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In 1971 the Wyoming Legislature enacted a compulsory unitization statute. The authors of this article analyze all of the provisions of this new statute. In considering the provisions which are typical of compulsory unitization statutes and the unique provisions of the Wyoming statute, the authors answer many of the questions and objections raised by a student article which appeared in Volume VI, Number 2 of this journal.

FIELDWIDE UNITIZATION IN WYOMING

*Morris G. Gray**

*Oscar E. Swan***

INTRODUCTION

IN 1971, the Forty-first Legislature enacted a field-wide unitization statute for Wyoming¹ which for the first time authorized the Wyoming Oil and Gas Conservation Commission to unitize oil and gas pools or parts thereof with the approval of the owners of at least 85% of the cost bearing interests and of a like percentage of the owners of specified interests which are free of cost. The statute became effective May 20, 1971,

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** Legal Counsel, Midwest Oil Corporation, Denver, Colorado; 1940, admitted to the practice of law in Oklahoma; Member of Colorado, Wyoming, Denver County, and American Bar Associations. The authors are indebted to Warren A. Morton, Representative from Natrona County and Chairman of the House Committee on Oil and Gas during the Forty-first Session of the Wyoming Legislature; Robert H. Martin, Manager, Wyoming-South Dakota Division, Rocky Mountain Oil and Gas Association; Thomas F. Stroock, Senator from Natrona County during the Forty-first session for their review of the drafts of this article and for their helpful information, comments and criticisms with respect to the general background and legislative history of the bill which became House Enrolled Act No. 40.

1. Ch. 102, §§ 1-18, [1971] Wyo. Sess. Laws 126-32. The statute has been incorporated into the Wyoming Compiled Statutes and will hereinafter be cited as such. WYO. STAT. § 30-222 (Supp. 1971).

and it has since been used in some of Wyoming's newest and most important oil and gas fields.²

A student comment discussing various features of the statute appeared in Volume VII, Number 2 of the Land and Water Law Review.³ In the main, the comment is an accurate summary of the salient provisions of the unitization statute. Knowledge of the legislative history and orientation to the problems involved is at least helpful, if not essential, to accurately gauge the scope, efficacy, and sometimes the impact of legislative enactments which deal with highly complex, specialized problems and are drafted in the legal jargon of the industry to which they relate. Wyoming's fieldwide unitization statute is no exception. The writers are persuaded that the author of the student comment misconceived the purposes for which the Wyoming Oil and Gas Conservation Commission may *order* involuntary unitization (as distinguished from merely approving unit agreements) and that some of his criticisms and recommendations for legislative changes are not warranted in light of the history of the statute and the peculiar problems to which its provisions are addressed.

This paper will consider the statute from a somewhat different viewpoint with primary emphasis upon the history, purposes and practical reasons for some of its major features. Hopefully this will in some measure help fill the void resulting from the lack of a published legislative history and perhaps also assist general practitioners who may occasionally be called upon to represent clients in fieldwide unitization proceedings before the Commission.

Unitization⁴ of oil and gas fields is not of recent vintage in Wyoming. The first federally approved unit operation in

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2. Some of the units which have been made effective under the statute are the Grady and Central Units in the Hilight Field, and the Duvall Ranch, Reel, Gas Draw, and Rogers Units.
 3. Comment, *Wyoming's New Unitization Statute*, 6 LAND & WATER L. REV. 587 (1971).
 4. Webster's New International Dictionary defines the verb "unitize" as applied to oil fields as "to aggregate discrete elements into a functional whole." This is too precise to be of much help. A more meaningful definition appears in WILLIAMS AND MYERS, INDEX VOLUME, OIL AND GAS LAW 485-86 (1971), and it is in this sense that the term unitization is used in this article:
A term frequently used interchangeably with 'pooling' but more properly used to denominate the joint operation of all or some

the United States was in Wyoming's Little Buffalo Basin Field in 1931. Many of Wyoming's most prolific fields have been completely or partially unitized for many years, both for primary recovery operations and for secondary recovery purposes. On federal lands the exploratory type of unit under which lands are unitized before the first exploratory wells are drilled also has been widely used.

