



Winter 1987

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Recommended Citation

Larry S. Eubanks, *Unitization of Oil and Gas Fields in Texas: A Study of Legislative, Administrative, and Judicial Policies*, 27 NAT. RES. J. (1987).

Available at: <https://digitalrepository.unm.edu/nrj/vol27/iss1/13>

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UNITIZATION OF OIL AND GAS FIELDS IN TEXAS: A STUDY OF LEGISLATIVE, ADMINISTRATIVE, AND JUDICIAL POLICIES

JACQUELINE LANG WEAVER

Baltimore: Resources for the Future, 1986. Pp. 555. \$37.50

Throughout the history of petroleum development there have been recurring episodes in which the petroleum resources of the nation were being wasted because the "rule-of-capture" which governed petroleum development provided classic common property incentives to overdrill and to remove the petroleum too rapidly. In response to obvious waste each of the petroleum producing states has enacted "conservation statutes" that give a state agency considerable power to regulate petroleum development in order to prevent the waste of a state's petroleum resources. The result today is found to be a complex set of statutes and administrative requirements that constrain petroleum development to be less wasteful but which represent significant public sector involvement in specifying the way in which petroleum resources will be developed and allocated. Economists suggest that much of this regulatory apparatus could be removed and petroleum allowed to be developed primarily through the voluntary market choices of oil producing enterprises if the majority of oil and gas fields were to be developed through unitization. In other words, if petroleum was developed in a fashion that treated each reservoir as a single production unit controlled by a single business enterprise rather than by many distinct enterprises, the single unit operator would then have the incentive to drill the number of wells and to choose a rate of production that would be efficient.

Relatively early in the history of petroleum development some producers realized that unitization would be a valuable tool to protect the resource from being developed wastefully as well as a means by which their own individual interest in the resource could be protected from the development activities of others. States were asked to consider allowing voluntary unitization, and later to consider statutes that would provide for compulsory unitization based upon the power of the state to enforce unitization given some minimum percentage (which varies across states) of the mineral interests agreeing to a unitization plan. To date all of the petroleum producing states have passed compulsory unitization statutes *except* Texas. Given the large part that Texas has in the total production of petroleum in the United States the fact that Texas has no compulsory unitization statute seems puzzling. The primary purpose of this book is to discover an explanation for why Texas has not provided for compulsory unitization.

As preface to exploring this issue Chapter Two provides a clear and very useful discussion of the physical characteristics of petroleum reservoirs, the engineering aspects of producing from the various types of reservoirs, the economics of unitization, and the reasons voluntary unitization is often so difficult to achieve.

Chapters Three and Four examine the role of Texas legislature in the development of petroleum. Of specific interest is the apparent antipathy the legislature held toward unitization during the early years of development, and which the legislature seems to hold to a lesser degree even today. Much of the explanation for the legislature's disfavor with unitization is found in a concern with monopoly and its impact on the allocation of petroleum resources. It is to be expected that the unit operator would be one of the major oil producers and thus the concern that unitization may result in monopoly or at least considerable market explanation is found in the fact that the independent oil producer in Texas generally did not support unitization because of the belief that unitization would result in a decrease in the favored economic position that independents had in the oil fields. Texas legislators tended to identify their own interests with that of the independent oil producer and thus would tend not to support unitization. Furthermore, the regulatory apparatus that had been constructed to prevent waste through prorationing and other devices seemed to be successful in preventing the wasteful excesses of the rule of capture, and this could be interpreted by the legislature as mitigating the need for unitization.

The behavior of the Railroad Commission which regulates petroleum development in Texas is examined in Chapter Five and Six. The discussion in these chapters reveals the "hidden law of unitization" in Texas. Although Texas statutes give the Railroad Commission the authority to severely regulate petroleum development in order to prevent waste, the statutes expressly forbid the Commission from using its authority to require unitization. Nonetheless, the Railroad Commission has used its administrative power and discretion to encourage and even coerce oil and gas producers to unitize. The primary tool it has used to accomplish unitization is the individual field order by which the Railroad Commission has shut down or severely curtailed the production from entire fields in the name of preventing waste. These restrictions were clearly meant to require unitization because it was understood that unitization was the only way in which producers could satisfy the Commission's demand that they curtail waste. The members of the Railroad Commission have never publicly spoken of the Commission as having authority to compel unitization, and yet their decision-making activities were of sufficient strength to establish as policy their efforts to accomplish unitization. The Com-

mission acknowledged the statutory prohibitions against requiring unitization, but they simply ignored it in practice.

Certainly the Railroad Commission's practice of using its authority to restrict production in order to encourage and coerce unitization could not have flaunted statutory prohibitions without help. The help came from the courts. Chapter Seven reviews court decision-making and developments in the common law that either inhibit or facilitate voluntary unitization. Much of the common law inhibits unitization and actually encourages overdrilling and inefficient production. There is probably no better example of this than the judge-made rule of capture. Of course most of the common law contrary to unitization is common to all producing states, and such common law practices in Texas need not imply that Texas courts were themselves hostile to unitization. In fact, Weaver finds several cases which indicate a pro-unitization attitude held by the Texas courts.

The court's review of Railroad Commission orders is examined in Chapter Eight. Here Weaver argues that there has been an effective partnership between the courts and the Railroad in efforts to prevent significant waste. This partnership goes so far that the "court's silence regarding . . . the legislative prohibition against issuing waste-prevention orders that would require repressuring or unitization—was so deafening that producers did not even attack the shutdown as illegal on this ground."

Although Texas has no compulsory unitization statute Weaver has shown considerable evidence that through the decision-making of the Railroad Commission and the courts there has been an effective policy of compulsory unitization in Texas. In Chapter Nine Weaver examines the extent of unitization in Texas with the aid of several statistical comparisons. The bottom line is that there has in fact been significant unitization in Texas, enough so that Texas appears to have accomplished more unitization than Oklahoma, but not so much as has Louisiana (both states have compulsory unitization). There are also many significant fields not yet unitized in Texas. Perhaps it is important not just to examine the unitization that has occurred, but to also attempt an evaluation of how much more unitization is needed in Texas. Chapter Ten offers Weaver's assessment that a compulsory unitization statute is still needed in Texas, and given some skepticism that such a statute will be passed a number of statutory reforms are also suggested.

There is certainly additional analysis and legal history to be found in this work of 555 pages that simply cannot be mentioned in a review. This is important research that should be of interest to both economists and legal scholars. As an economist I cannot judge the quality of the legal scholarship, but there is considerable economic analysis which is com-

petently done. I found the book interesting, informative, and well written, although I must confess that it was sometimes difficult for this economist to keep all the legal details straight. One recognizes in reading this book, the vast complexity that can surround production and economic relationships that simply is missed by the economist's account of the market as a demand and supply cross.

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