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Unit Operation of Oil and Gas Fields: Part II

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The unit operation of oil and gas fields: II

Part II. Compulsory Unit Operation

Compulsory unit operation is the joining together into a unit, as the consequence of an order of a governmental regulatory agency, all of the lease and royalty interests in a common source of supply of oil, gas and condensate in any field, pool, or a portion thereof; under the terms of a unit plan of operation the unit is operated as though there was but one lease and one operator, with the unit production of oil, gas and condensate being distributed equitably among the several lease and royalty owners in accord with the unit formula of participation.

† Originally scheduled as a two-installment article, changes in composition necessitated a three-fold division of this article. This is the second installment; the third will appear in the Fall Issue of Volume XXVIII of the Notre Dame Lawyer. [Editor's note.]

22 Gilbert and Pogue, The Energy Resources of the United States: A Field for Reconstruction, Bull. 102, Vol. I, p. 91, Smithsonian Institute, United States Nat. Mus. (1918), and McMurray and Lewis, Underground Wastes in Oil and Gas Fields and Methods of Prevention, Tech. Paper 130, Pet. Tech. 30 (July 1916), contain the first clear recommendations for unit operation, the latter suggesting the necessity for compulsory unit operation. Hardwicke, Antitrust Laws et al v. Unit Operation of Oil or Gas Pools (1948), contains an outstanding collection of materials which relate to unit operation. See German, Compulsory Unit Operation of Oil Pools, 20 Cal. L. Rev. 111 (1932); Hardwicke, Utilization Statutes: Voluntary Action or Compulsion, 24 Rocky Mt. L. Rev. 29 (1951); Jacobs, Unit Operation of Oil and Gas Fields, 57 Yale L.J. 1207 (1948); King, Pooling and Utilization of Oil and Gas Leases, 46 Mich. L. Rev. 311 (1948); Moses, Some Legal and Economic Aspects of Unit Operations of Oil Fields, 21 Texas L. Rev. 748 (1943); Myers, Spacing, Pooling and Field-Wide Unitization, 18 Miss. L.J. 267 (1947); Pressler, Legal Problems Involved in Cycling Gas in Gas Fields, 24 Texas L. Rev. 19 (1945); Voorhees, Techniques of Field Wide Unitization, 24 Rocky Mt. L. Rev. 14 (1951); Williams, Conservation of Oil and Gas, 65 Harv. L. Rev. 1155, 1170 (1952). See also the following articles in Institute on Oil and Gas Law (1952): Cook, Rights and Remedies of the Lessor and Royalty Owner Under a Unit Operation, p. 101; Holloway, The Unit Operation of Public Lands, p. 229; Kirk, Content of Royalty Owners' and Operators' Unit Agreement, p. 19; Murray, Engineering Aspect of Unit Operation, p. 1; Robinson, Compulsory Unit Operation: Procedure, Proof, Validity, and Legal Effect, p. 201; Sears, Antitrust and Other Statutory Restrictions of Unit Agreements, p. 63; Simmons, Problems of the Tract in which All or a Portion of the Interested Parties do not Agree to Unit Operation, p. 161.

The term "unit operation" seems preferable to the use of "unitization," "unitized operation," "unitized management" and similar phrases because of the

(577)
Statutory compulsory unit operation is initiated by activity on the part of those interested in the field or pool, and starts with the preparation of the unit plan of operation followed by the filing of a petition or application with the regulatory agency. Notice is given, a hearing held, and where there is compliance with the requirements of the statute, the unit order of operation is issued from the regulatory body. The unit order, together with the unit plan of operation, becomes the charter under which the unit operates. Like other charters of legal conduct, it is subject to amendment.

Compulsory unit operation has developed a terminology of its own — a few of the common terms are:

1. Unit Area — the area embraced within the plan and the order, expressed in the terms of description for land, possibly confusion which arises between the function under discussion and that which arises by reason of the leasing of separate tracts of land under one oil and gas lease. Preference is manifested for "unit operation" in recent writings. *The Nature of Petroleum Reservoirs, Reservoir Fluids, and Reservoir Energies in Conservation of Oil and Gas, A Legal History — 1948 3, 14-5* (Murphy ed. 1949); *Engineering Committee, Interstate Oil Compact Commission, Oil and Gas Production 65-7* (1951); *Robinson, A Form For An Oil and Gas Conservation Statute § 8* (1950). But cf. *Mid-Continent Oil and Gas Association, Handbook On Unitization of Oil Pools 15* (1930), where the term unitization "is distinguished from 'unit development' or 'unit operation' in that the first refers to the process of forming the property, i.e. unifying the ownership; thereafter unit development and operation take place." Pamphlet of the Research and Coordinating Committee, Interstate Oil Compact Commission, *Unitized and Cooperative Projects in the United States 1* (May 1950), defines a unit project as "A project for the efficient management, development, and operation of a single consolidated property, of two or more leases within a pool, or portion thereof, for the prevention of waste, the promotion of conservation, and increasing the recovery of oil, gas, natural gasoline, and associated hydrocarbons, by the drilling of wells with regard to reservoir conditions and structures, rather than man-made lease boundaries on the surface, and for the sharing of obligation or benefit so incurred, and of the oil and other products so produced on some equitable basis defined in the project or plan."

24 The question of the necessity for unit operation should not be determined solely by the desires of the lessees and the royalty owners to create a unit. In the interest of conservation the regulatory agency should have authority to bring a unit into being. In both Louisiana and Washington the agency may initiate proceedings for the creation of a unit. The Interstate Oil Compact Commission's approved form provides that the action for the formation of a unit may start by the application of interested parties, or upon the motion of the administrative agency. See *Robinson, op. cit. supra* note 23, § 8a.
but actually covering a common source of supply of oil, gas, or condensate underlying the described premises.

2. **Unit Plan of Operation** — the proposal prepared and signed by the lessees and royalty owners (depending upon the statutory requirements) which contains the agreement for unit operation and development.

3. **Unit Operator** — the person designated to conduct the unit operation within the unit area.

4. **Unit Production** — the oil, gas, or condensate found and produced from the unit area from and after that time at which the unit takes over the development and operation.

5. **Unit Operating Committee** — a committee consisting of each lessee, or his representative, within the unit area, and charged with the general over-all management and control of the business and affairs of the unit. The unit plan of operation customarily provides the specific powers of the committee.

6. **Unit Formula of Allocation or Participation in Production** 25 — production within the unit area is allocated according to various formulae which include all or any combinations of the following factors: (a) productive acre feet, (b) productive acreage, (c) estimated reserves in place, (d) estimated reserves recoverable, (e) cumulative production, (f) number of wells, (g) current production, (h) allowable, (i) bottom hole pressure, (j) potential and (k) current income.

The engineering thesis upon which compulsory unit operation is placed is sound and has substantial following in the petroleum engineering profession. 26 The engineer has long been frustrated by the operational and developmental tech-

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25 The creation of an adequate formula of allocation or participation is primarily for the petroleum engineer and the geologist. It is complicated by the fact that many of the necessary absolutes used in the formula are variable or known only with inexactitude.

26 See Kaveler, *The Engineering Basis for and the Results from the Unit Operation of Oil Pools*, 23 Tulane L. Rev. 331 (1949).
niques prescribed for him by the lawyer and the jurist. To the engineer each field or pool which covers a common source of supply should be operated as a unitary entity to secure the maximum efficient and economic recovery of oil and gas. When a field or pool containing a common source of supply is operated by proper engineering techniques as a unit, as opposed to individual operation upon the separately owned tracts, recoveries increase greatly. Through careful selective drilling, through the adoption of production techniques justified by engineering studies of the field, and through the exercise of the right to erase surface lease lines to take advantage of geologic structure, a maximum recovery of oil, gas, or condensate is guaranteed. This is not the only advantage — unit management and operation provide a centralized management enabled to take cognizance of the recoveries available through the application of repressuring and pressure maintenance to protect the reservoir energies.

I.