Oil and gas operators in Wyoming, including independents as well as major oil companies, are well aware of the benefits that can be obtained from unit operations. In the past, because of the predominance of federal ownership in Wyoming's older producing fields and the very nature of the structures involved, it was ordinarily possible to accomplish unitization by voluntary agreement when unitization was deemed to be absolutely essential for exploration and development to proceed.⁵ For this reason, the need for a fieldwide unitization law was not considered to be so pressing in Wyoming as in some of the other producing states.

Fieldwide unitization bills have been considered by several Wyoming legislatures. A bill similar in many respects to House Enrolled Act No. 40, the fieldwide unitization statute

portion of a producing reservoir as distinguished from 'pooling,' which term is used to describe the bringing together of small tracts sufficient for the granting of a well permit under applicable spacing rules. Pooling is important in the prevention of drilling of unnecessary and uneconomic wells, which will result in physical and economic waste. Unitization is important where there is separate ownership of portions of the rights in a common producing pool in order that it may be made economically feasible to engage in cycling, pressure maintenance or secondary recovery operations and to explore for minerals at considerable depth. The best results in conservation can be attained only by unitization. Only in this way can appropriate use of reservoir pressures be made and secondary recovery operations utilized at the appropriate early stage in the exploitation of the oil deposits. Moreover, only with unitization of fairly sizeable tracts is it economically feasible to utilize advanced methods of cycling for maximum extraction of liquid constituents from gas. Cycling operations should be conducted under a program planned for a field as a whole in order to prevent wet gas from being segregated from producing wells by the dry gas fingering into the formation. Under a unitization program, input and production wells may be located in accordance with the best engineering practices and without regard to lease or property lines.

5. Voluntary unitization, however, was not always achieved. Failure to achieve timely unitization contributed materially to the tragic waste of oil and gas resources in the Claretton Field. Both the basic Conservation Act passed in 1951 and the 1971 unitization law gained much of their support from the universal desire to avoid another Claretton.

which was enacted in 1971, was introduced in the Thirty-ninth Legislature in 1967. The immediate forerunner of House Enrolled Act No. 40 was introduced as House Bill No. 361 in the Fortieth Legislature in 1969. None of these earlier measures moved out of committee. There was some opposition to their adoption within the oil and gas industry itself. More important, however, was the inertia resulting from the belief of a substantial element of the industry that fieldwide unitization was not then vitally needed in Wyoming.

By 1971, it had become apparent that substantial waste of oil and gas resources would occur in the newly developed fields in the Powder River Basin of Wyoming unless secondary recovery operations were implemented early in the life of these fields. It was equally evident that the unitized operations necessary to accommodate secondary recovery techniques for these fields could not be achieved in all cases by voluntary means. This overcame the inertia. The next step was to draft a bill which would meet objections not only to the measures introduced in prior sessions but also to statutory unitization laws of other states.

House Bill No. 11, which became House Enrolled Act No. 40, was drafted with the assistance of the Legal Committee of the Rocky Mountain Oil and Gas Association. Its basic framework was taken from the statutory unitization provisions of the suggested form for an oil and gas conservation statute published by the Interstate Oil Compact Commission of which Wyoming is a member.⁶ Some parts were borrowed from unitization provisions of the conservation laws enacted by surrounding states before Wyoming found it necessary to enact such legislation.⁷ Other provisions were drafted especially for Wyoming and have no counterparts in the laws of other states.

Drafts of the proposed unitization bill were widely circulated within the oil and gas industry in Wyoming, to general practitioners known to have clients interested in oil and

6. INTERSTATE OIL COMPACT COMMISSION, A FORM FOR AN OIL AND GAS CONSERVATION STATUTE §§ 7.8, 7.9 (1959).

7. See COLO. REV. STAT. ANN. § 100-6-16 (Supp. 1965); NEB. REV. STAT. §§ 57-910.01 to .12 (1943); UTAH CODE ANN. § 40-6-17 (1953).

gas matters either as lessees or as lessors, and to other industry groups whose members would be affected by the proposed legislation. Comments and criticisms resulted in numerous revisions of the original draft. Even after the bill was introduced in the Forty-first Session, several material amendments became necessary. The sophistication of the members of Wyoming's oil and gas industry in unitization matters, the interplay of various interest groups with respect to the contents of the measure, and the careful consideration given to it by the legislature itself all combined to produce a fieldwide unitization law which is specifically tailored for Wyoming. It should both facilitate unitization for secondary recovery projects and also adequately protect the rights of all persons affected by any statutory unitization proceeding.

