

**STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION DIVISION**

**IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
DIVISION FOR THE PURPOSE OF
CONSIDERING:**

CASE NO. 11792

**AMENDED APPLICATION OF DOYLE HARTMAN,
TO GIVE FULL FORCE AND EFFECT TO
COMMISSION ORDER R-6447, TO REVOKE
OR MODIFY ORDER R-4680-A, TO
ALTERNATIVELY TERMINATE THE MYERS
LANGLIE-MATTIX UNIT,
LEA COUNTY, NEW MEXICO**

**AFFIDAVIT OF PATRICK H. MARTIN
IN SUPPORT OF OXY USA INC.'S MOTION TO DISMISS**

STATE OF NEW MEXICO §
 §
COUNTY OF SANTA FE §

BEFORE ME, the undersigned authority, on this day personally appeared **PATRICK H. MARTIN**, being by me duly sworn, who deposed and stated as follows:

1. My name is Patrick H. Martin. I am over the age of twenty-one (21) years, and of sound mind, capable of making this Affidavit. I have personal knowledge of the facts herein stated and each such fact is true and correct.

2. I am the Campanile Professor of Mineral Law at Louisiana State University Law Center in the State of Louisiana. * I have been a professor at LSU since 1977. From July 1, 1982

* The University and Law Center are in no way involved in my participation in this matter; the opinions expressed herein are based on my own experience and expertise and do not represent any view of the University or Law Center.

to March 12, 1984 I served as the Commissioner of Conservation for the Louisiana Department of Natural Resources. I have taught the subjects of oil and gas law, regulated industries, environmental law, jurisprudence, contracts, administrative law, and civil procedure. I have served as an expert witness in numerous states including the State of New Mexico. I have authored or co-authored numerous publications on oil and gas matters including co-authoring a textbook with Professor Bruce Kramer, Texas Tech School of Law, THE LAW OF POOLING AND UNITIZATION, (3d ed. 1989) (updated annually) which is a revision of a treatise of Raymond Myers. A true and correct copy of my *curriculum vitae* is attached.

3. I have reviewed the relevant documents, pleadings, and orders related to this matter and have formulated the following opinions.

4. It is my opinion that Hartman's application before the Commission is an impermissible collateral attack on Order No. R-4680-A, that Hartman is collaterally estopped from challenging the Order, and that Hartman failed to exhaust an administrative remedy that was available to him at the time of the hearing for that Order. A claim that challenges directly or indirectly an order or regulation of the conservation agency in a court or proceeding other than that specified by the statute for review is a collateral attack on the agency's order or regulation. Collateral attacks on agency orders cannot be maintained. This is true whether the collateral attack is before a court or before the agency. In our Treatise Professor Kramer and I have stated: "Just as parties cannot collaterally attack an order of an agency in a judicial proceeding that is not a proper review of the order so too must an agency refrain from setting aside an order without a basis founded in changed conditions or changed knowledge of conditions. Otherwise, the agency would be collaterally attacking its own order or acting arbitrarily." 1B. Kramer & P. Martin,

Pooling and Unitization, §14.02 (1989, 1996). *Leede Oil & Gas, Inc. v. Corporation Commission*, 747 P.2d 294 (Okla. 1987). The exhaustion doctrine may be asserted when a person has failed to go before an agency for relief at all or when the person has participated in an agency proceeding but has failed to take up an issue that it wishes to raise on appeal. See *Ruyle v. Continental Oil Co.*, 44 F.3d 837 (10th Cir. 1994); *Fransen v. Conoco, Inc.*, 64 F.3d 1481 (10th Cir. 1995). When an agency remedy was available and parties failed to request the remedy, they have not exhausted the administrative remedy. The prohibition against collateral attacks, the exhaustion doctrine, and the doctrine of collateral estoppel are related to and are like the judicial doctrine of *res judicata* in that they are concerned with prevention of litigation of an issue already judicially decided and with requiring parties to raise their claims in a timely fashion. See *International Paper Co. v. Farrar*, 102 N.M. 739, 741, 700 P.2d 642, 644 (1985); *Pubco Petroleum Corp. v. Oil Conservation Commission*, 75 N.M. 36, 399 P.2d 932 (1965). Decisions by the New Mexico Oil Conservation Division ("Commission") are entitled to collateral estoppel effect. *Amoco Production Company v. Heimann*, 904 F.2d 1405, 1417 (10th Cir. 1990). New Mexico traditionally requires four elements for the application of collateral estoppel: 1) the parties are the same or are privies of the original parties; 2) the cause of action is different; 3) the issue or fact was actually litigated; and 4) the issue is necessarily determined. *Id.* (citing *International Paper Company*, 700 P.2d at 644-645). Applying the elements of collateral estoppel to Hartman's attack on Order No. R-4680-A indicate the application should be collaterally estopped.

