Land & Water Law Review

Volume 6 | Issue 2 Article 5

1971

Wyoming's New Unitization Statute

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WYOMING'S NEW UNITIZATION STATUTE

Wyoming has a new unitization statute which was enacted into law by the Forty-First Session of the Wyoming State Legislature.[1] The new statute provides for compulsory unitization and will replace the current voluntary statute, WYO. STAT. § 30-222. The purpose of this comment is to examine some of the features and possible problem areas of this new statute with special regard to the type of analysis employed by Williams and Myers, *Oil and Gas Law;*[2] they have suggested several common problem areas which are the main concern of this comment.

The first concern in analyzing a unitization statute is the purposes for which unitization may be ordered and the methods which may be utilized. The Statute is very good in this area, employing broad language which should bring most problems within its scope. A unitization agreement may be authorized by the Wyoming Oil and Gas Conservation Commission wherever it is in the public interest, reasonably necessary to prevent waste, or for the protection of correlative rights.[3] The Statute refers to WYO. STAT. § 30-216 for definitions of the terms used. So conceivably unitization could be authorized to prevent the drilling of unnecessary wells as well as for the purposes stated in the statute. However, the value of estimated additional recovery must be shown to exceed the estimated additional costs incurred by unit operation.[4] As to the methods which may be utilized to recover the oil and gas in a unit operation, the Statute would seem to authorize all common forms used in secondary recovery, i.e. water flooding, gas injection, etc.[5]

The second problem area involves the contents of the petition requesting unitization. The provisions of the Statute in this regard are similar in most respects to the statutes of other states and no effort will be made here to analyze them in any

1. ENROLLED ACT NO. 40, HOUSE OF REPRESENTATIVES FORTY-FIRST SESSION OF THE WYOMING STATE LEGISLATURE (1971), introduced by Warren A. Morton.
2. 6 WILLIAMS AND MYERS, OIL AND GAS LAW, § 913 (1968). *See also* MYERS, RAYMOND A., THE LAW OF POOLING AND UNITIZATION, (2nd ed. 1967), and HOFFMAN, LEO J., VOLUNTARY POOLING AND UNITIZATION (1954).
3. *Supra* note 1 at § 1(1).
4. *Id.* § 1(5)(b, c).
5. Waterflooding or other recovery operations involving the introduction of extraneous forms of energy into any pool, *Id.* § 1(1).

detail.[6] Basically the application must contain a description of the land and pool, the names of all persons having an interest therein, a statement of the type of operations contemplated, a method or formula for allocating the production and a plan for supervision and allocation of the costs.

The next area presents a real problem. It involves the question of who may initiate the plan. Under the Statute any interested person may file an application with the Commission to unitize an area.[7] There is aparently no authority for saying that the Oil and Gas Commission would qualify as an interested person. As such, the Commission might never be able to initiate plans to unitize areas. If indeed this is true, the Statute should be amended at the earliest opportunity to provide a means for the Commission to initiate unitization plans. The Statute cannot accomplish it real goal without this power in the Commission, since the primary responsibility for conservation of oil and gas lies with them.

Next, consideration must be given to the findings prerequisite to the issuance of a unitization order. The Statute here also seems entirely adequate.[8] The Commission must find the plan to be feasible. The unitization plan must prevent waste, protect correlative rights, be expected to substantially increase ultimate recovery and equitably allocate production and costs. There is one finding prerequisite, however, that may prove troublesome. The Statute specifically authorizes unit operations on a portion of a pool.[9] But the Commission must find that the conduct thereof will have no material adverse effect upon the remainder of such pool.[10] This seems to indicate that a unit project could be blocked by a landowner whose land was not included in the unit merely by his showing an adverse effect upon the portion of the pool underlying his land. This could prevent a unit operator from deciding that the overall prospects for a profitable operation outweigh the damages which would have to be paid if the unit operations in some way affected the portion of the pool underlying the land which was not included within the unit. In short, a land-

6. *Id.* § 1(3).
7. *Id.* § 1(3).
8. *Id.* § 1(5).
9. *Id.* § 1(3).
10. *Id.* § 1(5)(e).

owner who does not own a material portion of the pool could block an otherwise profitable unit operation.[11]

The Statute is also good with respect to non-consenting owners within a unit. They are brought in and treated equally in every respect with the consenting owners. Further, financing, where necessary, must be provided if they are unable to meet financial obligations in connection with the unit.[12]