SPECIFIC PROVISIONS

The first and perhaps the most serious objection to the published comment above referred to is the statement therein⁸ with respect to Section 1 of the statute.⁹ The author fails to adequately distinguish between approvals of voluntary unit agreements obtained for the purposes of the state antitrust laws and the *involuntary* unitization of pools or parts thereof by *orders* of the Oil and Gas Conservation Commission.

Unitization by voluntary agreement of the parties has always been lawful and authorized. Since its adoption in 1951, the basic Wyoming Oil and Gas Conservation Act has contained a provision permitting, but not mandatorily requiring, Commission approval of voluntary agreements made for any lawful purpose.¹⁰ Prior to 1971, Wyoming's statute did not specify whether or not any consequences would result from failure to obtain the permitted approvals. The fieldwide unitization statute clarified this provision to specify that failure to obtain Commission approval of voluntary unit

8. Comment, *Wyoming's New Unitization Statute*, 6 LAND & WATER L. REV. 537 (1971).

9. WYO. STAT. § 30-222(1) (Supp. 1971).

10. Ch. 94, § 4, [1951] Wyo. Sess. Laws 122-23.

agreements would not per se constitute evidence of violation of the State's antitrust laws.¹¹

Involuntary unitization is effected by mandatory order of the Commission for unitized operations of one or more pools or designated parts thereof. Such order may be entered only pursuant to a finding by the Commission that unitized operations will result in a greater recovery of oil or gas or both than would have been realized without unitized operations. This finding must be based upon evidence adduced at a hearing called in accordance with the statute.¹²

The need for early unitization for secondary recovery purposes in the newly discovered fields in the Powder River Basin was the moving force behind the enactment of Wyoming's statute. Those who took an active part in the drafting of the bill, including its principal sponsors in the House of Representatives, the Senate, and the legislature as a body, understood and intended that the bill would empower the Commission to order unitization only in connection with operations that could be reasonably expected to result in the recovery of additional oil or gas which could not be recovered by primary recovery methods. This was made clear both in the legislative committee hearings and upon the floor of the legislature.

No enumeration was made in the statute of the types of recovery operations to which statutory unitization might be applied. New methods of recovery are constantly being developed, and old methods are constantly being improved. Specific enumeration might preclude unitization for the purpose of utilizing recovery methods not known or contemplated when the statute was adopted. While the previously mentioned student article recognizes the statutory requirement that the value of the estimated additional recovery should exceed the estimated additional costs of achieving it,¹³ it overlooks the significance of paragraph 5(b) which requires a showing that the unit operation "can reasonably be expected

11. WYO. STAT. § 30-222(1) (Supp. 1971).

12. WYO. STAT. § 30-222(5)(b), (c) (Supp. 1971).

13. WYO. STAT. § 30-222(5)(c) (Supp. 1971).

to increase substantially the ultimate recovery of oil or gas"¹⁴ and paragraph 15(b) which prohibits compulsory unitization under a plan which allocates unit production solely on the basis of surface acreage.¹⁵ These provisions effectively preclude statutory unitization for exploratory or development purposes solely to reduce operating costs or merely to prevent the drilling of unnecessary wells, contrary to what the student author suggests might be permitted.¹⁶

The requirement for showing a substantial increase in ultimate recovery as a prerequisite for statutory unitization is not unique. Equivalent provisions appear in the Interstate Oil Compact Commission suggested form¹⁷ and in the fieldwide unitization statutes of other states.¹⁸ There are valid, practical reasons why statutory unitization should be so limited. Until the productive limits of a pool are essentially defined by drilling operations and substantial development has occurred, *i.e.*, until it has reached a stage of development at which secondary recovery operations can be properly planned and undertaken, information upon which an adequate evaluation of the tracts can be made is not available. To require a party to commit his interest to a unit by order of the Commission before the existence of adequate evidence as to the value of that interest and even evidence regarding the need for the unitization would raise serious equitable and perhaps even constitutional questions. Additionally, if only primary operations are to be undertaken, the Commission has wide powers to prevent waste and protect correlative rights without unitization by establishing well spacing and exercising its other delegated powers.¹⁹ Unitization becomes necessary only when supplemental recovery methods requiring operations on a fieldwide basis without regard to property lines are needed to achieve maximum recovery from the field.