- a) Hartman was entitled to and was given proper notice of the hearing before the Commission and had ample opportunity to raise arguments about the validity

of OXY USA Inc.'s ("OXY") 1994 application. In addition, Hartman had the right and opportunity to appeal the Commission's Order once it was issued.

b) Hartman's present application before the Commission is a separate and distinct case than was presented to the Commission in 1994.

c) The issues raised in Hartman's present application were litigated in the 1994 proceeding. The proposed redevelopment program and the surface injection pressure level were the very subjects of the 1994 proceeding.

d) The Commission's Order No. R-4680-A ruled on the issues which are presented in Hartman's current application before the Commission. Specifically, the Commission granted authorization for OXY to expand the Myers Langlie-Mattix Unit by converting sixteen existing wells to injectors and by reactivating a plugged injector. In addition, the Commission approved a surface injection pressure not to exceed 1800 psi for the new injection wells.

e) In summary, Hartman had notice of the 1994 proceeding and the opportunity to appear before the Commission to present any arguments or objections he may have had. Hartman chose not to participate or appeal the Order. He failed to exhaust administrative remedies available to him, and he should not now be allowed to collaterally attack that order and relitigate the issues that were decided in that proceeding.

5. It is my opinion that Hartman's attempt to rewrite the Unit Operating Agreement is a collateral attack on Order R-6447, and his claim should be precluded as a failure to exhaust administrative remedies available seventeen years ago.

a) Hartman apparently asserts that the New Mexico Statutory Unitization Act

incorporated a carried non-consent provision into the private contract between the parties of the Myers Langlie-Mattix Unit that is different than the provision found in the Unit Operating Agreement itself. It is my opinion that there is a reasonable basis for the agency to have concluded in 1980 that the statutory criteria for a unit were satisfied by the Unit Operating Agreement. The Commission in its 1980 Order (No. R-6447) found that the Unit Agreement and the Unit Operating Agreement provided for unitization and unit operation upon terms and conditions that were "fair, reasonable, and equitable" and in conformity with the requirements of the New Mexico Statutory Unitization Act. Hartman's attempts therefore to now characterize the Unit Operating Agreement as violative of the order and statute is as clear an attack on the Commission's 1980 Order, which found otherwise, as I can imagine. Based on the doctrine of collateral estoppel, collateral attack and exhaustion as outlined above, Hartman should be precluded or collaterally estopped from attacking the Commission's 1980 finding. This is especially true in light of the fact that the Order was issued nearly 17 years ago. Irrespective of whether the agency would conclude that this Unit Operating Agreement's carry provision would be just and reasonable in a proceeding today for a non-consenting, non-approving working interest owner, the agency in 1980 did find that the agreement satisfied the agency's requirements for a just and reasonable provision under the statute. Hartman's predecessor-in-interest had notice of the 1980 hearing and ample opportunity to challenge the findings at the time the findings were made or alternatively to appeal them once the Order was issued. Instead, however, Hartman's predecessor-in-interest ratified the 1980 Order. The issue of whether the Unit Agreements adequately complied with the Statutory

