of Indian Affairs for the benefit of the Indians. Oil and gas leases upon lands purchased under the Act's authority are subject to unit operation at the requirement of the Secretary of the Interior. The Sec-

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Secretary's approval must be secured to the inclusion of the lands within a unit.

5. Operations Upon the Restricted Allotted Indian Lands. When required by the Secretary of the Interior, oil and gas leases issued upon restricted allotted Indian lands are subject to unit development.

6. Operations Upon Lands Within the Wind River Indian Reservation, Wyoming. Oil and gas leases upon the lands within the boundaries of the Wind River Indian Reservation in Wyoming are subject to unit operation when required by the Secretary of the Interior. No lease is included within a unit plan without the prior approval of the Secretary.

The Naval Petroleum Reserves

To protect future supplies of fuel the Department of the Navy requested that petroleum reserves be created. In 1912 the first reserve was established followed by the second a few months later. Reserve No. 3 came into being in 1915 and Reserve No. 4 in 1923.

The Secretary of the Navy is in possession of the properties within the petroleum reserves for the purpose of exploring, prospecting, conserving, developing, using and operating them, subject to the approval of the President of the United States, by contract, lease or otherwise.

Within the limits of Petroleum Reserve No. 1 (Elk Hills, Kern County, California) the Secretary is authorized, subject to presidential approval, to contract for the

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unit development and operation of lands owned or controlled by the United States in the reserve, and lands either owned or leased by private interests within the reserve, or outside of the reserve but upon the same geologic structure. Leases upon lands within Reserves No. 1 and 2 are governed by the same provisions with respect to unit operation as leases upon the public domain. Leases upon lands within the reserves in existence July 1, 1936, except as are within a unit plan, expire upon the termination of twenty years. Unit plans of development and operation entered into after July 1, 1937 (with certain exceptions), and leases entered into after July 1, 1937 with respect to lands within the petroleum reserves, contain a provision vesting in the Secretary of the Navy, subject to presidential approval, the authority to alter or modify the rate of prospecting and development, and the quantity and rate of production from such lands. Before entering into any contract for unit operation and development on the naval reserves, the Secretary must consult with the Armed Services Committee of the Congress.

IV.

Those Statutes Limited to Operation in Connection with Oil and Gas Fields Upon State-Owned Lands.

The Illinois Department of Finance\textsuperscript{120} is authorized to execute permits and leases upon state-owned lands for the extraction of oil, gas, or other petroleum deposits. The State of Illinois has established a public policy of encouraging the development and exploration of petroleum deposits upon state lands through the unit plan of development. When it is found in the best interests of the State of Illinois, the Department may compel the adoption of unit plans of operation for state lands which are within a

\footnote{120 ILL. STAT. ANN. c. 93, § 90 (Jones Supp. 1951).}
productive pool. If the permittee or lessee of state lands within such a pool cannot agree with others upon the terms of a plan of unit operation, the Department is empowered to fix the provisions of the plan. Forfeiture of the permit of lease follows failure to abide by the plan.

An identical enactment in Indiana provides for the compulsory unit operation of state lands within a productive pool.

A. The Use of Conservation Principles in the Statutes to Achieve Effects Similar to Those Secured Under Compulsory Unit Operation in Fields Which Produce Both Oil and Gas

With the exhaustion of the discussion relative to the statutes directly compelling compulsory unit operation of fields and pools, there remains one further method which effects the same results as unit operation. That method is the use of the conservation statute to prevent waste. The modern conservation statute is based directly upon the waste concept and includes within its terms an interdiction against waste, together with a statement of the uses to which natural gas may be devoted.

An oil and gas producing field with large amounts of gas lends itself to this technique. In the exercise of its waste prevention powers the state regulatory agency may issue orders which prohibit the further production of oil in the field until such time as the natural gas produced in conjunction with the oil is devoted to the uses approved

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121 ILL. STAT. ANN. c. 93, § 102 (Jones Supp. 1951). The State of Arizona had a similar statute in ARIZ. CODE ANN. c. 11, § 1313 (1939), which was repealed in 1951; ARIZ. CODE ANN. c. 11, § 1330 (Supp. 1952) became effective June 2, 1951, with the signature of the President to Pub. L. No. 44, 82d Cong., 1st Sess. (June 2, 1951).

122 IND. ANN. STAT. tit. 46, c. 16, § 13 (Burns 1952). The Department of Conservation is authorized to make agreements.

123 The States of Alabama, Arkansas, California, Arizona, Colorado, Florida, Georgia, Illinois, Indiana, Kansas, Louisiana, Michigan, Mississippi, Montana, New Mexico, North Carolina, North Dakota, Oklahoma, South Dakota, Tennessee, Texas, Washington and Wyoming have waste prevention statutes.
by the state, or to uses of a non-wasteful character.\textsuperscript{124}