As to the requisite consent needed, the persons who own at least eighty percent (80%) of the unit production or proceeds thereof that will be credited to royalty and overriding royalty interests which are free of costs, and those persons who will be required to pay at least eighty percent (80%) of the cost of unit operations must sign the agreement or in writing approve or ratify it.[13] There is a further provision that overriding royalty interests which exceed twelve and one-half percent (12½%) shall not be considered to the extent that they exceed twelve and one-half percent (12½%). This provision requiring 80% approval is not unusually high; other states, in their unitization statutes, require the same percentage of approval.[14] An effort was made in the House to increase this figure but was defeated. Eighty percent (80%) is an entirely adequate figure—in fact many states require a lesser percentage.[15] As seen above, provisions have been made for overriding royalty interests which exceed one-eighth (⅛); however, no provision is made for royalty interests which might exceed the customary one-eighth (⅛). A question might arise under the Statute as to what vote a royalty holder is entitled to to the extent that his interest exceeds one-eighth, or, to the extent that it is smaller than one-eighth (⅛). This is a common problem with unitization statutes and provisions should be made to deal with it. A further problem which might arise is who is entitled to give consent if the premises are encumbered. And a problem of perhaps less significance is the

11. It is suggested that the landowner whose land overlying a portion of the pool which is not included within the proposed unit be given the opportunity to be included within the unit or be restricted to suit for damages for good faith trespass. *See* WILLIAMS AND MYERS, OIL AND GAS LAW, § 226.2 (1970).
12. ENROLLED ACT NO. 40, HOUSE OF REPRESENTATIVES FORTY-FIRST SESSION OF THE WYOMING STATE LEGISLATURE, § 1(f)(iii), (1971).
13. *Id.* § 1(6).
14. COLO. REV. STAT. § 100-6-16(5) (1963), requiring 80%.
15. 3-A REV. STAT. NEB. § 57-910.3 (1968), requiring 80%.

consequence of one interest holder satisfying the percentage consent figure required. The Statute could certainly be made clearer with respect to these problems and efforts to do so should be made. A further point to be made here is that if the required percentages of consent are not obtained within six months then the order of approval shall be made ineffective and revoked.

No specific reference is made in the Statute to the allocation of production and costs except that such allocation must, so far as can be practically determined, represent each separately owned tract's just and equitable share of the oil and gas in the unit area.[16] Presumably the application must set forth its proposed method of allocating cost and production and the Commission will rule on its acceptability. Of course any interested person could object to the method of allocation and have his views reviewed by the Commission. This part of the Statute seems flexible and is probably preferable to those statutes making allocations based on a surface acreage basis.

Closely related to the problem of allocation is whether nonproductive lands can be included within the unit. There is nothing in the Statute which specifically excludes it and this factor alone may make determination of an equitable allocation difficult to achieve. Unit area is defined in the Statute to include "land and pool, pools or portions thereof proposed to be so operated."[17] If this definition can be restricted to include only productive lands it should be done. Further, the unit plan does not require a common source of supply. This too may complicate the Commission's determination of an equitable method of allocation. And the authorization of unit operations on a portion of a pool may create difficulty other than that already observed, especially as to allocation of cost and production and a question of liability to be discussed later. These problems are shared by most unitization statutes, however, and overcoming them should not present difficulties which cannot be solved.

16. *Supra* note 1 at § 1(5)(d).

17. *Id.* § 1(3)(a).

Modifications and amendments to a unitization order are handled in substantially the same manner as approval of the original plan.[18] This portion of the Statute should present no problems. Problems of unlawful operations,[19] exemptions from anti-trust laws,[20] and liens upon production for expenses[21] are well handled by the Statute and they too should present little difficulty.

Under the Statute leases are modified to conform to the unit plan,[22] and no transfer of title is required except to the extent that the parties affected so agree.[23] Further, the effect of unit operations or production, or both, is the same as operation or production or both, on each separate tract within the unit.[24] And the Statute provides that operations pursuant to the unit plan shall constitute fulfillment of all express or implied obligations of each lease,[25] and nothing in the Statute increases or decreases the implied covenants.

There are some questions remaining, however. An important one is whether or not working or royalty interest owners are liable for non-negligent injuries or for damages from operations conducted under the unit plan. A further question here is whether the liability for unit expense is several or joint—presumably it is the former. Another question is the status of the unit; that is, can it be taxed or sued and can it sue in its own right. This last question may well be answered by looking to the agreement submitted for approval by the Commission.

As can be seen by a review of the Statute, the overall scheme and methods of employment are very good. Like all statutes the new unitization statute can be expected to present some difficulty in interpretation and in carrying out its intent. It is suggested that future legislators consider empowering the Commission to initiate unitization plans and exempt from liability the working and royalty interest owners for

18. *Id.* § 1(8).
19. *Id.* § 1(7).
20. *Id.* § 1(1).
21. *Id.* § 1(4).
22. *Id.* § 1(10).
23. *Id.* § 1(13).
24. *Id.* § 1(10).
25. *Id.* § 1(10).

non-negligent injuries caused by the unit operater. It is also the opinion of this author that § 1(5)(e) of the Statute should be eliminated as a requirement prerequisite to the Commission ordering unitization.[26]

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26. *Supra*, note 10 and text discussion.