The Common Law and Compulsory Unit Operation

The doctrine of correlative rights is a common law doctrine as well as a statutory precept. It is customary to think of it as a statutory creation solely because of its inclusion within the modern conservation statute as a requirement which precedes action by the regulatory agency. Mr. Justice White, in *Ohio Oil Company v. Indiana*, laid down the correlative rights concept, not as the result of the Indiana statute there construed, but (as he said) because of the peculiar nature of oil and gas. The correlative rights doctrine holds:

> ... that each owner of land in a common source of supply of oil and gas has legal privileges as against other owners of

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27 177 U.S. 190, 20 S. Ct. 576, 44 L. Ed. 729 (1900).
28 1 SUMMERS, OIL AND GAS § 63 (2d ed. 1938).
land therein to take oil or gas therefrom by lawful operations conducted on his own land; that each such owner has duties to the other owners not to exercise his privileges of taking so as to injure the common source of supply; and that each such owner has rights that other owners not exercise their privileges of taking so as to injure the common source of supply.

Compulsory unit operation involves a course of legal conduct carried out in a common source of supply of oil and gas. The compulsory unit operation of the wells within the area secures to the owners of the rights to oil, gas, or condensate their proportionate shares of such production to the fraction most susceptible of determination, and the development and operation of the unit area is carried out in accord with engineering principles calculated to secure to such owners the maximum efficient recovery of oil, gas, or condensate, under conditions which preserve reservoir energies and drives, which prevent waste, and which protect co-equal rights. The concept of the correlative rights doctrine and the results of the regimen imposed by compulsory unit operation are directed toward common ends — the preservation of the co-equal rights in the common source of supply.

The attack upon the operational and developmental problems, which are solved through the compulsory unit operation of a field or pool which overlies a common source of supply of oil, gas, or condensate, has been by statute rather than by an application of the correlative rights doctrine read together with the common law approach to nuisances, negligence and wilful injury to the property rights of others.

No cases have been found which apply compulsory unit operation in absence of statute.\(^{29}\)

\(^{29}\) Western Gulf Oil Co. v. Superior Oil Co., 92 Cal. App. (2d) 299, 206 P. (2d) 944 (1949), was a case for the application of such principles, among others, but the court seemingly refused the relief requested more because of the difficulties which it imposed upon the court than as the result of the application of legal principles.
II.

The Statutory Authority for Compulsory Unit Operation — Those Statutes Limited to Operation in Connection With Gas and Condensate Fields.

Three jurisdictions — Alabama, Florida and Georgia — have adopted statutes which contain a number of the essential requirements for compulsory unit operation. These enactments are quite alike, and indeed, the Alabama and Florida laws are the same. These measures are statutes which cover only the condensate fields. The administrative agencies in these jurisdictions are authorized to require the integration of tracts and to promulgate rules to unitize separate ownership, resulting in compulsory unit operation limited to the cycling of natural gas for the purposes of pressure maintenance, repressuring, or secondary recovery.

Louisiana, the fourth of the states whose unit operation statutes are limited to fields or pools productive of natural gas, possesses more extensive authority for compulsory unit operation. The Commissioner of Conservation, the Louisi-

30 ALA. CODE ANN. tit. 26, §§ 179(36) B—179(36) C (Supp. 1952). The State Oil and Gas Board in order to prevent waste and to avoid the drilling of unnecessary wells may permit or require the cycling of gas in any pool or a part thereof. The Board is also authorized to permit or to require the introduction of gas or other substances into an oil or gas reservoir for the purpose of repressuring, pressure maintenance, and secondary recovery. The Board is to permit or to require integration of tracts when reasonably necessary in connection with cycling. An order which requires integration is made after notice and hearing and is to be based upon terms which are just and reasonable and afford the owner of each tract an opportunity to recover and receive his just and equitable share of the oil and gas in the pool. The Board designates an operator whose charges must be reasonable. These expenses may be recovered from the first production and in the event of a dispute are to be fixed by the Board.


32 GA. CODE ANN. tit. 43, § 717 (b) § (Supp. 1947). The Georgia Oil and Gas Commission may, to prevent waste and to avoid the drilling of unnecessary wells, require the cycling of gas in any pool or a part thereof productive of gas from which condensate may be separated or natural gasoline extracted, and promulgate rules to unitize separate ownership. The order of integration is made after notice and hearing and upon the same terms and conditions as expressed in the Alabama law. No rules have been adopted to date relative to forced integration. See GEORGIA OIL AND GAS COMMISSION, GENERAL RULES AND REGULATIONS (1945).

33 LA. REV. STAT. ANN. tit. 30, § 5B (West 1951).
ana administrative organization, after notice and hearing is authorized to determine the feasibility of re-cycling in any pool, or a portion thereof, producing natural gas, and thereafter to unitize separate ownerships for this purpose. Under this portion of the Louisiana conservation law, many compulsory unit operations have been established in gas-condensate reservoirs. In recent years many have claimed that this section of the statute, when read together with the other broad waste prevention powers vested in the Commissioner, authorized that officer to enforce unit operation of oil fields.

The validity of the Louisiana conservation law has been established, as has that of the section which deals with forced unit operation.

A. The Louisiana Statute

The Commissioner of Conservation is the administrative head of the Louisiana Department of Conservation.

1. The Petition. Any interested party may make application to the Commissioner of Conservation, the Department of Conservation, Baton Rouge, Louisiana, for a hearing relative to compulsory unit operation. The application is not required to be in any particular form nor to contain more than a request for a hearing to determine the feasibility of putting into effect a compulsory unit operation of a pool, or a portion thereof, productive of gas from which condensate or distillate may be separated or natural gasoline extracted.


35 Hunter Co. v. McHugh, 202 La. 97, 11 So. (2d) 495 (1942).

2. The Notice. A minimum of ten days notice of a public hearing to consider the issuance of an order of compulsory unit operation is required. The notice is published in the official journal of the state, and copies of such notice are mailed to those interested parties of whom the Department has knowledge.

3. The Hearing. The Commissioner has prescribed rules and regulations which govern the conduct of a public hearing. The rules are not technical nor do they require the application of rules of evidence as used in courts of law. The purpose behind the hearing and the deliberation incident thereto is to obtain the necessary facts as to the need for compulsory unit operation without delay or technical impediment. Naturally it will be essential for the interested parties to give geological and engineering data to establish the jurisdiction of the Commissioner and to lay the basis for the issuance of an order. The proposed plan of unit operation should be offered in evidence.

4. The Findings. Within thirty days after the conclusion of the hearing the Commissioner must take such action with relation to the application as he deems proper. His findings should be such as establish his jurisdiction to act, that is, that cycling is feasible, that the pool produces gas from which condensate or distillate are separated or natural gasoline extracted, and that notice has been given as required by statute and a public hearing held.

5. The Unit Order. The order for compulsory unit operation customarily recites the findings made by the Commissioner. The order is based upon the engineering and geological information available from the testimony in the

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37 The application for a hearing may be very informal and might even be initiated by the submission of a letter containing the pertinent information which requests the setting of a day for a hearing and the giving of notice. It may be as formal as the applicant desires.

38 LOUISIANA DEPARTMENT OF CONSERVATION, RULES OF PROCEDURE FOR PUBLIC HEARINGS (March 25, 1948).

39 Digby, supra note 34, at 156-8, 162.
cause before the Commissioner. The area included within the scope of the order is established, and a method set out for review of the order — which is to include additional information available later as a result of drilling. This provides a method for amendment or enlargement of the unit area subsequent to the order. The formula for the allocation or participation in the unit production is written into the order. This is based upon the “equity percentage” concept which Louisiana defines as “that amount of recoverable hydrocarbons in place at a stipulated time under a particular tract of land as it compares to that amount of recoverable hydrocarbons in place at the same stipulated time under the whole field.” The equity percentage for the separately owned tract is the “ratio of the dollar value of the hydrocarbons in place under each tract to the dollar value of the hydrocarbons in place under the entire field.”