\textsuperscript{124} Railroad Comm'n v. Shell Oil Co., 146 Tex. 286, 206 S.W.(2d) 235 (1947), was a decision based upon Order No. 4-10, 351 of the Railroad Commission of Texas and issued March 17, effective April 1, 1947. The order directed that all wells in the Seeligson Field be shut down until the gas produced from the oil wells was used for purposes lawful in Texas. An injunction was sought and granted in the trial court. Although the decision went against the Commission in the upper court on the ground that the granting of such an injunction was not an abuse of discretion, the Commission's authority to enter an order to prevent wasteful flaring was sustained. Tex. Stat., Rev. Civ. arts. 6014, 6015 (1948), were said to be pertinent. The court made these points: (1) the fact that a similar flaring rule had not been adopted in other oil fields or for all Texas oil fields did not invalidate it; (2) the Commission might not issue such a rule where no feasible use could be made of the gas; and (3) the fact that production in the field was within an established gas-oil ratio did not prevent such production from being wasteful. This was followed by Railroad Comm'n v. Sterling Oil & Refining Co., 147 Tex. 547, 218 S.W.(2d) 415 (1949). The Commission had entered its Order No. 2-13,541 November 22, effective December 1, 1948, which prohibited the further production of oil or gas in the Heyser Field until the gas produced with the oil was made available for lawful purposes. An injunction was sought and granted in the trial court, but reversed in the Supreme Court of Texas. The plaintiff's principal contention was that it was not committing waste as there was no market for the residue gas and no pipe line connection, although one would be available April 1, 1949. It was urged that the permitted end-uses established in the order prevented intermediate lawful uses. This was not valid. The Commission had established beyond doubt that the end-uses did not interfere with intermediate usage. The authority of the Commission to prevent waste of flare gas was sustained. The next decision involved Railroad Comm'n v. Flour Bluff Oil Corp., 219 S.W.(2d) 505 (Tex. Civ. App. 1949). The Commission had issued Order No. 4-13,551 November 24, effective December 1, 1948, to prohibit further production of oil and gas from any well in the Flour Bluff Oil Field unless the gas was used for lawful purposes. An injunction was sought and granted but dissolved in the Court of Civil Appeals. The court found that the Commission had authority to make the order and directed its attention solely to the reasonableness of the order and the question of its support by substantial evidence. The court found no arbitrary action in allowing but six days to intervene between the date upon which the order was issued and its effective date, as the Commission had held hearings with relation to the field over a long period; the fact that it was obvious to the plaintiff that it was wasting sweet gas, and that the plaintiff decided the gas could not be used for purposes other than light or heat was not controlling. The court stated that the gas could be returned to the ground even though the plaintiff felt this was not sound. See Hardwicke, \textit{Texas, 1938-48 in CONSERVATION OF OIL AND GAS, A LEGAL HISTORY—1948 486-7} (Murphy ed. 1949); Hardwicke, \textit{Texas in A LEGAL REPORT OF OIL AND GAS CONSERVATION ACTIVITIES FOR THE YEAR 1949 41-2} (Murphy ed. 1950); Williams, \textit{The Negotiation and Preparation of Unitization Agreements} in \textit{INSTITUTE ON OIL AND GAS LAW 71, 72} (1949). In a \textit{LEGAL REPORT OF OIL AND GAS CONSERVATION ACTIVITIES FOR THE YEAR 1951 37-8} (Murphy ed. 1952), it is stated: "The Commission ordered that wells in a number of fields be shut in unless on specified dates pressure maintenance or other operations were effective to prevent the loss of gas or waste of oil. Typical orders were these: (1) January 8th for the Shafter Lake Devonian Field, Andrews County, (2) February 23rd for the Anton Irish Field, Hale and Lamb Counties, and (3) November 13th for the Pegasus Field, Midland and Upton Counties, and (4) December 21st for the Fort Chadbourne Field, Coke and Runnels Counties.

The desire of operators to prevent waste or loss of oil or gas, plus the efforts of the Commission to minimize waste and loss, were two factors leading to the consummation of many unit-operation programs during 1951. Another factor, and an important one, was the Act of 1949 (Texas Laws 1949, c. 259,
The non-wasteful uses of natural gas may be its use for light, fuel, chemical manufacturing (excluding carbon black), reintroduction into the oil and gas producing formation to repressure or to maintain reservoir pressures in an effort to increase ultimate recovery, stripping the liquid hydrocarbons from the gas and selling the residue gas to pipe lines for approved purposes or returning it to the formation.

In the present market for natural gas it may be possible to solve the operator's problems by one or more of these useful methods; certainly where it is at all practicable to sell the gas in its natural state, or as residue gas, no operator is guilty of refusing the opportunity. There are situations, however, where such sales are not feasible, and in those cases (and they are the ordinary ones) the operators have but one option—to enter into an agreement for the unit or cooperative development of the field or pool, thus permitting an indirect exercise of power by the regulatory agency to achieve a compulsory unit or cooperative operation which is not authorized by statute.

V.

The Oil and Gas Lease and Compulsory Unit Operation.

The number of oil and gas lease forms in use in the oil states is legion. Any person with enough money to pay printer's bills can devise and issue a new form of lease, or

Art. 6008b of Vernon's Civ. Stat.) that authorized pooling or unit-operation agreements for certain purposes, such as gas conservation, cycling, pressure maintenance, and all types of secondary recovery operations, and provided that, upon approval of such an agreement by the Commission, the agreement and acts thereunder would not be construed as being in violation of antitrust laws. Twenty-two agreements were approved during 1951. Doubtless others were not submitted for approval, on the ground that the antitrust laws were not applicable and there was no need to submit the agreements to the Commission. Unquestionably, the 1949 act and its intelligent, sympathetic administration by the Commission has stimulated the making of agreements for carrying on unit operations."
alter, mutilate, or perform whatever operation he desires upon an old and respected form.