Unitization Act's requirement that they contain a carry provision upon such terms and conditions which are "just and reasonable" was ruled upon by the Commission in the 1980 proceeding; it was an issue actually decided. All of the working interest owners were in agreement on the appropriateness of the provisions for cost-sharing, and it would have been impractical and pointless for the agency to have reached any other conclusion. Based on my experience in the industry and in regulatory matters, there are many, many issues in pooling and unitization proceedings that are decided on the basis of agreement among the parties; I think it would be foolish for an agency to allow years later a party's successor in interest to set aside an order that had been based on unanimous working interest agreement to the unit operating agreement and that party's predecessor's explicit ratification.

b) In addition, because Hartman's predecessor-in-interest voluntarily joined the unit when it was formed in 1973 Hartman cannot now seek protection as an involuntary or forced in party under the Statutory Unitization Act. The Statutory Unitization Act, 70-7-18 provides that existing property and contracts rights between parties should only be amended as necessary to conform to the Act and to any valid order of the agency. Since the Commission specifically found that the Unit Operating Agreement provided a carry provision that was just and equitable and in conformity with the Statutory Unitization Act, it did not rule or determine that an amendment to the existing Unit Agreement was necessary. There has been no change in circumstances that merits Hartman's attempt to now challenge the Commission's finding that the Unit Agreements conformed to the Statutory Unitization Act other than Hartman's self-serving

motives. The Statutory Unitization Act was not passed to allow parties to escape their contractual obligations which they voluntarily entered into.

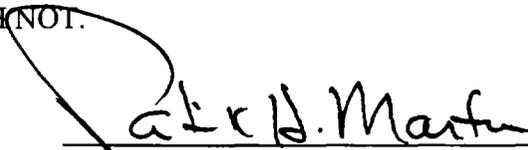
c) In summary, Hartman's argument that the existing carry non-consent language is inadequate is nothing more than a collateral attack on the Commission's 1980 Order finding that the Unit Agreement language was satisfactory and in compliance with the Statutory Unitization Act. The time to attack the Commission's 1980 findings has long passed. *See Adkins v. Bd. of Oil, Gas and Mining*, 926 P.2d 880, 884 (Utah 1996) (plaintiff's eighteen years of inaction to challenge Board's order constitutes waiver and has allowed the "sands in his geologic hourglass to run out")(discussed in Martin, "Recent Developments in Nonregulatory Oil and Gas Law," §1.07[2] Forty-Eighth Annual Institute on Oil and Gas Law and Taxation, Dallas, Texas, February 13, 1997). Therefore Hartman's claim that the existing Unit Operating Agreement language is inadequate and should be replaced with his own version of a "fair" carry non-consent clause should be collaterally estopped.

6. I have been provided a copy of an Affidavit of Professor Bruce Kramer in support of Hartman's Opposition to OXY's Motion to Dismiss. As would be indicated by my foregoing statements, I do not believe that Order R-6447 has imposed a new and uncertain non-consent carried interest term to the existing Unit Operating Agreement. The testimony at the August 5, 1980 hearing was directly contrary to such a contention. On page 27 of the transcript of that hearing, the question is asked of the Witness Woods: "Mr. Woods, if statutory unitization is approved pursuant to this application, will the unit continue to be operated under the same unit agreement, unit operating agreement? A. There will be no change in either agreement." The unit

order does not purport to modify the existing agreement, and no modification was sought by any person for nearly seventeen years. To suggest that the order would be ultra vires without such a term as desired by Hartman, as Professor Kramer states (Kramer Affidavit ¶ 11), is to make clear that Hartman's position is a challenge to the validity of the order. It is thus a collateral attack on the order. I would also disagree with Professor Kramer's opinion that OXY's position violates the "letter and spirit of the New Mexico Statutory Unitization Act." To me, it is clear that the 1975 Act did not intend to change the terms of existing unitization agreements and operating agreements (§§70-7-10,70-7-18) and that 70-7-7F is concerned with nonconsenting working interest owners who had not agreed to a unit operating agreement prior to the statutory unitization.