The order contains an affirmative approval of the unit plan of operation which extends the approval of the Department and of the Commissioner to those portions of the plan which effectuate the purposes of the Louisiana statute.

6. The Plan of Unit Operation. The plan of unit operation is the creation of the owners of the oil and gas rights within the proposed area who desire to engage in the operation of the pool as a unit. It contains many of those provisions commonly contained in a unit plan — a description of the unit area, provisions for a unit operator, an operating committee and subcommittees to manage the general affairs of the unit, a method of fixing unit expense and providing for its charge and collection against the separately owned tract, and an allocation or participation formula. No minimum percentage of owners of oil and gas rights is necessary to place a unit plan in good standing with the Commissioner; there are no veto provisions, and no statutory provisions which relate to the form or content of the unit plan.

40 Id. at 163.
Indeed, inasmuch as the Commissioner may act upon his own motion, as well as upon the application of an interested party, it is not impossible that the Commissioner might prepare his own plan of unit operation and place it in effect through the issuance of an order of unit operation!

III.

Those Statutes Unlimited in Scope Which Apply to Oil and Gas Fields.

Arkansas, Oklahoma, Washington and the Federal Government have adopted measures which permit the regulatory agencies of those governments to require the compulsory unit operation of oil and gas fields.

A. Arkansas

The Arkansas Oil and Gas Commission issued an order calling for the compulsory unit operation of the McKamie-Patton Field. An attempt had been made to secure a plan of voluntary unit operation which had been agreed to by ninety-seven percent of the operators and seventy-five percent of the royalty owners in the field. An action was instituted by those royalty owners not signing the agreement which resulted in the case of Dobson v. Arkansas Oil & Gas Commission. The court held that the Commission was without statutory authority to order the compulsory unit operation of the field. This decision, coming as it did at the close of 1950, provided the impetus for the enactment of a compulsory unit operation measure during the 1951 legislative session.

41 Richardson, supra note 34, at 222.
42 Arkansas Oil and Gas Commission, Order No. 33-48, Order for the Unit Operation of the Reynolds Member of the Smackover Lime Formation, McKamie-Patton Field, Lafayette County, Arkansas (Nov. 8, 1948).
The Arkansas Statute

The proceedings contemplated by the Arkansas law are initiated by the filing of a petition for the compulsory unit operation of a pool, or a portion thereof, with the Arkansas Oil and Gas Commission, El Dorado, Arkansas.

1. The Petition. The petition for compulsory unit operation is to contain: (1) a description of the proposed unit area, that is, the legal description of the surface area, together with a statement which identifies the common accumulation of oil, gas, or oil and gas which is involved; (2) a statement of the nature of the proposed compulsory unit operation, that is, whether the unit is to be a cycling project, a pressure maintenance project, or a project for secondary recovery; and (3) an exact copy of the proposed unit operating agreement executed at the time of its filing by persons owning (a) at least seventy-five percent of the right to drill and to produce oil, gas, or oil and gas from the proposed unit area, and (b) at least seventy-five percent of the record legal title to the royalty and overriding royalty payable from oil, gas, or oil and gas produced from the unit area. An interest encumbered by a mortgage or a deed of trust is a legal interest which belongs to the grantor and the grantee, who, for the purposes of the petition, are considered the record owners of legal title, unless the mortgage or deed of trust reserves to the grantor the sole right to execute a unit operating agreement — in which event the grantor is to be considered the record owner of legal title. The unit operating agreement may be signed and executed by the parties in one instrument, or it may be a composite of executed counterparts of the same agreement.

45 For a discussion concerning the Commission, see Rector, Arkansas, 1938-1948 in Conservation of Oil and Gas, A Legal History — 1948 32, 35 (Murphy ed. 1949); Murphy, The Legislative and Administrative Concept of Oil and Gas Conservation in Arkansas, 1917-1947, 1 Ark. L. Rev. 236 (1947). For an excellent discussion of administrative law in Arkansas, see Parker, Administrative Law in Arkansas, 4 Ark. L. Rev. 107 (1950).
2. **Notice.** Absent any emergency, the Arkansas Oil and Gas Commission gives at least seven days notice before the hearing for an order of compulsory unit operation.

3. **The Hearing.** At the hearing the Commission must be offered evidence and testimony demonstrating that: (1) the unit agreement has been executed by the requisite persons with the required interests; (2) the unit operation is reasonably necessary to prevent waste, to increase ultimate recovery of oil, gas, or oil and gas, and to protect correlative rights; (3) the value of the added oil, gas, or oil and gas which is recovered from the unit area will exceed the added cost of unit operation; and (4) the allocation and participation formula is based upon the relative contribution, other than physical equipment, made by each separately owned tract to the unit operation, and each tract is to receive its fair share of all of the oil, gas, or oil and gas produced from the unit area.

4. **The Commission Findings.** After consideration of the petition itself, and of the evidence both for and against the petition, if the Commission finds that: (1) the unit operating agreement has been executed in accord with the statute; (2) the unit operation is reasonably necessary to prevent waste, to increase ultimate recovery and to protect correlative rights in oil, gas, or oil and gas; and (3) the value of the added oil, gas, or oil and gas recoverable exceeds the added cost of unit operation, an order of unit operation is to issue.

46 **ARKANSAS OIL AND GAS COMMISSION, GENERAL RULES AND REGULATIONS RELATING TO OIL AND GAS, Rule A-2** (September 1948).

5. The Unit Order. The unit order issues from the Commission and is to provide for: (1) a description of the unit area; (2) the allocation or participation formula for the unit based upon the relative contribution of each tract to the whole unit, other than physical equipment; (3) the credits and charges made to adjust the unit owners' investments in wells, tanks, pumps, machinery, materials and equipment contributed to the unit operation — the net amount due from those owning a tract is considered an expense of unit operation chargeable against the tract; (4) the allocation of unit expenses, including capital investments, to each tract in the same proportion that the tract shares in the unit production — the unit expenses are payable by the person who, in the absence of unit operation, would be held responsible for the tract's expenses of development and operation; (5) the time the unit operation is to begin; and (6) such other provisions which do not conflict with, or are not inconsistent with the unit operating agreement determined by the Commission to be appropriate for the prevention of waste, and for the protection of the parties to such an agreement.

6. Enlarging the Unit Area. It frequently becomes necessary to enlarge the unit area by reason of new discoveries. A petition for enlargement which complies with all of the original requirements — signatures, a proposed unit operating agreement and allegations — must be filed with the Commission. If the original unit operating agreement, under which the unit was first formed, contained a provision which related to enlargement, the subsequent petition need only be accompanied by an agreement signed by the owners of the requisite percentages of the lands to be included within the area. Otherwise the percentage requirements must be met overall for interests owned in the lands within the original unit and the proposed enlargement to the unit. The subsequent order of enlargement must treat the original unit as a single tract in its production allocation or partici-
pation formula and then assign the production allocated among the tracts in the original unit as provided in the original formula. No new order may alter the formula previously established except by the consent of those affected. Orders which relate to enlarged unit areas and to those persons owning interests in the areas are to contain the same terms as the original order.

7. Unit Expenses. The obligation for unit expense is several and not joint. The owner of the oil, gas, or oil and gas rights may not be charged with a sum greater than that due from his interest under the unit plan. The Unit Operator may create a lien upon the owner’s property within the unit area by filing, with the circuit court of the county in which the unit is located, an affidavit which sets forth an itemized statement of the amount due and the interest of the owner in the unit. The lien is thereafter enforced according to the Arkansas law which relates to labor liens.48

8. Production From Unit. Oil, gas, or oil and gas produced from the unit area and allocated to a separately owned tract are deemed for all purposes to have been produced from the unit. Operations conducted in accordance with the order of the Commission are deemed for all purposes to be operations upon each of the separately owned tracts.