A. The Use of a Clause Consenting in Advance to the Unit Plan of Operation and Appointing an Agent to Sign, Ratify, or Approve Such Plan

It has become common practice to include within a lease consent upon the part of the lessor to pool the leased acreage with other acreage to form a drilling or spacing unit, the pooling to take place as the result of an appropriate order issued by a state or federal regulatory agency. Some lease forms contain an authorization for the lessee to join with other lessees in a program of unit operation. These forms have statements to the effect that the royalties which are payable to the lessors under the tract so leased are payable from a portion of the total production allocated by the unit plan to the leased tract, as if there produced. Forms have been devised to provide that no royalty is to be paid for any part of the gas re-injected in the conduct of the unit operation.

The 1951 compulsory unit operation statute in Oklahoma and Arkansas require the consent and approval of a percentage of the lessees and those who own the normal one-eighth royalty interests to the unit plan of operation. Under the Oklahoma statute the order establishing compulsory unit operation remains in abeyance pending an affirmative showing that sixty-three per cent of the royalty interest in the unit area, excluding interests owned by the lessees or their subsidiaries, have signed, ratified in writing, or approved the unit plan. The Arkansas law requires a finding preceding the issuance of the order of compulsory

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125 1 Summers, Oil and Gas § 104 (Supp. 1952); 7 Summers, Oil and Gas § 1217 (Supp. 1952); Adoue, Royalty and Pooling Provisions in Oil, Gas and Mineral Leases in Institute on Oil and Gas Law 195, 230 (1951).
unit operation to the effect that owners of seventy-five per cent of the record legal title to the royalty and overriding royalty payable from oil, gas, or oil and gas in the unit area have executed the unit plan.

The propriety and the legal effect of including a clause within the oil and gas lease which operates to give consent to whatever plan of unit operation is later proposed, and to appoint an agent to give that assent, has been discussed. The following suggestions have been considered: (1) That such a clause be drafted as applicable to Oklahoma lands and that the agent be authorized to consent to that plan which receives the approval of the Oklahoma Corporation Commission. This would limit the authority of the agent to sign any plan of unit operation which might be proposed by persons whose interests did not coincide with the best interests of the lessor. (2) A clause of similar import would not work in Arkansas because that statute requires the signatures to be upon the plan of unit operation at the time of the petition. This would make it necessary to draft a clause giving consent and appointing an agent to exercise the power of execution without supervision.

A most interesting argument is the statement that a man can make (within certain limitations) any type of an agreement he wishes, and that should a lessor execute a lease containing this clause, about which he has knowledge and concerning which there is no fraud, the court would find he was bound by the terms of his contract. The other view is that this provision in the statutes which relates to the lessor's consent to the plan of unit operation was inserted as a matter of public policy. Its purpose was

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129 This statement is predicated upon conditions which imply contractual capability, consideration, a negation of overreaching, fraud and mistake, and is based upon the proposal that a man with knowledge of what he is doing can enter into a contract not otherwise illegal by which he will be bound. There is authority that the clause must be limited to a term less than twenty one years. Adoue, supra note 125, at 195, n.57, 231; Merrill, Lease Clauses Affecting Implied Covenants in Institute on Oil and Gas Law 141, 188 (1951).
to prevent the imposition of an unwise plan upon the lessor and his property. To permit him in advance to contract away the creation of this public policy would be permitting him to contract to do a thing which public policy affects.\textsuperscript{130}

B. \textbf{The Effect of Compulsory Unit Operation Upon the Express Terms of an Oil and Gas Lease}

The exercise of the power to require unit operation is supported upon the ground that it is a proper use of the state police power. Such action upon the part of the police power's use operates to modify the terms of the lease to comply with the order of the regulatory agency. It has been usual to include within the express terms of the ordinary lease form a clause stating that the express terms of the lease are subject to federal and state laws, orders, rules and regulations, and that the lease is not to be terminated nor the lessee held liable in damages for failure to comply with the lease terms where prevented by law, order, rule or regulation.

C. \textbf{The Effect Upon Covenants Implied in Oil and Gas Leases of Compulsory Unit Operation}

Professor Merrill has written that "State laws providing for compulsory unitization programs . . . probably are valid. To the extent of their validity, these laws, and the orders issued under them, supersede the implied covenant

\textsuperscript{130} There is but little doubt that the change from the 1945 unitization act to require that the unit plan of operation be consented to by both lessees and the owners of the normal one-eighth royalty interest reflected a desire upon the normal one-eighth royalty interest reflected a desire upon the part of the Legislature to protect more adequately the rights of the lessors and royalty owners against the supposed inequities forced upon them by their lessees, and that it is a right conferred upon the lessor because it is believed to be in the public interest to do so. If the legislative purpose in requiring consent is to assure them of an added protection, it would seem that this right could not be bargained away in advance. CORBIN, CONTRACTS § 1515 (1951) and the authorities there cited. McRae, Granting Clauses in Oil and Gas Leases: Including Mother Hubbard Clauses in INSTITUTE ON OIL AND GAS LAW 43, 61 (1951).
obligations. He has suggested that the implied covenants obligation requires the lessee to represent and to protect adequately the interests of his lessor before the regulatory agency, which includes within its scope a duty to see (a) that the lessor is included within the unit upon proper terms, and (b) that the tract owned by the lessor is included within the unit upon proper terms.

VI.

The Anti-Trust Statutes and Compulsory Unit Operation.