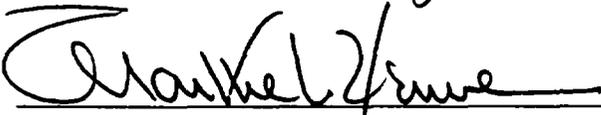
In conclusion, it is my opinion that Hartman's claims in sum are barred by the doctrine of collateral estoppel, the prohibition against collateral attacks, and the doctrine of exhaustion of administrative remedies and should be dismissed before the Commission.

FURTHER AFFIANT SAYETH NOT.



Patrick H. Martin

SUBSCRIBED AND SWORN TO BEFORE ME on this 30th day of JUNE 1997, to certify which witness my hand and official seal of office.



Notary Public, In and for the
State of New Mexico

My commission expires:

August 19, 1999

Resume: Patrick H. Martin

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Office: Room 332, Paul M. Hebert Law Center
Louisiana State University
Baton Rouge, Louisiana 70803
Phone: 504-388-8714

Education: B. A., Louisiana State University, 1967
M. A., Louisiana State University, 1969
Ph. D., Louisiana State University, 1974
J. D., Duke University Law School, 1974 (with Distinction)

Employment: Campanile Professor of Mineral Law, LSU (At LSU since 1977).

Subjects Taught: Oil & Gas Law Contracts
Regulated Industries Administrative Law
Environmental Law Civil Procedure
Jurisprudence

Personal: Age: 52; Married, 7 children

Previous Employment: Commissioner of Conservation
Louisiana Department of Natural Resources
July 1, 1982 - March 12, 1984
(Appointed by Governor David C. Treen)

Assistant Professor of Law
University of Tulsa College of Law
Tulsa, Oklahoma
1975 - 1977

Attorney
Gulf Oil Corporation
New Orleans, Louisiana
1974 - 75

Activities:

Arbitrations:

- a. Member of Prudhoe Bay Unit Operating Agreement Arbitration No. 2, April-October, 1984. Arbitration of gas valuation under operating agreement, Prudhoe Bay Field Alaska.
- b. Amoco--Texas Gas Pipeline, fall 1984 (third arbitrator); matter settled prior to hearing.
- c. Mesa--Texas Eastern Transmission Company, fall 1985 (third arbitrator); decision rendered February, 1986.
- d. Cities Service--Petrofunds/Kelly, September 1986 (sole arbitrator).
- e. BTA Producers--Amoco Production Company, September-October, 1987 (sole arbitrator).
- f. Banner Petroleum, Ltd.; Kaneb Operating Company, Ltd.; E. Gerald Rolf -- Amoco Production Company, February-March, 1991 (sole arbitrator).
- g. Conoco Inc. and Amoco v. Sunterra Gas Gathering Co., (third arbitrator), 1992-93.
- h. Selected as arbitrator in a number of other proceedings that resulted in no disposition.

Mediations:

- a. State of Louisiana, et al. v. Mid-Louisiana Gas Company, et al. (1994 - co-mediation)
- b. Ruth Brown v. Drillers, Inc., et al. (1994).
- c. Pardee Exploration Company v. Ashland Exploration, Inc. (Jan. 1997)

Expert witness: W. Watson LaForce, et al v. El Paso Natural Gas Co., case No. CV-92-645-1, Eleventh Judicial District, San Juan County, New Mexico expert report re: royalty obligations, February 1997.

Expert witness: Stuart Pike v. Petro Chem Operating Co., Inc., Deposition, Dec. 19, 1996 (by phone) - operating agreements.

Expert witness: Shell-Todd v. Kapuni Gas Contracts Limited and Natural Gas Corporation - Statement of evidence re: gas purchase contracts submitted, May 1996, Auckland New Zealand.

Expert witness: Arbitration - Wolverine Exploration Company et al. v. Texaco, Inc., deposition May 15, 1995 and testimony June 29, 1995 re: gas purchase contracts.

Expert witness: Energy Development Corporation and HGC, Inc. vs. Louisiana Natural Gas Gathering Company, 129th Judicial District Court of Harris County, Texas. deposition June 23, 1994 re: gas balancing issues.