14. WYO. STAT. § 30-222(5)(b) (Supp. 1971).

15. WYO. STAT. § 30-222(16)(b) (Supp. 1971).

16. Comment, *Wyoming's New Unitization Statute*, 6 LAND & WATER L. REV. 537 (1971).

17. INTERSTATE OIL COMPACT COMMISSION, A FORM FOR AN OIL AND GAS CONSERVATION STATUTE § 7.2.1 (1959).

18. See, *e.g.*, COLO. REV. STAT. ANN. § 100-6-16(3)(b) (Supp. 1965); NEB. REV. STAT. § 57-910.03(2) (1943).

19. WYO. STAT. §§ 30-219, -221 (1957, Supp. 1971).

Turning now to the detailed requirements for involuntary unitization of pools or parts thereof, the fieldwide unitization statute adopts the definitions of the basic Oil and Gas Conservation Act except when the context of the unitization sections requires otherwise.²⁰ The reference to these definitions merely explains the meanings of the terms employed. They do not expand the purposes for which unitization may be ordered.

Following the incorporation of these definitions, the statute addresses itself to the issues of who may file an application for unitization and what the application must contain. With respect to who may file, the statute merely says that any interested person may file an application for an order requiring unit operation of one or more pools or part or parts thereof.²¹ It does not attempt to define an "interested person." There is ample precedent for using the term without definition. The Wyoming Administrative Procedure Act²² contains references to "interested persons," "interested parties" and "persons aggrieved."²³ The phrase "interested person" is a common one in statutory parlance. Certainly it embraces all persons having a pecuniary interest in the subject matter of the proceeding. A more certain description of the class of persons entitled to appear probably cannot be devised. A restrictive definition might exclude persons with legitimate interests in the proceeding. This would jeopardize the validity of the statute. To expand the definition to permit the initiation of unitization by persons who indeed have no legitimate interests would be sheer folly and would handicap the administration of the statute. In the final analysis, under any definition the question of whether a person has such a legitimate interest as to be entitled to participate in a proceeding is a question of fact to be determined by the agency involved in light of the peculiar facts and circumstances of each case, subject of course to appropriate review by the courts.

20. WYO. STAT. § 30-222(2) (Supp. 1971).

21. WYO. STAT. § 30-222(3) (Supp. 1971).

22. WYO. STAT. §§ 9-276.19 to .33 (Supp. 1971).

23. WYO. STAT. §§ 9-276.24, -276.32 (Supp. 1971).

The term "interested persons" does appear to exclude the Commission as an applicant.²⁴ As an applicant, the Commission would be thrust into the role as an advocate of its own plan. At any hearing, the Commission would have to sit in judgment of the plan it sponsored. Complete impartiality would be difficult if not impossible to achieve under such circumstances.

Since to be effective a plan of unitization must receive approval by the owners of not less than 80% of the cost bearing interest and by the owners of a like percentage of the specified cost-free interest,²⁵ it is apparent that a plan with such support will have an advocate willing to file the necessary application for an order implementing it. If such a plan does not have widespread support, it would be useless for the Commission to file an application. Moreover, the Commission is not adequately staffed to originate the engineering studies and to conduct the negotiations necessary to win approval of proposed unit plans. The Commission should not expend its limited funds (contributed by all oil and gas producers) for the benefit of those few who may be affected by the unitization when, by proper exercise of its powers, it should be able to secure the filing of an application by truly interested parties whenever unitization is necessary to prevent waste.²⁶ Thus, there would appear to be no real need for the Commission to become an applicant.

Paragraph (4)²⁷ of the statute is concerned with the hearings which must be held and notice which must be given after applications for unitization are filed. Paragraph (5)²⁸ enumerates the facts which the Commission must find to exist before unitization may be ordered. These provisions are taken

24. It is perhaps significant that the Administrative Procedure Act defines "person" in such a way as to exclude governmental agencies. WYO. STAT. § 9-276.19(b) (6) (Supp. 1971).