A. The Federal Statutes and Compulsory Unit Operation

The effect of the federal anti-trust enactments upon those who, in compliance with an order of a state regulatory agency, undertake the regimen of compulsory unit operation is settled in Parker v. Brown. Assuming that

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131 Merrill, Implied Covenants and Secondary Recovery, 4 Okla. L. Rev. 177, 189 (1951). See also Merrill, Covenants Implied in Oil and Gas Leases § 227 (2d ed. 1940, Supp. 1950); Merrill, Lease Clauses Affecting Implied Covenants in Institute on Oil and Gas Law 141, 188, and cases cited 111-13, 189 (1951); Merrill, Implied Covenants, Conservation and Unitization, 2 Okla. L. Rev. 469 (1949); Merrill, Unitization Problems, The Position of the Lessor, 1 Okla. L. Rev. 119 (1948); Merrill, Current Problems in the Law of Implied Covenants in Oil and Gas Leases, 23 Tex. L. Rev. 137 (1945).

132 In discussing specific implied covenants Professor Merrill writes: (a) the covenant for protection against drainage has no application under the unit operation as it is contemplated that the individual tracts are to be operated as a unit; (b) the covenant for exploration or for development is of little use unless the unit is formed prior to a time when the limits of the field have been adequately established; (c) the covenant for diligent and proper operation places a duty of compliance upon the unit. Breaches which affect the entire unit would be enforced by an action brought by all of those interested in the royalty; breaches affecting individual lessors would be maintained singly. Merrill, Implied Covenants and Secondary Recovery, 4 Okla. L. Rev. 177, 195-7 (1951).


134 317 U.S. 341, 63 S.Ct. 307, 87 L.Ed. 315 (1943). The case involved the California Agricultural Prorate Act, Cal. Gen. Laws act 143a (Deering 1944), as amended, Cal. Gen. Laws act 143a (Deering Supp. 1949); Cal. Agric. Code Ann. § 1300.10 (Deering 1950). Its constitutionality was established in Agricultural Prorate Comm’n v. Superior Court, 5 Cal. (2d) 550, 55 P.(2d) 495 (1936). The statute authorized the creation of an Agricultural Prorate Advisory Commission empowered to hold hearings, and upon petition, to organize a program for the marketing of an agricultural commodity in a manner which restricted competition among growers and maintained prices. If the program as approved was consented to by sixty-five per cent of the owners holding fifty-one per cent of the producing acreage in any
a program of compulsory unit operation would violate the Sherman Act if organized and made effective "by virtue of a contract, combination or conspiracy of private persons, individual or corporate . . . ," and that Congress in the exercise of the commerce power could not prohibit a state from maintaining a program of compulsory unit operation, the courts in following the *Parker* case would hold that: (1) the program does not operate by force of an individual agreement or combination; (2) the program derives its authority from the statutes of the state and could, and would, not operate without that permission; (3) there is nothing in the Sherman Act which suggests that its purpose is to "restrain a state or its officers or agents from activities directed by its legislature. . . . The Sherman Act makes no mention of the state . . . and gives no hint that it was intended to restrain state action . . . ", and (4) the fact that it is necessary to secure a percentage consent of those interested to initiate the unit operation is of no importance as it is the state fixing the conditions and imposing the restraint.

The Sherman Act would not apply to compulsory unit operations entered into pursuant to the order of an appropriate state regulatory agency under the state statute, nor to the plan of unit operation signed and perfected for the unit.

regulated crop the program was instituted. The program was carried into effect to govern the marketing of raisins and the Federal Government sought an injunction upon the theory that the act violated the federal anti-trust laws and constituted an undue burden upon interstate commerce. The lower court decided in favor of the Government. Brown v. Parker, 39 F. Supp. 895 (S.D.Cal. 1941). The Supreme Court reversed. The similarity between the California Act and compulsory unit operation is readily apparent.

136 Id., 317 U.S. at 350-51.
In the case of United States v. Cotton Valley Operators Committee, the Federal Government indicated that it wished to establish that joint processing and refining of wet gas, and the joint sale of the products removed from the gas violated the Act. At the same time the then Attorney General made it clear that no violation occurred through the joint production of gas, the removal of its hydrocarbons, the maintenance of reservoir pressures, or in any activity necessary or essential to the prevention of waste and the conservation of natural resources. The Cotton Valley Field was unitized by order of the Louisiana Department of Conservation, and by agreement an operators committee was authorized to develop and to operate the unit area. Specific authority was granted to construct and operate a plant for the extraction and processing of the condensate. The unit production, with the exception of the residue gas, was distributed to the lessees. The Cotton Valley case disappeared from the scene by dismissal because of the failure of the Federal Government to produce documents, which included FBI reports, covering the investigation.

B. The Federal Statutes and Federal Compulsory Unit Operations

Under the federal statutes the Secretary of the Interior is empowered to approve operational and developmental agreements which might normally be considered to violate the federal anti-trust laws. The effect of the approval by

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138 75 F. Supp. 1 (W.D. La. 1948) and 77 F. Supp. 409 (W.D. La. 1948) contain the rulings upon preliminary motions. For a copy of the complaint see HARDWICKE, ANTITRUST LAWS ET AL v. UNIT OPERATION OF OIL OR GAS POOLS 211 (1948); a copy of the press release, id. at 224; and a letter from the Attorney General explaining the purpose of the suit, id. at 227. 8 F.R.D. 35 (W.D. La. 1948); 9 F.R.D. 719 (W.D. La. 1949).
139 5 INTERSTATE OIL COMPACT Q. BULL. 8 (Dec. 1946).
140 Louisiana Department of Conservation, Order No. 10-B as supplemented by Order No. 10-C.
the Secretary of a unit agreement and a unit plan of operation and accounting as a bar to subsequent anti-trust proceedings has not been tested.\textsuperscript{142}

C. The State Statutes and State Compulsory Unit Operations

Many state enactments provide exemption from the operation of state anti-trust enactments. But even in the absence of such a statutory exemption, the rules previously discussed, with relationship to federal statutes and state compulsory unit operations, clearly apply to state anti-trust and monopoly laws to the extent that the state statutory requirements are complied with, as to approval by the regulatory agency, and as to obeying the dictates of the statute.

