

VOLUNTARY POOLING: A PRIMER

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Voluntary Pooling: A Primer

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I. DIFFERENCES IN VARIOUS KINDS OF UNITS

The term “unit” in the context of oil and gas has several different meanings that cause considerable confusion for courts and within the industry. Below are the most common types of “units” that arise in Texas. The first, the voluntary pooled unit, is the primary focus of this paper.

A. Voluntary Pooled Units

Voluntary pooled units result from the lessee’s exercise of authority granted in a lease pooling clause or other agreement of the parties. A voluntary pooled unit is created by combining separately owned mineral interests and leases covering different tracts of land into one “pool” or tract. This kind of unit is typically established by an instrument called a unit declaration or designation of unit. Production proceeds are usually allocated among the various mineral interest owners pro rata on the basis of their fractional mineral acres relative to total mineral acres in the unit. Operations and/or production on any portion of the pooled unit are deemed to be operations/production on each of the leases and tracts included within the unit, thereby maintaining all of the leases that are pooled.

B. Force Pooled Units

Force pooled units are relatively rare. These units are created by an order of the Railroad Commission (RRC) under the Mineral Interest Pooling Act (“MIPA”).¹ This RRC action compels the joinder or inclusion of otherwise unpooled interests in the force pooled unit subject to the specific provisions of the statute. The MIPA designates who may make application for force pooling and under what circumstances. These units are limited to an individual well proration unit and to a specific RRC field or producing reservoir. The maximum size of an MIPA unit is 160 acres for oil wells and 640 acres for gas wells plus ten percent tolerance.

C. Drilling Units

Drilling unit is a RRC term. A drilling unit is the acreage assigned to a well as shown on the plat submitted with the drilling permit application. Drilling units are designated to show the RRC that the operator seeking to drill a well has sufficient unassigned acreage in the tract to meet the applicable density rule for the target field. Designation of drilling units for RRC purposes normally does not have any title significance.²

¹ Chapter 102, TEX. NAT. RES. CODE ANN.

² But see *SMK Energy Corp. v. Westchester Gas Co.*, 705 S.W.2d 174 (Tex. App.—Texarkana 1985, writ ref’d n.r.e.), where the court seems to have confused a drilling unit and a pooled unit.

D. Proration Units

Proration unit is another RRC term. A proration unit includes the acreage assigned to a completed well for the purpose of obtaining production allowables. RRC Rule 38(a)(2). Proration units exist only when the RRC has adopted special field rules that use acreage, or some other reserve-based factor involving area or acreage, as a factor in the allocation formula. The allocation formula divides the field allowable, as determined by the RRC for all wells in the subject field or reservoir, among the various wells in that field. Each proration unit applies to a single well. Because the vast majority of fields recognized by the RRC are regulated by statewide - as distinguished from special - field rules, few wells have proration units.

E. Fieldwide or Enhanced Recovery Units

Fieldwide or enhanced recovery units are formed to conduct enhanced recovery operations under the state's unitization statute.³ In many cases, the unit will cover an entire field which gives rise to the term "fieldwide unit." However, an operator may also establish an enhanced recovery unit for a portion of a field. The key distinction between this type of unit and a voluntary pooled unit is the way in which it is created. These units are rarely authorized by lease pooling clauses. Instead, the participants usually enter into a unit agreement committing their mineral interests, both working and royalty, to the cooperative project. A cornerstone of this statute is that no one may be compelled to join an enhanced recovery unit.

F. Specially Defined Units in the Lease Instruments

Many leases, particularly those containing retained acreage clauses, define other types of "units" and call them by various names such as "production units" or "producing units" or "retained acreage units." These units typically consist of the lease acreage held by an individual well after a certain point in time, such as the end of continuous drilling operations, under the express terms of the lease instrument.

II. EXERCISE OF THE VOLUNTARY POOLING POWER

The most important single source for recognizing and resolving land and legal questions about voluntary pooling is the oil and gas lease instrument. Whether pooling is appropriate – or has been appropriately done – will accordingly turn on the specific wording of the lease instrument. There are countless "standard" form "Producer 88" printed leases and many more custom versions. As a result, the issues and problems discussed herein are generalized.

Pooling may prevent waste that results from the drilling of unnecessary wells and may protect the correlative rights of landowners in a common reservoir. Many pooling provisions set out certain events that will trigger the lessee's right to pool. For example, the pooling clause may be invoked (1) for the conservation of oil or gas; (2) to

³ Chapter 101, TEX. NAT. RES. CODE ANN.

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