9. Anti-Trust Laws. The formation and operation of a unit under an order of the Commission does not violate the laws of Arkansas with relation to trusts and monopolies.49

B. Oklahoma

Oklahoma was the first state to adopt a compulsory unit operation statute.50 Under the terms of this enactment units

were formed and operated with success.\textsuperscript{51} The constitutionality of the measure was established in 1951 in the Oklahoma Supreme Court.\textsuperscript{52}

Due to dissatisfaction upon the part of persons interested in the production of oil and gas, an interim committee was established in the Oklahoma Legislative Council to study the 1945 statute and to report their conclusions to the 1951 session of the Oklahoma Legislature.\textsuperscript{53} The recommendations made were embodied in a new measure enacted at the 1951 session.\textsuperscript{54} In part the new law follows the 1945 act, but departures of importance are made.\textsuperscript{55}

\begin{itemize}
\item \textsuperscript{51} Williams, \textit{Oklahoma} in \textit{A Legal Report of Oil and Gas Conservation Activities for 1949} 36 (Murphy ed. 1950), lists eight unit operation projects in Oklahoma; Williams, \textit{Oklahoma} in \textit{A Legal Report of Oil and Gas Conservation Activities for 1950} 23 (Murphy ed. 1951), lists six new units and the enlargements of four previously established units; Williams, \textit{Oklahoma} in \textit{A Legal Report of Oil and Gas Conservation Activities for 1951} 31-2 (Murphy ed. 1952), lists two new units and three enlargements for 1951, making a total of sixteen units created to the end of 1951.
\item \textsuperscript{52} Palmer Oil Corp. v. Phillips Petroleum Co., 204 Okla. 543, 231 P. (2d) 997 (1951); Sterba v. Corporation Commission, 204 Okla. 543, 231 P. (2d) 997 (1951). Upon appeal to the United States Supreme Court, the Court in a per curiam opinion continued the cause for "such period as will enable appellants with all convenient speed to secure in an appropriate state proceeding a determination as to the effect of this repeal [the 1945 Act] on the matters raised in these appeals." Palmer Oil Corp. v. Amerada Petroleum Corp., 342 U.S. 35, 72 S. Ct. 11, 12, 96 L. Ed. *21 (1951). An appropriate motion has been filed with the Oklahoma Supreme Court and denied. Subsequently the United States Supreme Court dismissed the cases for lack of a substantial federal question. \textit{....U.S.}, 72 S. Ct. 843, 96 L. Ed. *680 (1952). The cases of Spiers v. Magnolia Petroleum Co., \textit{....Okla.}, 244 P. (2d) 843 (1952), and Spiers v. Magnolia Petroleum Co., \textit{....Okla.}, 244 P. (2d) 850 (1952), further sustain the constitutionality of the 1945 enactment and action thereunder. See also West Edmund Hunton Lime Unit v. Stanolind Oil & Gas Co., 193 F. (2d) 818 (10th Cir. 1951), \textit{cert. denied, ....U.S.}, 72 S. Ct. 678, 96 L. Ed. *555 (1952).
\item \textsuperscript{54} \textit{Okla. Stat. tit.} 52, §§ 287.1-287.15 (1951).
\item \textsuperscript{55} These sections were stricken from the 1945 Act: \textsection{} 2, \textsection{} 6, \textsection{} 11 and \textsection{} 12 which related respectively to the common sources of supply to which the Act was applicable, the veto privilege, amendments to the plan of unit operation and the enlargement of units. New sections added were \textsection{} 6 which requires approval by lessees and royalty owners, and \textsection{} 11 relating to enlargements and amendments. For a copy of the 1951 Act which shows the language stricken from
\end{itemize}
The Oklahoma Statute

The proceedings to be initiated under the terms of the Oklahoma measure start with the filing of a petition with the Oklahoma Corporation Commission, Oklahoma City, Oklahoma, for the compulsory unit operation of a common source of supply of oil, oil and gas, or gas-distillate.

1. The Petition. The petition is filed with the Oklahoma Corporation Commission, State Office Building, Oklahoma City, Oklahoma, in the form and manner provided by the Commission rules and regulations, and the Oklahoma statutes which relate to procedure before the Corporation Commission.

The petition must describe the proposed unit area. This area is limited to one common source of supply, or a part thereof, defined and determined to be productive of oil and gas by actual drilling operations. The applicant must allege the facts necessary to give the Corporation Commission jurisdiction to act: (1) that the unitized management, operation and further development of the common source of supply, or a part thereof, is reasonably necessary to carry on effectively pressure maintenance or repressuring, cycling operations, water floods, or any form of joint effort calculated to increase substantially the ultimate recovery from the common source of supply; (2) that one or more of the methods of unit operation which apply to the common source of supply are feasible, prevent waste, and with reasonable probability increase substantially the recovery from

the 1945 Act, the new material added and the sections not changed, see State Legislative Council, op. cit. supra note 53, at 91-5.


57 The procedure and procedural requirements provided in Okla. Stat. tit. 52, §§ 84-135 (1951).

58 Corporation Commission of Oklahoma, op. cit. supra note 56, at 44-5, Rule 5, Art. I, requires that all pleadings filed with the Commission be printed or typewritten on one side of the paper, and be on paper 8½” x 14” in size. An original and three copies of the pleadings must be filed with the Commission secretary together with as many other copies as the Commission may order.

59 See the discussion at note 74 infra, and text thereto.
the common source of supply over that recovery to be expected without such operation; (3) that the added cost will not exceed the value of the added recovery; (4) that the unit operation and the use of unit methods operate for the common good, resulting in a general advantage to all owners of oil and gas rights within the common source of supply; and (5) that the unit plan of operation has been signed, ratified in writing, or approved by the lessees of record of at least sixty-three percent of the unit area, and the owners of record of at least sixty-three percent, excluding those royalty interests owned by lessees or their subsidiaries, of the normal one-eighth royalty interest in the oil and gas rights in the unit area.

2. Notice. The Corporation Commission gives ten days notice of the time and of the place of a hearing upon a petition. This notice is effected through the publication one time in a newspaper of general circulation in Oklahoma City. The Conservation Department of the Commission, in addition, mails a copy of the application to those persons who have made written requests to the Commission to receive all applications and orders of the agency, at least five days before the date of hearing. The Commission is given statutory authority to give such other notice as it may require.

3. The Hearing. The Oklahoma Corporation Commission operates under established rules and regulations which govern the formal conduct of a hearing.

The applicant presenting the petition for unit operation should offer oral and documentary testimony necessary to establish the allegations of his petition to such an extent that the Commission may properly base its findings upon such evidence. The Commission in receiving evidence in the exercise of its quasi-legislative powers is not bound to follow precisely the rules of evidence approved by the courts.

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60 Corporation Commission of Oklahoma, op. cit. supra note 56, at 47, Rule 4, Art. II.
61 Id. at 42-3.
in Oklahoma. Its usual conduct is to hear all of the testimony offered which is relevant to the issue and to determine later what portions are appropriate and material to consideration. In the presentation of testimony and in the general character of evidence required, the administrative agency practitioner will find that the Commission takes a more legalistic approach than is common in the regulatory agencies.