VII.

The Formation of the Unit Plan of Operation.\textsuperscript{143}

The first step in establishing the unit plan of operation is to determine the time at which the regimen of unit management is to become effective. Indubitably the time should be the earliest period at which there is compliance with the statute's commands as to necessary development. If the field or pool is one that should be operated as a unit geologically, not much is gained by an undue delay to

\textsuperscript{142} Ely, supra note 137, at 604. United States v. Rock Royal Co-Op., Inc., 307 U.S. 533, 59 S.Ct. 993, 83 L.Ed. 1446 (1939), involved an order of the Sherman Act and the Secretary of the Agriculture under somewhat similar circumstances, against the Act; United States v. Borden Co., 308 U.S. 188, 60 S.Ct. 182, 84 L.Ed. 181 (1939), involved the Agricultural Marketing Agreement Act. Any agreement there made would be a defense to the extent that the prosecution under the Act should try to penalize what was validly agreed upon or directed by the Secretary; United States v. Socony-Vacuum Oil Co., 310 U.S. 150, 60 S.Ct. 811, 84 L.Ed. 1129 (1939), held that knowledge or acquiescence of officers of the Federal Government conferred no immunity in that Congress specified the exact and precise manner in which immunity was conferred and that method alone sufficed.

\textsuperscript{143} Terrill, Unit Agreements and Unitized Operations: A Review of Their Past and Some Speculations as to Their Future; With Particular Comments on Federal Unit Agreements in INSTITUTE ON OIL AND GAS LAW 1 (1949); Williams, The Negotiation and Preparation of Unitization Agreements in INSTITUTE ON OIL AND GAS LAW 43 (1949); King, Pooling and Unitization of Oil and Gas Leases, 46 MICH. L. REV. 311 (1948).
await the precise definition of its boundaries and ultimate productivity.¹⁴⁴

Problems arise when an agreement has been reached that the time for unit operation has arrived. Who should begin negotiations? How should these parleys be opened? Who should be permitted to participate in the preliminary sessions? Not unnaturally, the idea generates in the minds of those persons interested in the operation of the common source of supply; these are the people to take informal soundings of opinion from the lessees in the field or pool. If the informal questionings raise evidence of interest needed to satisfy the statutory requirements, the next step is to call a meeting of those persons holding leases within the proposed unit area to determine if there is a mutual desire for unit operation. Where that interest is present, it is apropos to form a steering committee, or a committee of whatever title chosen, to begin studies and negotiations which lead to the execution of an agreement for unit operation. This committee should be chosen with care as to personnel and come from those persons who own leases within the proposed unit area. The owners of the royalty interests in lands within the area should be encouraged to form a representative group to take part in the preliminary deliberations of the committee.

Having been selected, the committee should establish a regular schedule of meetings, keep minutes, circulate information regarding its activities and direct its force so that the advisability of further proceedings can be secured from its progress and its final reports. The committee should investigate the feasibility of operating the field or pool as a unit, and the probable economic results which would follow unit operation. A determination of a formula for evaluating the contribution of the different properties within the area to the unit, and for the adjustment of

¹⁴⁴ See note 74 supra.
costs, investments and the disposition of equipment and materials is necessary. Methods of financing the purchases of property and the compensation of the unit operator are to be established. At its option the committee may make these studies, both the technical and business research, or it may employ outside experts.

With the conclusion of the committee research and the receipt of a favorable report for the unit operation of the field or pool in which the outlines of the areas of agreement are stated, this work and the agreement must be translated into a document with meaning to the participants, the regulatory agency and the courts.

The plan of unit operation is the product of the combined efforts of the attorneys, the petroleum engineers and the geologists. It is the responsibility of the former to present a legal document, soundly drafted from the standpoint of law, that requires a minimum of interpretation when placed in operation, and one that is a valid contract. The petroleum engineers must give their legal associates sufficient information of the unit area to incorporate the formula of allocation or participation within the legal agreement, and keep the counsel engaged in drafting the plan up to date on the engineering techniques and theories applicable to the matters discussed at the preliminary sessions.

To a certain extent every executed plan of unit operation represents a compromise between the parties to the agreement as to some facet of the operation, development, or production of the unit common source of supply. Parties to the agreement should not approach the drafting conferences with an intransigent attitude, nor make demands not substantiated by factors which justify their viewpoints.

While the unit plan of operation is the product of agreement and compromise between the parties conducting the unit operations, an accepted form for certain provisions in the agreement has evolved from the first experimental contracts. No one is bound to follow slavishly a form, but the
use of a standard proposal where possible, varied only as to local conditions in the individual common source of supply, works to an advantage. By its use the regulatory agencies and their officials, the courts and the participants have an opportunity to become familiar with the terms of the agreement, its legal character and its effect upon each party participating. The concept has not hardened, however, to the point when counsel may not prepare and secure signatures to a form greatly at variance with those now in use.\textsuperscript{145}

A. The Unit Plan of Operation Covering a Unit Area Located Wholly Upon Land Within the Jurisdiction of a State Regulatory Agency and Including No State or Federal Lands

The unit plan of operation for lands within the jurisdiction of a state regulatory agency, which includes within its area no state or federal lands, contains some or all of the enumerated clauses.

