

PRESENTED AT

2019 Ernest E. Smith Oil, Gas and Mineral Law – Fundamentals and
Institute

March 28, 2019
Houston, TX

**POOLING AND UNITIZATION IN TEXAS:
A PRIMER**

Carroll Martin

Author Contact Information:
Carroll Martin
Scott Douglass & McConnico LLP
Austin, TX

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	DIFFERENCES AMONG VARIOUS KINDS OF “UNITS”.....	1
	A. Voluntary Pooled Units.....	1
	B. Force Pooled Units.....	2
	C. Drilling Units	2
	D. Proration Units	2
	E. Fieldwide or Enhanced Recovery Units	3
	F. Specially Defined Units in the Lease Instruments	3
III.	EXERCISE OF THE VOLUNTARY POOLING POWER	4
	A. Authority to Pool.....	4
	B. Governmental Authority Provisions	5
	1. Prescribed.....	5
	2. Regular location/Maximum allowable.....	5
	3. Permitted	6
	4. Horizontal Wells	6
	C. Exhaustion of Pooling Power.....	7
	D. Pooling With Less Than 100% of the Interest.....	7
	E. Effect of a Pugh Clause.....	9
	1. Definition	9
	2. Pugh Clause Interaction with Continuous Development/Retained Acreage Clauses.....	9
	3. Pugh Impact (Unpooled) Depths	10
	F. Enlargement of Existing Pooled Units.....	11
	G. Reduction of Existing Pooled Units.....	11
	1. Acreage	11
	2. Interval	12
	H. Non-Contiguous Lands	12
	I. Unit Well Changes From Gas to Oil Classification.....	13

J.	Unpooled Undivided Interests Within Pooled Unit Boundaries.....	13
	1. Cost-bearing interests.....	13
	2. Non-Participating Royalty Interests.....	16
K.	Considerations in Determining Pooled Interval.....	16
	1. Governmental Authority	17
	2. Existing Pooled Units	17
	3. Maximizing Flexibility for Future Development.....	18
	4. Best Development of Leased Acreage.....	18
L.	Timing for Exercise of Pooling Power	19
M.	Effective Date of Pooled Units	19
N.	Description of Pooled Unit: Statute of Frauds.....	20
O.	Good Faith Pooling	21
	1. Standard	21
	2. Problem areas for good faith pooling.....	22
	3. Factors.....	22
	4. Timing of unit formation: before or after drilling the unit well?.....	24
	5. Pooling to prevent drainage or the drilling of unnecessary wells.....	24
	6. Voluntary pooling offer as defense to drainage lawsuit	26
	7. Pooling to preserve the leasehold estate to enable the lessee to develop the field in an orderly manner	26
	8. Pooling to enable joint development of a prospect by more than one lessee	27
	9. Pooling to prevent drilling exception locations for geological or engineering reasons.....	27
	10. Dual purpose pooling.....	28
	11. Result of bad faith pooling.....	28
P.	Termination or Dissolution of Pooled Units.....	29
	1. Authority in lease provisions	29
	2. Termination of all but a single lease in the pooled unit.....	29
	3. Termination of pooled unit’s drillsite lease	29
	4. RRC Rule 38(d)(3) exceptions for terminated pooled units	32
Q.	Anti-Dilution Restrictions.....	33
R.	Pooling Authority for Enhanced Recovery Units	34

S.	Pooling Authority for Overrides and Back-in Working Interests.....	34
IV.	Production Sharing Agreements	35
V.	Fieldwide Unitization.....	37
A.	Fieldwide Unitization Distinguished from Pooling.....	37
B.	The Texas Unitization Statute.....	37
C.	The Effect of Railroad Commission Approval.	37
D.	The Important Legal Instruments for Fieldwide Units	38
E.	Application and Hearing to Obtain Railroad Commission Approval.....	39
VI.	Conclusion	42
Appendix I	43
Appendix II	46

I. INTRODUCTION

Pooling issues are a staple of oil and gas law practice in our state. The splintering of mineral ownership within tracts and the subdivision of larger tracts into smaller tracts, through inheritance and sale, creates increasingly fragmented ownership of minerals. Pooling tracts and leases, usually voluntarily and, occasionally by use of Texas' forced pooling statute, is often an effective and efficient way to solve those problems. This paper presents "the fundamentals" on voluntarily pooling in Texas, including lease authority, regulatory considerations, the duty to pool in good faith, and case law developments. Fieldwide unitization for enhanced recovery projects and production sharing agreements are also addressed herein.

II. DIFFERENCES AMONG VARIOUS KINDS OF "UNITS"

Terminology is critical. One first has to understand what a pooled unit is – and what it is not. The term "unit" is widely used in oil and gas leases and has numerous meanings in the oil and gas industry. At least seven different types of units are widely used in Texas oil and gas development. Only one of these is a "voluntary pooled unit."

Other common types of "units" include: drilling units, proration units, force pooled units, and enhanced recovery units. Each of these units is based on the conservation statutes and/or rules of the Railroad Commission of Texas ("RRC") that apply to the regulation of oil and gas drilling and production. Even though many of these types of units are regulatory creatures, the terminology appears often in oil and gas leases. Finally, the lease may refer to other types of "units," such as a retained acreage tracts, adding more possibilities for confusion.

By contrast to the regulatory purpose "units", a pooled unit is created under the terms of oil and gas lease provisions or other private contracts between lessees and lessors. In recent years, the production sharing agreement unit has developed as a variant on the pooling clause. The production sharing agreement unit is also created by private contract. 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 one encounters in Texas.

A. Voluntary Pooled Units

A 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 RRC under the Mineral Interest Pooling Act (“MIPA”).¹ An MIPA order 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 an oil well and 640 acres for a gas well plus ten percent tolerance. The statute does not address horizontal wells.

C. Drilling Units

A drilling unit is “the acreage assigned to a well for drilling purposes.” RRC Rule 38(a)(2).² Until recently, to obtain a drilling permit, an operator had to depict a drilling unit for a to-be-permitted well on the plat submitted with its drilling permit application. A drilling unit had to contain at least the minimum acreage prescribed by the applicable density rule for the target field, otherwise a Rule 38 exception would be required. Notably, the RRC allowed drilling permit applicants to designate more than the minimum acreage prescribed by the applicable rules as the “drilling unit” for a well. Presently, operators are no longer required to formally designate drilling units on their permit plats. Instead, the RRC now confirms compliance with Rule 38 by requiring operators to state (a) the number of acres in the lease (or unit), and (b) the number of wells applied for, permitted or completed on that lease/unit in the targeted field. If the number of acres per well is equal to, or greater than the density rule for the field, the well is deemed to be in compliance with Rule 38. While drilling units are no longer required by the RRC, references to drilling units in oil and gas leases are not infrequent.

D. Proration Units

A proration unit includes the acreage an operator has assigned to a completed well to receive a production allowable. RRC Rule 38(a)(2). Every well does not have a proration unit. 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 total field allowable among the various wells in the field. Each proration unit applies to a single well.

A proration unit includes the acreage an operator has assigned to a completed well to receive a production allowable. RRC Rule 38(a)(2). Every well does not have a proration unit. 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.

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

² All references to rules are to RRC statewide rules, found at 16 TEX. ADMIN. CODE §§ 3.1-3.100, unless otherwise specifically noted.

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: Pooling and Unitization in Texas: A Primer

Also available as part of the eCourse

[2019 Fundamentals of Oil, Gas and Mineral Law eConference](#)

First appeared as part of the conference materials for the
2019 Fundamentals of Oil, Gas and Mineral Law session
"Voluntary Pooling and Unitization"