4. The Commission Findings. The statute expressly commands that the Corporation Commission make certain findings upon which the order of unit operation is based. The Commission is required to find: (1) that the unit management, operation, and further development of the common source of supply is reasonably necessary to carry out effectively (a) pressure maintenance or repressuring, (b) cycling, (c) water flooding, (d) any combination of pressure maintenance, repressuring, cycling or water flooding, or (e) any form of joint operation which substantially increases ultimate recovery from the common source of supply; (2) that one or more of these methods are feasible as concerns the common source of supply, prevent waste, and result in an increased recovery of substantially more oil and gas from the common source of supply than otherwise would be recovered; (3) that the estimated added cost of the opera-

62 General laws as to the admissibility of evidence are followed. See Robinson, Oklahoma, 1938-1948 in Conservation of Oil and Gas, A Legal History — 1948 420 (Murphy ed. 1949). The strict rules of evidence do not apply to hearings before the Corporation Commission except when that agency is trying a contempt charge. Muskogee Gas & Electric Co. v. State, 81 Okla. 176, 186 Pac. 730 (1920); St. Louis & S.F.R.R. v. Cannon & Son, 31 Okla. 476, 122 Pac. 231 (1912); Hine v. Wadlington, 27 Okla. 285, 111 Pac. 543 (1910). The Commission is liberal in the admission of letters, telegrams, documents and statistical data. The Oklahoma Constitution was amended in 1941 by the legislature under authority provided in that document as to those sections which conferred powers upon the Corporation Commission. Okla. Const. Art. IX, § 35. As a part of the 1941 amendments, the Legislature directed that the orders of the Corporation Commission be sustained by the Supreme Court of Oklahoma if supported by substantial evidence. Okla. Laws 1941, p. 544, § 1; Okla. Const. Art. IX, §§ 20-22. This places an added burden upon the Commission to see that it secures such evidence, and upon those appearing before the agency to see that such evidence is offered.
tions does not exceed the value of the added recoveries from the common source of supply; (4) that the unit operation under the methods proposed is for the common good and the general advantage of the owners of the oil and gas rights in the common source of supply; and (5) that the unit plan has been approved by lessees of record of at least sixty-three percent of the unit area, and by the owners of record of at least sixty-three percent, excluding the royalty interests owned by the lessees or their subsidiaries, of the normal one-eighth royalty interest in the unit area. Where the Commission is unable by reason of the testimony offered to make the finding in (5), the order may issue for unit operation, but remains in abeyance until such an affirmative finding can be made based upon a proper showing. In the event the Commission is unable to make this finding at the time the order issues, it may upon petition and after notice hold further hearings to determine the quantitative status of the signing, ratification, or approval of the required percentage of owners. The expiration of a period of six months after the entrance date of the order, without a showing or without evidence at the further hearings, voids the order and gives cause for its revocation by the Commission.

5. The Unit Order. The unit order must be fair, reasonable, equitable, and protect, safeguard and adjust the respective rights and obligations of those affected, that is, the royalty owners, the overriding royalty owners, oil and gas

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63 The findings which the Corporation Commission has to make under the Act are not stated with that directness which one might prefer in statutory drafting. The words "reasonably," "equitably," "probable," "necessary," "proper," "convenient," and the phrase "for the common good and the general advantage" tend to hedge in the actions of the Corporation Commission with words and phrases that have little or no meaning in a constructive sense. While it is true that the Commission may, and indeed does, make such findings, it is difficult to see what is gained by requiring them. Words and Phrases (1940), including the 1952 supplements, does not define "common good" or "general advantage." They may be pious expressions of what the Corporation Commission should do, but they are impossible of practical ascertainment in the field of administrative law.
payment owners, carried interest owners, mortgagees, lien claimants and the lessees.\(^\text{64}\)

The unit order is limited to all or a portion of a single common source of supply of oil, oil and gas, or gas-distillate defined and determined to be productive by actual drilling operations. The order may cover less than the entire common source of supply where the unit area is of a size and shape as is reasonably required for the successful and efficient conduct of the method of the unit operation selected. The operation of a part of the common source of supply must be such that it will not materially or adversely affect the remainder.

The unit order must provide for: (1) The efficient unit management or control of the future development and operation of the area, which states that the operations within the unit are to be carried out by the unit, or by one or more of the lessees subject to the unit's supervision and direction.

\(^{64}\) An overriding interest in royalty is a certain percentage of the working interest which, as between the lessee and the assignee of a mineral interest, is not charged with the cost of development or production. Payne v. Callahan, 37 Cal. App. (2d) 503, 99 P. (2d) 1050 (1940); Thronburgh v. Cole, 201 Okla. 609, 207 P. (2d) 1096 (1949); McDonald v. Follett, 142 Tex. 616, 180 S.W. (2d) 334 (1944). An oil payment is similar to an overriding royalty except that the interest of the assignee ceases upon the receipt of a certain amount of money or value out of the oil and gas produced from a percentage of the working interest. Knight v. Chicago Corp., 183 S.W. (2d) 666 (Tex. Civ. App. 1944), aff'd, 144 Tex. 98, 188 S.W. (2d) 564 (1945). Carried interests are of two general types — those which continue for the life of the leasehold operation, and those which last only during the initial development period. A carried interest under the first situation arises where co-owners of undivided interests in an oil and gas lease agree that one of such owners will manage, control, and operate the lease, and pay all costs of such operation. The owner will charge the interest of his co-owner with its proportionate part of the expenses and credit it with a corresponding part of the gross receipts. The managing owner is to recoup the total outlay made by him in developing the property out of the entire income before payments are made to his co-owner. There is no assignment of interest in the lease, and the co-owners own the equipment in the fraction which represents their ownership in the lease. The carried interest for the initial development period arises where co-owners of a lease enter into an agreement by the terms of which one agrees to drill, manage and operate at his expense. The one so drilling is entitled to the entire income until the cost of drilling is recouped at which time each pays his own share of development and operation and each receives his share of the production. Appleman, \textit{Sales and Assignments of Leases and Other Interests in Oil and Gas} in \textit{INSTITUTE ON OIL AND GAS LAW} 427 464 (1949).
The Corporation Commission may not designate the Unit Operator in its order. The lessees are empowered to select such an operator by vote. (2) The division of interest or the formula for the apportionment and allocation of the unit production among the separately owned tracts within the unit area. The division must reasonably permit those entitled to share in the production from the separately owned tracts to produce or to receive their fair, equitable and reasonable share of the unit production. The Commission in prescribing this division is governed by the value of each tract for oil and gas purposes, and its contributing value to the unit in relation to the values of other tracts as determined by considering (a) acreage, (b) the quantity of oil and gas recoverable from the tract, (c) its location on the structure, (d) its probable productivity in the absence of unit operation, (e) the burden of the operation to which the tract may be subjected, and (f) as many of these factors, together with other pertinent engineering, geological, or operating factors as are readily determinable. (3) The manner in which the unit and its further development and operation are to be financed, the basis, terms and conditions of apportionment of the costs among the tracts and interests properly chargeable with these expenses, and a detailed accounting procedure. Subject to terms and to conditions as to time and rate of interest as are fair and reasonable to those concerned, the Commission is to make provisions for the carrying or for the financing of lessors who are unable to meet with promptness their financial obligations in connection with the unit's operations. (4) The procedure and

65 Geologic structures are anticlines, synclines, domes and monoclines and play great importance in localizing accumulations of oil and gas. Position on these structures relates to the amounts and types of hydrocarbons underlying surface ownership. See ENGINEERING COMMITTEE, INTERSTATE OIL COMPACT COMMISSION, op. cit. supra note 23, at 9-11, 15-7, 115-122 (1951).

66 The participants in the unit operating agreement usually choose a definite accounting plan. This plan may vary from unit to unit, and even within a given unit is subject to constant modification and change. The selection of a plan is largely for management to decide and its terms are certainly those to which accountants are accustomed rather than attorneys.
the basis upon which wells, equipment and other properties of lessees in the unit area are to be taken over and used for the unit’s purposes, together with a plan which compensates or proportionately equalizes or adjusts the investment of the lessees at the date of unit operation. (5) The creation of an operating committee vested with the general management and control of the unit and of its business, affairs and operations, which includes the creation and designation of subcommittees, boards, or officers to function under the committee for the necessary, proper, convenient, efficient management of the unit, together with a definition of their powers, duties, tenure, selection and appointment. (6) The time the unit plan comes into effect. (7) The time, the conditions and the method of dissolution of the unit.

The statute requires that the order contain an affirmative finding that the plan of unit operation has been signed, ratified, or approved by (a) lessees of record of at least sixty-three percent of the unit area, and (b) owners of record of at least sixty-three percent, excluding royalty interests owned by lessees or their subsidiaries, of the normal one-eighth royalty interest in the unit area.\(^{67}\)

6. Enlarging the Unit Area. The unit area may be enlarged to include adjoining parts of the same common source of supply, including the unit area of another unit. A new unit may be created to manage, develop and operate the enlarged area, or the original plan of operation may be amended. The enlargement is subject to all of the requirements established for the creation of a unit unless the amendment to the original plan relates solely to the rights and obligations of the lessees.