1. Title. It is customary to entitle the agreement as the plan of unit operation, or the plan of unitization of a named field and of a named sand (the common source of supply). The unit title is taken from the combination of the field and sand common source of supply, that is, the West Cement Medrano Unit.

2. An Introductory Clause. This is customarily a statement that the agreement constitutes the plan of unit operation which is applicable to the named unit, and which is created under the authority of the appropriate state enactment, citing the act. The purpose of the agreement is stated as being for the unit management, operation and development of the common source of supply — oil; oil.

\textsuperscript{145} These clauses are based upon an analytical study of some one hundred unit agreements, both voluntary and compulsory, secured from the participants or the regulatory agencies.
gas and condensate; gas; or gas-condensate—which underlies the lands outlined upon a marked map attached, which is an exhibit and made a part of the agreement. It is usual to recite the accomplishments required by the statute as a condition to the operation of the law, that is, that a greater ultimate recovery will be had, waste will be prevented and correlative rights protected.

3. Definitions. Some or all of these words are defined: unit, commission or regulatory agency, person, the neuter pronoun it, unit production, lessee, unit operator, oil and gas, oil and gas rights, effective date of operation, unit expense, unqualified subscriber to the unit plan, residue gas, unit area, royalty owner, oil production period, original plan, original unit and any other terms which are susceptible to definition and about which doubt can arise as to clarity of expression and purpose.

4. Unit Name. The name of the unit.

5. Unit Area. The extent of the unit area, which includes the common source of supply which underlies the lands outlined upon the map, and the location in a certain parish or county, and state.

6. The Separately Owned Tract. Where well spacing or drilling units have been established by an order of the regulatory agency, a clause is included which provides that such units are to be regarded as separately owned tracts within the terms of the agreement. The tracts are identified by order of the regulatory body and shown upon the attached map by number or distinctive symbol. The separately owned tract in appropriate circumstances may be that tract of land within the unit area which, by virtue of the ownership of the fee, by common ownership of the oil and gas rights in such tract by lease, or by agreement among the owners, is presently regarded as a single tract for the purpose of oil and gas development and operation.
In referring to such a tract in general terms it is not the intention of the agreement to encompass more than the common source of supply underlying the separately owned tract. These tracts are likewise identified upon the accompanying map by number or symbol.

7. The General Powers of the Unit. The unit is authorized to supervise, to manage and to conduct the further development and operation of the unit area for the production of oil and gas (oil, gas and condensate; gas; gas-condensate; oil) pursuant to the powers conferred by, and the limitations imposed in, the state statute and the plan of unit operation.

8. The Effect of Unit Operation. This clause may be drafted so as to effect a merger of title or to bring about a pooling of the production. The merger of title provision requires the submission of abstracts, the examination of titles represented by such abstracts, and finally an interchange of title by assignment between the unit lessees to achieve by this method a percentage interest in all of the unit leases in the lessees. Under the pooling of production clause the production is unitized, the lessees continue to be the owners of the record title to their interests, and each shares in the production and in the expense according to their proportionate interests. This is the preferred technique.

There are three further results of the effect of the unit's merger or pooling. The relationship between the owners of the oil and gas rights is described in the agreement as that of tenants in common. The amount of production which is allocated to each tract, no matter where it may be produced from in the unit area, is for all purposes treated as production from the tract. The operations carried on in accord with the plan are considered as a fulfillment of the provisions, covenants and conditions of the leases upon the unit lands, or of any contracts for the development of lands
THE UNIT OPERATION OF OIL AND GAS FIELDS

within the unit area. A well drilled within any part of the unit area is regarded as a well drilled upon each tract of land in the area.

9. The Allocation of Unit Production. The unit production, except that which is used in development and operation— which includes repressuring, pressure maintenance, or other operations set up in the plan—or that which is unavoidably lost, is allocated to the separately owned tract in accordance with the percentage and division of interest established. There are a number of approaches to the division of interest technique: (a) a percentage division may be established which cannot thereafter be varied; (b) a percentage division may be made which can thereafter be varied according to facts and occurrences to take place in the future; or (c) a percentage division may be set up which depends upon the production of a minimum amount of unit substances and varies after the production of such an amount.

The unit production is distributed to those persons owning interests in the tracts upon the same conditions and provisions which existed in the absence of unit operation. Unit production is distributed to the lessees, to persons owning oil and gas rights in the tract, or to persons who may have purchased these tracts, in kind. Those taking in kind are authorized to construct storage facilities for that purpose at places which do not interfere with the operation of the unit. The unit operator may be authorized to purchase in kind those amounts available to persons not wishing to receive production in kind. Any person receiving unit production in kind is made responsible for the payment of royalties, overrides, production payments, gross production taxes in the jurisdictions where such are levied and those other payments and taxes which are chargeable against unit production received in kind.

If the title or right of any person claiming to take in
kind is in dispute, or not approved by the unit operator, the production may be marketed, purchased by the operator, or impounded, and the proceeds held in suspense pending a determination of the dispute. The operator may elect to deliver, subject to the receipt of a proper bond or security, to the person whose right is disputed.

The unit operator has the right to take and use as much of the unit production as is needed for the development and operation of the unit area through those activities established in the plan. No royalty, override, production payment, or other payment is due with respect to that part of the unit production so used.

10. The Operating Committee. An operating committee is created and vested with the management and control of the unit, its business and affairs. Participation in that committee is fixed within the plan—it may be limited to each lessee, to lessees who individually or collectively own a certain percentage of the total unit area, or it may include both lessees and royalty owners who individually or collectively own certain percentages of the total unit area.