25. WYO. STAT. § 30-222(6) (1971).

26. The Wyoming Oil and Gas Conservation Commission has already quite successfully used its waste prevention powers to bring about the initiation of unitization proceedings in the Grady Unit, Central Unit, and Jayson Unit in the Hilgert Field. It has also issued "show cause" orders in other fields for the purposes of determining whether unitization is desirable or feasible.

27. WYO. STAT. § 30-222(4) (Supp. 1971).

28. WYO. STAT. § 30-222(5) (Supp. 1971).

almost verbatim from the Interstate Oil Compact Commission suggested form.²⁹ Substantially the same provisions appear in every fieldwide unitization statute.³⁰ They leave no doubt as to what must be proved. In general, the applicant must establish that the proposed unit operation is feasible; that it will result in the recovery of additional quantities of oil or gas the value of which will exceed the additional cost of unit operations; and finally, that all persons owning an interest in the oil and gas in the pool or pools being unitized will bear the burdens and share the benefits in a fair and equitable manner with as little modification of pre-existing contractual arrangements as possible.

With respect to the payment of unit costs, if all persons who will be required to bear the costs of unit operations have executed both the unit agreement and the proposed operating plan or unit operating agreement, the applicant need only establish such agreements. The Commission should not be concerned with or burdened by the details of unit operating agreements which are executed by all of the working interest owners.

When there are persons who will be required to share the costs of unit operations but who have not consented to unit operations and have not executed the unit operating agreement, the Commission must concern itself with the terms of the proposed unit operating agreement to insure that these nonconsenting owners receive fair and equitable treatment. The statute delineates a number of conditions which must be met.³¹ The working interest owners who have consented to the unit operating agreement may be required to carry or finance the share of costs attributable to the interests of the nonconsenting working interest owners. Recovery of these costs may only be out of such nonconsenting owners' shares of unit production.³² But, if the unit operation does in fact increase substantially the ultimate recovery of oil or gas and if the

29. INTERSTATE OIL COMPACT COMMISSION, A FORM FOR AN OIL AND GAS CONSERVATION STATUTE § 7.3 (1959).

30. *E.g.*, NEB. REV. STAT. § 57-910.03 (1943).

31. WYO. STAT. § 30-222(5)(f) (Supp. 1971).

32. WYO. STAT. § 30-222(5)(f)(ii) (Supp. 1971).

value of this additional recovery exceeds its costs, the non-consenting working interest owner participates in the resulting profits.

Paragraph (5)(d) of the statute requires that in order to compel unitization the Commission must find from the evidence adduced at the hearing upon the application therefor that

[t]he oil and gas allocated to each separately owned tract within the unit area under the proposed plan of unitization represents, *so far as can be practically determined*, each such tract's just and equitable share of the oil or gas in the unit area.³³

This requirement poses the basic issue to be decided in all statutory unitization proceedings, *i.e.*, the matter of allocating or dividing the unit production. As the italicized language recognizes, it cannot be proved precisely and irrefutably. Some parameters commonly used in determining unit participation such as current and cumulative production can rarely be disputed; others, equally relevant, such as remaining recoverable reserves or original oil in place simply must be based upon the opinions of experts. Obviously, experts may and often do differ as to what represents each tract's just and equitable share of the oil and gas in the unit. If there were complete agreement on the allocation of unit production, compulsory unitization proceedings would be unnecessary. Since in determining the matter of allocation the Commission is clearly resolving a dispute among private parties over the value of their respective properties, its function is quasi-judicial rather than administrative or legislative in nature. Whatever findings it makes should be based solely upon the evidence presented to it.

The statute also authorizes the unitization of parts of pools,³⁴ but in such cases the statute requires the applicant to prove that the unitized operation of the balance of the pool will not have a material adverse effect upon the omitted portion.³⁵ The purpose of the provision is to permit unitization of

33. WYO. STAT. § 30-222(5)(d) (Supp. 1971).

34. WYO. STAT. § 30-222(3) (Supp. 1971).

35. WYO. STAT. § 30-222(5)(e) (Supp. 1971).

logical portions of productive reservoirs when the remaining portions either should not be included or represent a sufficiently large portion of the total pool that its owners can prevent unitization of the entire pool. Under this provision, owners desiring to unitize their portion of a producing pool can proceed without being blocked by the owners of the excluded portions. The excluded owners are protected by the requirement of proof that unitization of the remainder of the reservoir without them will not damage their omitted lands. Thus, those desiring to unitize are prevented from damaging or appropriating the excluded properties in order to carry out their own plans.