Expert witness: Moncrief v. Williston Basin Interstate Pipeline Company, D. Wyoming, deposition June 22, 1994 re: gas purchase contract issues; testimony in Federal district court, Cheyenne, Wyoming, January 17, 1996.

Expert witness: Bass Strait Royalty Arbitration (Oil Basins Limited v. The Broken Hill Proprietary Company Limited, BHP Petroleum (North West Shelf) Pty. Ltd., BHP Petroleum

(Bass Strait) Pty. Ltd., and Esso Australia Resources Ltd.], several expert statements re: royalty on oil and gas production (1993-94).

Expert witness: Columbia Gas Transmission Company, bankruptcy claims proceeding (for Exxon); expert statement and testimony re: Louisiana law of obligations, gas contracts (1993).

Expert witness: Huffco Petroleum Corporation et al v. Trunkline Gas Company, gas purchase contract dispute; affidavit re: Louisiana law filed. (1992).

Expert witness: Arbitration between Texas Eastern Transmission Corp. and CanadianOxy Offshore Production Co., gas purchase contract dispute (1992).

Expert witness: Sonat Exploration Company v. Chevron U.S.A. Inc., U.S.D.C., W.D. La., Lake Charles Division, No. 90-1960.

Expert witness: Amoco Production Company, et al. vs. Total Minatome Corporation. USDC SD Texas, Houston Div. Civil Action No. H-91-1553.

Expert witness: Martin Exploration Company vs. Amoco Production Company, suit number 18,033; Div. C.; deposition September 4, 1991; testimony October 9, 1991 [conservation practice; oil and gas agreements].

Expert witness: M.J. Brannon, Jr. et al v. BHP Petroleum (Americas) Inc., et al and BHP Petroleum (Americas) Inc., v. El Paso Natural Gas Company, San Juan County, New Mexico, Cause No. CV 88-279 deposition July 30, 1991.

Expert witness: Texas Eastern Transmission Corp. v. Amerada Hess, Marathon, and OKC Limited Partnership, CA No. CV892036 (W.D. La.); deposition September 18, 1990.

Expert testimony on pooling and unitization in Wilhelm v. Texaco, M.D. La. Testimony July 23, 30, 1990; deposition March 1, 1990.

Expert witness: E. Brown v. El Paso Natural Gas Company, USDC DNM Cause No. CIV 89-390 JP. (operating agreements; gas purchase contracts)(two affidavits filed).

Expert witness: PEDCO et al. v. Mobil Exploration & Producing North America (Federal district court and state district court, Tulsa, OK) (pooling and unitization; operating agreements; gas purchase contracts)(two affidavits filed).

Expert witness: Shell Offshore, Inc. v. FMP Operating Co., et al., CIV. A. No. 87-3919, (E.D.La.). Deposition, March 15, 1988. Expert opinion re: OCS agreements.

Expert witness: Louisiana Power & Light v. United Gas Pipe Line Co., CA 84-5156, E.D. La.. Deposition Feb. 18, 1988. Expert report re: gas valuation, south Louisiana.

Expert Witness: Quintana v. LRC Arbitration, Deposition April 7, 1988; testimony in hearing of April 11-14, 1988. (Louisiana oil and gas agreements - gas purchase contract litigation).

Deposition in fall 1982 in lease contract dispute, Pointe Coupee Parish.

Testimony in civil proceeding May 5, 1986 - Federal district court, Lake Charles, Louisiana regarding oil theft claim (fact witness).

Expert witness, Spring 1980 Mulcahey v. Petrofunds, Inc. (USDC S.D. Texas) re: Louisiana law relating to a gas purchase contract dispute. (no deposition, testimony or expert report).

Private Adjudication Center, Inc. (Durham, North Carolina) - Louisiana representative.

Special Assistant United States Attorney, Middle District, Louisiana, January-August, 1985.

Adjunct Professor of Law, Tulane University School of Law. Fall, 1984: Energy Law.

Editor, Oil & Gas Reporter (since 1980)(Louisiana).