It is customary to provide the committee with all or some of these powers: (a) to make rules and regulations; (b) to remove the unit operator and to select his successor; (c) to determine the extent to which drilling operations and development are to be carried out; (d) to pass upon and to approve or disapprove of costs, estimates of costs and proposed expenditures above a stated minimum sum; (e) to determine the manner in which the unit area is to be produced so as to conform to acceptable engineering practices and applicable laws or regulations; (f) to pass upon, to approve or disapprove of the purchase, sale, or disposal of materials and equipment by the unit operator outside of the normal operations; (g) to pass upon, to approve or to disapprove of the purchase, construction, location, abandonment, sale, or disposal of compressor
plants, gasoline tanks, tank batteries, salt water systems, and the like; (h) to determine the manner in which gas injection is to take place; (i) to provide for a proper audit procedure and audits; (j) to appoint subcommittees; (k) to approve or disapprove plans of development and operation, and their amendments where such plans must be submitted to a regulatory agency having jurisdiction over the unit; (l) to approve or to disapprove of expenditures for expert advice; (m) to direct and to consult with the unit operator; and (n) to provide for the necessary financing for the unit and carried subscribers.

The problem of voting in the operation committee must be determined. It is customary to assign a proportionate value to each lease and attach that value to the vote cast.

The operating committee must have a set pattern for giving of notice of meetings, for keeping minutes and records and for disseminating information with relation to its activities to those persons interested in the operation of the unit area.

11. The Organization of the Unit and the Effective Date of the Plan. A method of calling into session the operating committee for the first time, and for its organization at that time, must be provided. A fixed time for taking over the unit operation must be set. A provision should state that the actual date of taking over the operation is to be the effective date which marks the beginning of the unit’s activities. In the event the last date mentioned for the commencement of unit operation passes without activity, mention should be made of the liability, if any, of the parties to the agreement for the failure and for the dissolution of the unit. An escape clause must be provided in the event the necessary parties do not participate in signing the agreement within a set period.

12. The Unit Operator. The operations in connection with the development and further operation of the unit
are to be carried out by the unit operator under the supervision of the operating committee. Specific authority is to be given the operator to carry out named activities. The right of removal is reserved to the operating committee, as well as the designation of a successor. The right of resignation must be preserved to the operator. The operator should be designated by name or corporate title.

13. The Unit Expenses. The unit operator is authorized to pay the costs and expenses of development and operation in accordance with a fixed accounting procedure. As it accrues, the unit expense is charged to the tracts in accordance with their percentage of participation in the production. The lessee, or the person responsible for the costs and expenses of the tract in the absence of unit operation, is charged with the expense set up against his tract. A formal procedure for billing of charges and credits, for fixing a due date for the payment of excess charges, for interest upon an unpaid balance and for a method of carrying those lessees or owners not electing to pay their proportionate share of expense must be established. Budget procedures for future expenses are important.

The unit is assigned a first and prior lien upon the leasehold interest, excluding the landowners' one-eighth royalty interest, to secure the payment of unit expenses and costs assigned against the tract. The lien operates to the benefit of those persons entitled to participate in the repayment of any sums advanced. The unit operator may market or purchase the production which belongs to carried lessees or to those not making payments and thereafter adjust the credits and debits upon such accounts.

14. The Initial Adjustment of Investment. Upon the effective date of the assumption of control and management of the unit, each lessee is to turn over to the unit operator all wells within the unit area, all lease and operating equipment and all production and well records.
A basis for the determination of the value of these contributions must be established as to wells, equipment, buildings and the like. The operating committee is to decide what it will take and what is to remain the property of the lessee.

15. **Oil in Lease Tankage as of the Effective Date of the Unit.** The tanks located within the unit area should be gauged upon the effective date of the unit; the oil therein remains the property of those persons entitled to it, had the unit not been formed. Delivery in kind of such oil should be prescribed, and the unit operator authorized to sell the oil in the event it is not removed within a minimum period of time.

16. **Gas and Liquid Products.** The gas produced from the unit, together with its extracted liquid components, less those amounts used in development and operation, or unavoidably lost, is to be distributed among the lessees in an agreed manner.

17. **Plan of Operation.** The unit area is to be developed according to a plan of operation. The operating committee is to direct the plan and to have the privilege of changing or abandoning such a plan, and of substituting another in its place. Inasmuch as the application or petition which is addressed to the regulatory agency is based in part upon a plan of operation to reach certain required statutory ends, the draftsmen must be reasonably specific as to the details of the plan.

18. **Right to Information Regarding the Unit’s Operation.** The lessees, and there is no reason to omit the royalty owners, are entitled at reasonable times to information relative to the operation of the unit.

19. **Liability.** Liability is disclaimed by members of the operating committee, by the committee, by the unit
and by the unit operator for causes the draftsmen establish as legitimate and necessary. Liability may be limited to gross negligence or bad faith.

20. Changes of Interest. Transfers, assignments and conveyances, to be binding upon the unit or the operator, must be presented in photostat or certified form which evidences the change of ownership and recordation of the instrument.

21. The Audits. The operating committee is to cause audits to be made at certain intervals, to select an auditing agency and to furnish copies of the audits.

22. Rights-of-Way. The unit is given a servitude and right-of-way over lands in the area for the normal purposes of development and operation.