The student comment recommended deletion of paragraph (5) (e) on the ground that it enables owners of excluded portions which would be adversely affected by unitization of the remainder of pools to block unitization.³⁶ The recommendation is not well taken. The owner of excluded lands which would be adversely affected by unitization of the balance of the pool should be able to block such unitization. The remaining pool owners should not be entitled to appropriate the excluded owner's property for their private purposes. The answer is either to formulate a plan that will not adversely affect the excluded lands or to include such lands on an equitable basis.

Paragraph (6)³⁷ of the statute is the first provision which differs materially from the Interstate Oil Compact Commission suggested form and from corresponding provisions of the unitization provisions of other states. This is the section which specifies the percentage of approvals required before an order of the Commission for unitization can become effective. The corresponding provisions of the statutes of other states³⁸ and of earlier drafts of the Wyoming statute require ratification by the owners of a stated percentage of unit production or proceeds thereof attributable to all categories of cost-free interests, such as royalty and overriding royalty in-

36. Comment, *Wyoming's New Unitization Statute*, 6 LAND & WATER L. REV. 537, 538-39 (1971).

37. WYO. STAT. § 30-222(6) (Supp. 1971).

38. *E.g.*, COLO. REV. STAT. ANN. § 100-6-16(5) (Supp. 1965); NEB. REV. STAT. § 57-910.03(d) (1943); UTAH CODE ANN. § 40-6-17(4) (1953).

terests, as well as ratification by the owners of at least the same percentage of interests which would be required to pay the costs of unit operations, *i.e.*, the working interests.

Representatives of landowners and mineral interest owners, *i.e.*, the non-cost bearing interests not carved out of the working interests of oil and gas lessees, objected to this provision. Some argued that owners of overriding royalty interests should not be entitled to vote at all—that they should be considered as being represented by the owner of the working interest out of which their interests were carved. Others argued that the overriding royalty owners should vote with the working interest owners. Still others believed that there should be a third category for cost-free interests which are carved out of the working interest and that the same fixed percentage of this third category should be required as was required for the other two categories. There was a reasonable basis for the concern on this point. For financing purposes, very large cost-free interests may be carved out of the working interest on a tract, such as production payment or overriding royalty. The net result is to produce a cost-free interest, the owner of which probably will be sympathetic with the lessee or working interest owner. The interest might well be of sufficient size to outweigh the vote of the lessor holding the basic $\frac{1}{8}$ royalty interest in the tract. Conceivably, such large cost-free interests could be carved out by designing lessees for the purpose of achieving approval by the owners of the specified percentage of cost-free interests.

Paragraph (6)³⁹ reflects the compromise between the conflicting views. It provides that the overriding royalty in a tract may vote with the royalty interests but only to the extent that such interests do not exceed $12\frac{1}{2}\%$ of the production that will be credited to that tract. The overriding royalty interest in any tract which would be qualified to vote would thus never exceed the lessor's normal $\frac{1}{8}$ royalty interest in the same tract. This compromise probably is as fair a solution as could be devised.

39. WYO. STAT. § 30-222(6) (Supp. 1971).

The student comment expresses concern that paragraph (6) is not clear enough regarding the vote to be accorded a royalty owner whose royalty exceeds the normal $\frac{1}{8}$ or with respect to requirements when an interest is encumbered by a mortgage or similar security interest.⁴⁰ It is submitted that the answers are implicit from the language of the statute. With the exception of the limitation on overriding royalties, there is no limitation on the quantum of cost-free interests in any tract qualified to vote. Thus, if a tract is subject to a 25% landowner's royalty, then the holder of this royalty interest owns a greater share of the unit production or proceeds thereof which are free of cost than does his neighbor who owns only a $\frac{1}{8}$ royalty interest in a tract of equal size. The quantum of his vote is measured by his share of the unit production.