7. Unit Expenses. Unit expense in the statute is defined to include “cost, expense, or indebtedness incurred by the

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\(^{67}\) The magic of sixty-three percent is explained by the fact that those interested in the measure wanted in some instances seventy-five percent and others desired fifty percent. A halving of the difference resulted in sixty-two and one-half percent so an additional one-half percent was placed making it sixty-three percent.
unit in the establishment of its organization, or incurred in
the conduct and management of its affairs or the operations
carried on by it.” Liability for payment of unit expense is
several, and no lessee or owner of oil and gas rights is obli-
gated to pay more than those amounts charged to his
interest under the plan of unit operation. The unit is given
a first and prior lien upon the leasehold estate and the other
oil and gas rights, exclusive of the one-eighth royalty inter-
est, upon the interests in the unit production, and upon the
equipment in the possession of the unit to secure those unit
expenses charged to the tract. The interest of the lessee,
or of such other person who, by reason of a contract, lease,
or otherwise, is charged with the expense of development
and operation of the tract in the absence of unit operation,
is primarily liable for assessments of unit expense. Resort to
overriding royalties, to oil and gas payments, to royalty
interests which exceed the normal one-eighth, or to other
interests normally not chargeable with costs can be had
only when the person primarily liable fails to pay, or when
such a person’s production is insufficient to pay the unit
expense. Any payments by persons not normally liable sub-
rogates such persons to the unit’s rights. The one-eighth
royalty is paid to its owners free of unit charges or liens.

8. Production from the Tract. The production which is
allocated to each separately owned tract in the unit, irrespec-
tive of where upon the unit area it is produced and whether
it be more or less in amount than the production from wells
upon the tract, is considered as production from the tract.
It is to be distributed to the persons entitled to receive it in
kind, or in money realized from the sale of such production
upon the same conditions, proportion and manner as if the
unit had not been organized. The same legal effect exists by
reason of the receipt in kind or in money as would if the
delivery or payment had been made without the organiza-
tion and intervention of the unit. The operations carried
out which further the unit plan are regarded as compliance
with the provisions, terms and conditions (express or implied) of the leases, or of contracts for development, upon the lands within the unit. A well drilled or operated upon any part of the unit area is a well drilled or operated upon each separately owned tract included in the unit area. The statute and the plan of unit operation are not to be construed as increasing or decreasing the implied covenants of an oil and gas lease upon the common source of supply, or upon lands, not within the unit area.

9. Miscellaneous Provisions. (1) Production prohibited — after the order of the Corporation Commission which establishes unit operation and a plan, the operation of any well within the unit area by persons other than the unit, or its agents, or in a manner or extent not consistent with the unit plan, is unlawful and prohibited. (2) Unit powers — each unit is a body politic and corporate, capable of suing, of being sued, and of contracting in its own name. (3) Property rights, leases, and contracts — property rights, leases, contracts and all other rights and obligations are amended to the extent necessary to conform to the Oklahoma statute, to valid plans of unit operation, and to the orders of the Commission. (4) Title of separately owned tract — no transfer of title to the unit of the separately owned tracts or leases is required. The unit has the right to use and to operate the tract or lease as provided in the unit plan. (5) Unit property — any real or personal property which the unit acquires, holds, or possesses is not for the unit but for the account of, and as the agent of, the lessees. The real or personal property which belongs to the lessees is subject to the right of the unit to its possession, management, use, or disposal in the unit's affairs, and to any lien of the unit. The unit does not own the unit production. (6) Unit taxation — the unit production or proceeds from its sale is not treated, regarded, or taxed as the income or profits of the unit. The unit receives and disburses its monies as the administrative agency of those persons to
whom the same are payable — the receipts are in the income of such persons. (7) State cooperation with the unit — the Commissioners of the Land Office, boards, or officers of the state controlling or managing state lands, and the boards or officers of the political or municipal subdivisions and agencies of the state are authorized to consent to, and to participate in a plan of unit operation.68 (8) State anti-trust laws — no agreement entered into under the statute which brings about unit operation and development violates the anti-trust laws of Oklahoma.69 (9) Definitions — the statute defines lessee, separately owned tract, oil and gas, person and unit expense.

The Oklahoma Decisions

Palmer Oil Corp. v. Phillips Petroleum Co., and its companion case, Sterba v. Corporation Commission,70 estab-

68 Those authorized to lease lands for oil and gas purposes in Oklahoma are: the Bank Commissioner of the State of Oklahoma, covering lands vested in the Commissioner as assets of an insolvent state bank, OKLA. STAT. tit. 6 §§ 163.1-163.3 (1951); the State Game and Fish Commission, as to lands under its control and management, OKLA. STAT. tit. 29, § 111 (1951); the Commissioners of the Land Office, as to any of the school or other lands owned by the state, OKLA. STAT. tit. 64, § 281 (1951); any county, township, school district, city or town having any lands under the control of the Board of County Commissioners, Board of Town Trustees, Directors of School Districts, Boards of Education, or the governing body of any city, OKLA. STAT. tit. 64, §§ 405-406 (1951); receivers of abandoned municipalities, that is, a city, town or school district which has had for one year no governing board, OKLA. STAT. tit. 64, § 407 (1951); the Board of County Commissioners as to lands belonging to the separate county schools, OKLA. STAT. tit. 64, § 408 (1951); the Board of Regents for Oklahoma Agricultural and Mechanical Colleges as to lands under their control, OKLA. STAT. tit. 70, § 1387 (1951); the State Board of Public Affairs, as to lands belonging to the state upon which are located penal or eleemosynary institutions or a part of such institutions, OKLA. STAT. tit. 74, § 97 (1951). This enumeration does not include the authority of the State Board of Public Affairs to lease lands identified as state capitol building land, which has no effect upon its right to enter into unit agreements. It is excluded because of its limited interest. OKLA. STAT. tit. 74, § 360.1 (1951), authorizes the Oklahoma Planning and Resources Board to lease lands under its control; OKLA. STAT. tit. 64, § 290 (1951), authorizes the Commissioner of the Land Office to lease for oil and gas purposes all lands between mean high water mark in streams or rivers of two chains or over.


70 204 Okla. 543, 231 P. (2d) 997 (1951) (considered together).
lished the validity of the 1945 Oklahoma Unitization Act, and of an order of the Commission issued under the authority of the Act.

The decisions involved two major propositions: (a) the constitutionality of the Act, and (b) the legality of the order of the Oklahoma Corporation Commission, issued under the Act, establishing the West Cement Medrano Unit. The subject matter of the Act was recognized as being within the police power of the state; the question was whether the Act constituted a reasonable exercise of the police power.

The plaintiffs represented three interests: (a) the lessors who contended that the Act was an unconstitutional delegation of legislative power, that in the formation of the unit and of the operational management lessees were the sole interest recognized, that the Act imposed an unreasonable burden upon the royalty interest, that the Act imposed an unauthorized burden upon the leased premises, and that the Act violated the obligation of contracts; (b) the lessees who contended that the Act as a whole was unreasonable, and that the Act constituted an unauthorized delegation of the police power; and (c) the owners of royalty in excess of the normal one-eighth who contended that the Act was invalid because it imposed an undue burden upon their interests.

The lessors' contentions which relate to an unauthorized delegation of the police power were based upon that section of the Act which required that fifty percent or more of the lessees must petition for unit operation, and upon that section which permitted the veto of unit operation by at least fifteen per cent of the lessees within the proposed unit area. There are two answers to these contentions and the court supplied both. The first is that the powers of petition and of veto do not establish or disestablish a unit — that power is vested in the Corporation Commission. The second is that the use of the right to petition, or to veto, does not carry with it any exercise of legislative power.
The Oklahoma Legislature was within its jurisdiction in enacting a section which recognized the lessees solely insofar as the legislative body treats similarly situated parties alike in conferring or withholding privileges. Lessees, who under the Act included those landowners whose lands were unleased, comprise a class and are given the right to petition and to veto. Lessors comprise another class and these privileges are withheld from them. No caprice is found in the action of the Legislature creating these classes, as the burdens and duties imposed by law upon the lessees give them an interest distinct from that of the lessors.