23. Claims, Suits and Judgments Against Individual Lessees Within the Unit Area. A provision should be prepared relating to suits or claims against lessees upon account of any cause of action which grows out of the unit operation and development. It might provide for a means of defending such a suit and for the effects of decisions adverse to the lessee or to the unit.

24. Title Information. Abstracts of title down to date, together with title opinions and information of value which affect lands within the unit area are to be furnished upon request to the operating committee or to the operator.

25. Formations Other Than the Common Source of Supply, the Subject of the Unit. The common source of supply in many cases overlies or underlies other producing formations which are capable of commercial production but are in no manner a part of that common source of supply connected with the unit operation. The rights of persons to these sources of supply are not affected by the unit plan; they remain the property of such persons. Sev-
eral questions arise in connection with this clause which must be resolved—(a) the use of presently existing well bores to produce from such other common sources of supply when not used by the unit, or when such use by the unit is abandoned in the operation; (b) the use of the surface rights in connection with the production from such other common sources of supply; and (c) a plan for the use of both the wells and the surface rights when needed in the unit operation.

26. The Abandonment of Wells. The operating committee may elect to abandon a well and to salvage its casing and equipment. The lessee should have a right to notice of such abandonment, and an option to take over the well by paying its fair market value as to its casing and equipment, less their salvage value. The lessee upon taking over the well must be required to seal off the unit common source of supply, and to cease production from that formation.

27. The Abandonment of Unit Operations and the Dissolution of the Unit. Specific terms must be laid down to identify the time of abandonment and dissolution, and the effect such action is to have upon property rights committed to the unit.

28. Amendments to the Plan. A method of amending the plan must be provided.

29. Enlargement of the Unit. A method of enlarging the unit in accord with statutory and administrative directives should be made a part of the plan.

30. Unqualified Subscribers and Qualified Subscribers. A means of identifying the characteristics of each subscriber, the terms of subscription and a method of carrying should be included.

31. Force Majeure Clause. Such a clause might well be added.
32. *Exhibits Attached to the Unit Plan.* It is customary to attach certain matters to the unit plan, to mark them as exhibits and to make them a part of the unit plan of operation as though incorporated within the body of that agreement. Some or all of these are commonly so attached: (a) a map of the unit area, (b) a table of percentage of participation or allocation within the unit, (c) a schedule of uniform accounting practice and procedure to be applied within the unit as to charges and expenses, (d) a schedule pertaining to the processing and compression of gas from the unit, and (e) such other schedules which are of importance to the operation of the unit area.

B. The Unit Plan of Operation Covering a Unit Area Located Wholly Within the Jurisdiction of a State Regulatory Agency and Which Includes State-Owned Lands

The unit plan of operation for lands within the jurisdiction of a state regulatory agency, but which includes within its area state lands, contains some or all of the clauses enumerated in the immediately preceding subdivision “A” and some or all of the following additions to those respective clauses.

2. *An Introductory Clause.* It is proper here to identify the fact of participation by a state agency which has control over state lands, the statutory authority for this participation and the administrative authorization.

3. *Definitions.* Terms which identify the state agency and any of its employees, officers, or agents who will act under the agreement, and are mentioned therein, should be defined.

9. *The Allocation of Unit Production.* In some instances a formula for participation or allocation is required to conform to statutory requirements as to state land. Care should be taken to secure this information and to include
it within the agreement.

32. *Exhibits Attached to the Unit Plan.* Evidence of the administrative compliance with statutory requirements by making findings, determinations, or certifications prior to participation should be included as an exhibit.

C. *The Unit Plan of Operation Covering a Unit Area Located Upon Land Within the Jurisdiction of a State Regulatory Agency and Including State and Federal Lands*

The unit plan of operation prepared under these circumstances includes some or all of the clauses enumerated in the immediately preceding subdivisions “A” and “B” and some or all of the following additions to those respective clauses.

3. *Definitions.* Identification of the federal agency and of the federal officials involved is added.

9. *The Allocation of Unit Production.* In the event that a title dispute arises with reference to federally-owned lands, a provision must be inserted to the effect that the unit operator may not impound these funds, but must pay them to the Oil and Gas Supervisor pending a final determination, or at least deposit them under the Supervisor’s direction.

D. *The Unit Plan of Operation Covering a Unit Area Located Upon Private Lands Within the Jurisdiction of a State Regulatory Agency With Authority to Order Compulsory Unit Operation, and Which Includes Federal Lands*

The unit plan of operation devised to include within a single unit private and federal lands, in a state where the state regulatory agency has jurisdiction to order compulsory unit operation, presents (within certain of its aspects) a
choice as to which agency the petitioners choose. The Secretary of the Interior may vest his authority in a state officer or agency, thus making possible the inclusion of federal lands within the unit area for unit operation with private lands which are subject to state compulsory unit operation. Where lands of the Five Civilized Tribes are involved, the Secretary must approve the order of the Oklahoma Corporation Commission involving the compulsory unit, and, in any event, approval of the plan of unit operation must be secured.

Such a plan might include any or all of the clauses enumerated in the immediately preceding subdivisions "A," "B" and "C."

E. The Unit Plan of Operation Covering a Unit Area Located Upon Private Lands, Federal Lands, and State Lands Where No State Regulatory Agency Has Jurisdiction to Compel Unit Operation

and,

F. The Unit Plan of Operation Covering a Unit Area Located Wholly Upon Federal Lands

These agreements are within the terms of the federal regulations but inasmuch as they represent the plan agreed to between the lessees they may include some or all of the clauses enumerated in the preceding subdivisions "A," "B" and "C."

Blakely M. Murphy*