With respect to encumbered interests, the owners of encumbrances are given notice of the proceeding⁴¹ and an opportunity to appear and assert any rights they may claim by granting or withholding approval. If those rights are in dispute, the right to grant or withhold approval with respect to encumbered interests should be determined on the basis of who, under general property and contract law, holds the incidents of ownership of the interest involved.

The statute provides that, after the unitization order becomes effective, operations in the unit area may be conducted only by the unit operator or by persons acting under authority of the unit operator unless specific provisions are made for operations by other persons in the plan of unitization.⁴²

Paragraph (8) provides for amendment of unitization orders,⁴³ and paragraph (9) prescribes the procedure for enlarging statutory units.⁴⁴ Both provisions are typical of field-wide unitization statutes found in other states.⁴⁵

40. Comment, *Wyoming's New Unitization Statute*, 6 LAND & WATER L. REV. 537, 539-40 (1971).

41. WYO. STAT. § 30-222(3) (b), -222(4) (Supp. 1971).

42. WYO. STAT. § 30-222(7) (Supp. 1971).

43. WYO. STAT. § 30-222(8) (Supp. 1971).

44. WYO. STAT. § 30-222(9) (Supp. 1971).

45. See, e.g., COLO. REV. STAT. ANN. §§ 100-6-16(6), -6-16(7) (Supp. 1965); NEB. REV. STAT. §§ 57-910.04, -910.05 (1943); UTAH CODE ANN. §§ 40-6-17 (5), -6-17(6) (1953).

The first three sentences of paragraph (10)⁴⁶ have counterpart provisions in the unitization laws of other states⁴⁷ and in the Interstate Oil Compact Commission recommended form for a conservation statute.⁴⁸ They are essential before any plan of unitization can be complete. Under their terms, operations conducted on a unit in accordance with the plan and the payment of proceeds of production in accordance with the allocation prescribed in the unit plan shall be deemed to be compliance with the terms of each separate lease and to continue each such lease in effect.

The remainder of paragraph (10) has no counterpart in other unitization statutes. By its terms, leases partially included in a statutory unit will be vertically segregated into separate leases with respect to the lands inside and lands outside that unit. Such segregation is to be effective 90 days after the lease anniversary date next ensuing after the effective date of the unit. The provision was added to satisfy the objections of landowners who feared that, if small portions of their lands covered by leases were included within a unit area, unit operations would perpetuate the entire lease as to all lands covered thereby, including the larger leased tracts outside the unit area. These landowners felt that as a result lessees would be enabled to unreasonably delay exploration and development of the excluded lands. The Wyoming statute solved the problem by making essentially the same provision applicable to private lands as is required by the federal government and the State of Wyoming with respect to federal and state lands committed to units. The exploration and development requirements relating to excluded lands are the same as those in the original lease. For these purposes, excluded lands are treated as though a separate lease had been executed on the segregated portion. To avoid the harshness of forfeitures in those cases where the primary term of the original lease may have already expired or may be about to expire, the operator is allowed two years from the date of segregation

46. WYO. STAT. § 30-222(10) (Supp. 1971).

47. *E.g.*, COLO. REV. STAT. ANN. § 100-6-16(9) (Supp. 1965); NEB. REV. STAT. § 57-910.06 (1943); UTAH CODE ANN. § 40-6-17(8) (1953).

48. INTERSTATE OIL COMPACT COMMISSION, A FORM FOR AN OIL AND GAS CONSERVATION STATUTE §§ 7.8, 7.9 (1959).

or the remainder of the primary term whichever is the longer, within which to conduct operations on the excluded lands and to thus perpetuate the segregated lease. It is submitted that this provision is fair. It affords the landowner protection against the possibility that a large portion of his land can be held for an unreasonable time without exploration and development while simultaneously affording the lessee a reasonable time after unitization within which to conduct exploration and development operations on the excluded lands and thus perpetuate the segregated lease as to those lands.

Paragraphs (11), (12) and (13)⁴⁹ are standard provisions designed to insure that unit operations will not alter the obligations under existing contracts or change existing property rights at the time of unitization except to the extent absolutely necessary for unit purposes.