The Act gave the unit a first lien upon the unit leasehold interest, exclusive of the one-eighth royalty interest, and under certain conditions the unit might resort to these interests for the payment of unit expenses charged against the tracts represented by the royalty interests. Subrogation was also provided. The court pointed out that the segregation of the normal one-eighth interest is one made in the oil and gas lease; that prior to unit operation the lessor was entitled to receive his one-eighth interest free of the costs of production; and that after the land is unitized the same rights remain to this interest — the lessee being liable to account for the remainder. The rights to exceptional royalties must yield to the extent that it operates against the unit plan, but it must be preserved as far as may be done with consistency. The liability of the excess royalty arises because it is a leasehold interest in the meaning of the Act. Under the terms of a lease the liability of the excess royalty is secondary and comes into play only when the lessee breaches his duty to discharge the costs of operation. The Act preserves the legal extent of excess royalty and its enjoyment.  

The court found that unauthorized burdens had not been imposed upon the leased premises and that it could not

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anticipate that such burdens might be imposed at a later time. The court further rejected the contention that the Act violated the obligation of contracts.\textsuperscript{72}

The order of the Corporation Commission which prescribed compulsory unit operation in the West Cement Medrano area was attacked upon the common grounds assigned to orders of administrative agencies. Since the formulation and the execution of the legislative policy was given to the Corporation Commission, the court could not substitute its theories of what is best for those supplied by the Commission. The burden of establishing whether the order was contrary to the weight of the evidence was cast upon the plaintiffs. The alleged errors were that: (a) The West Cement Medrano Unit was not limited to one common source of supply. The 1945 Act required that a unit be limited to one common source of supply as does the 1951 measure. More than one common source of supply may exist in a single sand by reason of faults between portions of the sand. The Commission found that although faults did exist in the sand, there was a substantial migration of oil, gas, and reservoir pressure, and but one common source of supply. (b) The proposed area of the unit included within its limits lands not reasonably defined by drilling operations. The 1945 Act required that only so much of a common source of supply as is reasonably defined by actual drilling operations be included within the unit area. Actual drilling, the court held, upon undrilled tracts or even within a definite proximity to such tracts is not required by the 1945 Act. What is required is that the source of supply be reasonably defined by drilling operations "the evidentiary force of which is sufficient to justify a conclusion, by those capable in law of weighing the facts as to the existence of the source of supply."\textsuperscript{73} The 1951 enactment was adopted after the decision in the court and in regard to the question of the unit

\begin{footnotes}
\item[72] Id., 231 P. (2d) at 1007.
\item[73] Id., 231 P. (2d) at 1010.
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area reads "Only so much of a common source of supply as has been defined and determined to be productive of oil and gas by actual drilling operations may be so included within the unit area." The discovery well in the West Cement Field was drilled more than twenty years prior to the Act. The 1945 Act applied only to fields wherein the discovery well was drilled less than twenty years prior to the effective date of the statute. The West Cement Medrano common source of supply was discovered October

74 The 1951 Act was adopted in the Senate April 12, in the House of Representatives May 15, and signed by the Governor May 26. The measure was identified in the Legislature as Engrossed S.B. 203 (1951). The Palmer case was decided March 24, 1951, and copies of that opinion were freely circulating in the Legislature after their distribution there by persons engaged in lobbying for S.B. 203. The 1945 Act required that "Only so much of a common source of supply as has reasonably been defined by actual drilling operations may be so included within the unit area." OKLA. STAT. tit. 52, § 286.5 (Cum. Supp. 1949). The changes in expression between the 1945 Act and the 1951 Act are: (1) "reasonably" was dropped, (2) "determined" is added as is the phrase "to be productive of oil and gas." Those people who had objected to the 1945 Act based their statements in part upon this feature of that law. See Hill and Godfrey, supra note 53. It seems reasonable that a change has been worked in the 1951 statute which would require a more definite character of determination than that of which the court and the Commission approved in the Palmer case. The court in that case said, 231 P. (2d) at 1010: "The alleged mandatory force of the statute is predicated upon the use of the word 'reasonably' as used in the statute. We think the use of the word precludes rather than justifies the construction claimed. If the word 'reasonably' were omitted the words 'defined by actual drilling operations' would import absoluteness. The effect of prefixing the word 'reasonably' to the words 'been defined' necessarily qualifies the import of absoluteness which would obtain without it. In prescribing the formula the Legislature must have had in mind the impracticability of accomplishing the full purpose of the Act if its operation was to be conditioned upon actual drilling on all tracts. There is no prescription touching the places of the drilling operation nor the depth of the wells nor of what must be reflected therein. The only prescription is that the source of supply must have reasonably been defined thereby." The requirement of determination, the dropping of the qualification of reasonableness, and the added "productive of oil and gas" phrase when read in the light of the quotation from the court increases the belief that a substantial change has been worked in the unit operation law of 1951. It may be argued that the measure now is one for unit management and operation rather than one for unit development, management and operation. A strong argument could be made that the unit might include within its boundaries only those tracts upon which a productive well has been drilled, or upon those spacing units, where spacing has been established, upon which a well is drilled. It is going to be difficult to find that the legislative intent was to retain the 1945 language and meaning under the circumstances that surround the opinion and the subsequent passage of the 1951 law. See Williams, Oklahoma in A Legal Report of Oil and Gas Conservation Activities for the Year 1951 30-1 (Murphy ed. 1952).
15, 1936, but a well had been opened in the area of the unit as early as October 17, 1917. The discovery well, which is the well of significance under this section of the two Acts, is that well which actually discovers the common source of supply — the subject of the unit operation. The 1917 well had no importance as it was the discovery in 1936 which opened up the common source of supply to production. (d) The plan of unit operation and the division of interest formula were not fair, reasonable and equitable. These contentions, the court found, went only to the weight of the evidence, and nothing was offered to challenge the presumption which attaches to the Corporation Commission’s findings. The Palmer Oil Corporation, a lessee, directed the attention of the court to a phase of the order which, as to the corporation, was alleged to be particularly unfair, unreasonable and inequitable. Within the unit was a tract of land from which the Gulf Oil Corporation had assigned to Palmer its interests in the oil and gas to the depth of 6000 feet, retaining all oil and gas rights below 6000 feet. This level passes through the common source of supply, and Palmer had drilled into the source and had obtained production. Gulf had no well on the tract. The Commission’s order fixed the percentage of production for the tract, and then fixed the rights of Palmer and Gulf to that production. Palmer’s statement that Gulf could not share in the production was founded upon the original rule of capture, which however has been modified in Oklahoma. The premise that the division between the two was unfair raises once more a question of the weight of the evidence — the court could not say that the percentages were arbitrary since the Commission had before it ample evidence.

The dissent of Justice Welch deserves particular attention because of the changes made in the 1945 Act at the

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76 Id., 231 P. (2d) at 1013.
77 Ibid.
1951 session of the Legislature. Justice Welch felt the weakest portion of the 1945 Act to be that which permits the exercise of a veto. His point was that the Act is based upon the need to conserve oil and gas and to prevent waste. This necessity authorizes and requires the state to compel the lessors, the lessees, and the royalty owners to operate and develop their properties as a unit, but then the Act sets this need aside after the regulatory agency has made a series of uncontrovertible findings which relate to the existence of waste and the necessity of conservation. In his dissenting opinion he stated the case for a pure form of unit operation, that is, if unit operation is necessary to prevent waste and to promote conservation, then unit operation must come into being not at the option of the lessees alone, but also at the option of the state. No veto can exist. This provision was removed in the 1951 statute.