Paragraph (14)⁵⁰ of the Act provides for an operator's lien to cover the costs of unit operations. It applies only to those interests required under the terms of a lease or other agreement to bear a part of the costs of unit operations. Foreclosure of the lien would have no effect upon a landowner's royalty reserved under a lease contract. Under limited circumstances, overriding royalty interests may be foreclosed. Thus, under the provisions of this paragraph, an overriding royalty interest carved out of the working interest after the effective date of the unit will be subject to the operator's statutory lien. Such interest should be subject to foreclosure for otherwise it would permit the creation of cost-free interests subsequent to unitization for the purpose of defeating the operator's lien.⁵¹ In other situations, the overriding royalty probably should be and by the statute is afforded the same protection as accorded the landowner's royalty.

49. WYO. STAT. §§ 30-222(11) to (13) (Supp. 1971).

50. WYO. STAT. § 30-222(14) (Supp. 1971).

51. Occasionally prior to development, a lessee carves out such an unrealistically large cost-free interest that the remaining cost bearing interest cannot possibly bear its share of development costs. Whether such transparent attempts to evade liens for development costs and to defeat or hamper pooling or unitization are valid as against third parties is questionable.

The provisions of paragraph (15)⁵² are generally not found in the unitization statutes of oil producing states. They are not included in the statutory form suggested by the Interstate Oil Compact Commission.⁵³ The paragraph provides that when an unleased interest is made subject to a unit, $\frac{7}{8}$ of the interest will be deemed to be subject to the cost-bearing provisions of the statute; $\frac{1}{8}$ of the interest will be deemed to be free from such costs. This means that, if the owner of an unleased interest is unable or unwilling to pay his share of the cost, the operator's right to a lien extends only to the $\frac{7}{8}$ interest made subject to the payment of costs by the statute. The landowner is still entitled to a $\frac{1}{8}$ royalty on the interest free of any cost just as though he had executed a lease on such interest. In the absence of such provisions, it could be argued that the entire unleased interest should be charged with its share of the costs of unit operations.

Paragraph (16)⁵⁴ is unique among the fieldwide unitization statutes of oil producing states. The first provision is designed to insure the status quo of all property rights and interests relating to units in which secondary recovery operations had been conducted prior to the effective date of the unitization statute (May 20, 1971). The paragraph in substance provides that the unitization statute may not be used to change the rights of persons who either have entered into unit agreements under which secondary recovery operations had been conducted prior to the effective date of the statute or who had the opportunity to join such units but had failed or refused to do so. In other words, the unitization statute may not be used to effect a re-negotiation of voluntary unitization agreements; nor, under the second provision of this paragraph, may the statute be utilized to create units in which production is allocated to the separate tracts therein solely on an acreage basis. The latter feature effectively precludes the use of the statute to form the typical exploratory units. Moreover, it assures that the statute will be limited to the for-

52. WYO. STAT. § 30-222(15) (Supp. 1971).

53. Such a provision does appear in the Oklahoma statute. OKLA. STAT. ANN. tit. 52, § 87.1(d) (Supp. 1971). Similar provisions are often included in voluntary unitization agreements when unleased tracts are made subject to the agreement.

54. WYO. STAT. § 30-222(16) (Supp. 1971).

mation of units for the purpose of conducting secondary recovery or similar operations utilizing energy forces outside the reservoir to recover oil or gas that could not be otherwise produced with primary recovery methods using only the initial reservoir energy.

CONCLUSION

Someone has observed that the camel is a horse put together by a committee. It is an ungainly brute, but often it is the only animal which can perform the task assigned it. Wyoming's fieldwide unitization statute is the product of an *ad hoc* committee composed of everyone interested enough to express an opinion. Some of the humps which this committee grafted onto the symmetrical framework of the Interstate Oil Compact Commission suggested form may make the resulting statute, like the camel, appear ungainly. However, each such added provision was necessary if the bill was to survive the legislative process and become law. Omissions which the author of the student comment would seek to correct were intentional, not the result of oversight, and were equally necessary for the same reason. Each provision and each omission is soundly based on practical experience. The statute will perform its intended function efficiently and fairly. Certainly, the statute is not perfect, but changes should not be lightly undertaken. Any amendments, like the original provisions themselves, should be the product of demonstrated need based upon meaningful experience.