C. Washington

At the 1951 session of the Washington Legislature a comprehensive oil and gas conservation statute was enacted as the result of conference and study upon the part of the state officials and representatives of the petroleum industry. The statute brings into being an administrative agency — the Washington Oil and Gas Conservation Committee composed of the governor, the land commissioner, the state auditor, the director of conservation and development, and the state treasurer. A part of this measure calls for compulsory unit operation.80

The Washington Statute

When, in the judgment of the Oil and Gas Conservation Committee, production in any pool or field has declined to

79 The Governor, the Commissioner of the Bond Office, the State Auditor and the State Treasurer are elective officers. The Director of Conservation is appointed.
a point where secondary recovery operations are necessary or advisable, the Committee, in the absence of an agreement among the lessees and the owners of the oil and gas rights upon a plan of unit operation, is authorized to order the unit or cooperative development of a field or pool. The order is to be in connection with the conduct of repressuring, pressure maintenance, cycling, recycling, water floods, or any other method, and includes the extraction and separation of liquid hydrocarbons from natural gas. To set in motion the proceedings authorized by the enactment, the applicant must file a petition or proposal with the Washington Oil and Gas Conservation Committee, Olympia, Washington, directed to the attention of the state land commissioner as the executive secretary to the Committee.

1. *The Petition or Proposal*. The petition or proposal must be in writing and be verified. The statute requires a separate petition or proposal for an oil pool and for a pool which contains only gas. The allegations in each are much the same. The petitioner must attach to the petition a copy of the unit plan of operation and allege such facts as tend to prove that the unit plan is proper, feasible, equitable, reasonably necessary, and that it is for the common good and general advantage of the lessees and the owners of the oil and gas rights in the pool. In the petitions which cover gas pools this allegation should be that it is for the common good and general advantage of the lessees and the owners of the gas rights in the pool. The petition must allege that the plan prevents waste, that it distributes the oil and gas (or gas) recovered upon a fair and equitable basis, that it increases the ultimate recovery of oil from the pool, and that the estimated added oil recovery exceeds the added cost of unit operation.

2. *Notice*. Notice of the time and the place of the hearing, together with a description of the lands involved, is given by publication (a) on three consecutive days, at least ten days prior to the date of hearing, in a newspaper of general circu-
lation printed in Olympia, Washington, and (b) on three consecutive days, at least ten days prior to the date of hearing, in a newspaper of general circulation in the county, or in each county if more than one, in which the lands covered by the petition are located. A further requirement is that a postal card notice must be mailed to the last known address as disclosed by the records of the county treasurer of the county in which the land is located to all persons who own interests in land within the unit area. This notice must be made not less than thirty days before the date fixed for the hearing. Affidavits which evidence such notice by publication and by mail are to be filed with the Committee by the applicant.

3. The Hearing. The Committee is authorized to hold hearings. The hearings are public and any person having an interest in the subject matter is entitled to be present and to be heard. When the hearing cannot be completed upon the first day set for the session, the Committee prior to adjournment publicly announces the time and the place at which the hearings are to continue. This announcement constitutes the required notice of continuance.

The applicant is to offer evidence and testimony adequate to prove the allegations of his petition and proposal, and to establish the jurisdiction of the Committee. There is no requirement that the applicant prove that the unit plan of operation has been approved by any percentage of those persons who own interests in the oil and gas, or gas rights within the proposed unit area.

The date of the hearing is not to be set for a time less than thirty days nor more than sixty days from the time of filing of the petition or proposal for unit operation.  

81 Wash. Rev. Code tit. 65, c. 16, §§ 010, 020, 030 (1951), define a legal newspaper and cover publication requirements.

82 Wash. Rev. Code tit. 1, c. 12, § 040 (1951), excludes the first day and includes the last day unless it falls on a legal holiday.
4. The Committee Findings. Within fifteen days after the completion of the public hearing upon the petition or proposal for compulsory unit operation of the unit area, the Committee is to determine, from the facts and evidence presented, (a) whether the unit plan for the management and operation of the oil (or gas) pool is proper, feasible, equitable, reasonably necessary, for the common good and general advantage of the lessees and owners of the oil and gas (or gas) rights in the pool; (b) whether the plan prevents waste and distributes the oil and gas (or gas) produced upon a fair and equitable basis; (c) whether the plan increases the ultimate production of oil from the pool, and if the added oil recovered exceeds the added cost of unit operation. If the Committee determines that the unit operation of the area accomplishes the required factors, it makes a finding to that effect. Should the Committee determine that the unit plan will not secure the required results, it makes a finding to that effect in which are recited in detail the considerations upon which rejection is based.

5. The Committee Order. The Committee's order which establishes the unit consists of its approval of the unit plan of operation, the findings made by the Committee, and the date upon which the unit is to begin.

6. The Unit Plan of Operation. The statute makes detailed requirements governing the content and operation of the unit plan. The unit plan must: (a) define and identify the unit area; (b) outline the nature and the purpose of the operation contemplated; (c) provide for the efficient unitized management of the operation in the unit area; (d) provide for a division of interest and a formula for the apportionment and allocation to each separately owned tract of its fair, equitable and reasonable share of the unit production; (e) provide the manner in which the development and operation of the unit is to be financed; (f) provide for the apportionment of the unit costs, charges and credits, together with a detailed accounting plan; (g) provide the
procedure and the basis upon which wells, equipment and properties of the lessees within the unit are to be taken over and used, and provide for the equalization and adjustment of the investments in such property; (h) provide a fair and equitable plan for the general management of the unit which permits the participation of the lessees, and also provide for voting upon unit affairs; (i) provide that the obligation of the lessees is several and limited to amounts charged against their interests; (j) provide that each lessee takes his share of the unit production in kind; (k) provide for amendment of the unit plan; and (l) contain such other provisos as the lessees deem appropriate for waste prevention and for the protection of all interested parties.

The unit plan must be proper, feasible, equitable, reasonably necessary, for the common good and general advantage of the lessees and the owners of the oil and gas rights (or gas rights) in the pool, prevent waste, and in an oil pool result in increased ultimate recovery exceeding the added cost of unit operation.

7. Unit Expense. The developmental and operational expenses of the unit are apportioned among the separately owned tracts. Expense under the unit plan is several and no lessee is liable for more than the charges apportioned against his tract. The share of the expense chargeable to the lessee may become a lien upon his production from the unit, but under no circumstances is the lien to operate against any interest, estate, equity, or title of the lessee. A lessee unable to finance his share of the expense is to be carried under the terms of a required section in the unit plan.

8. Production from the Tract. That amount of production allocated under the plan to the separately owned tract, regardless of the location of the well from which it is produced, or whether it be more or less in amount than the production from a well upon the tract, is production from
the tract. The lessee is not obliged to pay royalties or to make other production payments in excess of the allocated production. Operations carried out in connection with the unit plan are regarded as fulfilling the provisions, conditions and covenants (express or implied) which relate to the development of a tract by lease or contract.

9. Miscellaneous Provisions. (1) Production prohibited — after the effective date of the unit plan the operation of a well, which produces from the unit area, by persons other than those acting for the unit, or in a manner other than that set out by the unit plan, is unlawful and prohibited. (2) Amendments to the unit plan — the Committee retains jurisdiction of the unit plan and of the parties associated in that agreement for the purpose of amending the unit plan. An amendment operates prospectively from the date of its approval. The procedure for an amending order is that required for the original creation of the unit as to petition, notice and hearing. (3) State cooperation with a unit — the commissioner of public lands, or any officer or board who has control and management of state land, and any board or officer of a political or municipal division or agency of the state which controls or manages public land, may, with respect to the land and to the oil and gas rights subject to their control and management, consent to and participate in a unit plan.1 3 (4) State anti-trust law — no plan for unit operation of a field or pool containing oil or gas which is created or approved by the Committee violates the state anti-trust laws.1 4

(To be concluded)

Blakely M. Murphy*

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83 WASH. REV. CODE tit. 78, c. 52, § 450 (1951).
84 WASH. CONST. Art. XII, § 22.
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