Advisory Board, International Oil and Gas Educational Center, Southwestern Legal Foundation; Treasurer, 1987-1988, Vice-Chairman 1989-95.

Chairman, 34th Annual Institute on Oil and Gas Law and Taxation, and co-chairman 32nd and 33rd Annual Institutes, Southwestern Legal Foundation, 1981-83. Planning committee, 1978-87.

Reporter, Committee on Mineral Rights, Louisiana Law Institute.

Subject matter expert, legal - IHRDC oil and gas project for Kazakstan Ministry of Oil and Gas - June 1996.

Co-Reporter, Conservation and Environment, University of Houston Russian Legislation Project, 1991-1992.

Co-Reporter, Special Committee on Department of Environmental Quality Procedures, Louisiana Law Institute, 1991-1992.

Chairman, Marine Resources Committee, Natural Resources Section of the American Bar Association, 1981-83.

Chairman, Institute on Environmental Law and the Petroleum Industry, Southwestern Legal Foundation, Dallas, Texas, October 5-6, 1981.

Trustee, Rocky Mountain Mineral Law Foundation, since 1993.

Editorial Advisor, Public Land and Resources Law Digest (Outer Continental Shelf matters), since 1980.

Editorial Advisor, Public Utilities Law Anthology, since 1994.

Republican Party, State Central Committee Member, District 62, since December 1990.

Commissioner, Amite River Basin Drainage and Water Conservation District (1988-1990).

While Commissioner of Conservation: Governor's delegate to Interstate Oil Compact Commission, to staff advisory committee of the National Governors' Association, and to the Southwest Regional Energy Council; presented testimony before several committees of Congress (Fossil and Synthetic Fuels Committee, April 14, 1983, October 17, 1983 - re: proposed natural gas regulation) and the Federal Energy Regulatory Commission on natural gas and unitization topics (Tight sand formation designation Nov. 12, 1982; Gas purchase practices of pipelines July 11-12, 1983); numerous speeches before public and private groups.

Publications and Speeches or Presentations:

Pooling and Unitization, Matthew Bender, 1989 (updated annually). A revision of a treatise of Raymond Myers, with Professor Bruce Kramer, Texas Tech School of Law.

Williams & Meyers Oil and Gas Law, Matthew Bender - update and revision author, with Professor Bruce Kramer, of this work originally by Howard W. Williams and Charles Meyers. (first update finished in August, 1996).

Economic Regulation: Energy, Transportation and Utilities (with Pierce and Allison); Michie/Bobbs-Merrill, 1980.

Oil and Gas, Cases and Materials (with Maxwell, Williams and Kramer)(6th Ed.); Foundation Press (1992)(Supp. 1996).

Jurisprudence: Text and Readings on the Philosophy of Law (with Christie)(2d Ed.); West Publishing (1995).

"The Joint Operating Agreement - An Unsettled Relationship?" Southwestern Legal Foundation, Fiftieth Anniversary Continuing Legal Education Seminar, Dallas Texas, June 18, 1997.

"Pooling under the Pooling Clause of an Oil and Gas Lease," 44th Louisiana Mineral Law Institute, Baton Rouge, Louisiana, March 21, 1997.

"Recent Developments in Nonregulatory Oil and Gas Law," Forty-Eighth Annual Institute on Oil and Gas Law and Taxation, Dallas, Texas, February 13, 1997.

"Gas Balancing and Split Stream Sales under Joint Operating Agreements and Unit Operating Agreements," Rocky Mountain Mineral Law Foundation Special Institute on Onshore Pooling & Unitization, Denver, Colorado January 30, 1997.

"UnBundling the Executive Right *or* Reflections on a Misguided Metaphor," Oil and Gas Symposium, University of New Mexico, Albuquerque, New Mexico, October 30, 1996.

"The Courts and the Commissions: Recent Developments in Judicial Review of Oil and Gas Agency Orders," 17th Eastern Mineral Law Foundation Institute, Baltimore, Maryland, April 26, 1996.

"Recent Developments in Nonregulatory Oil and Gas Law," Forty-Sixth Annual Institute on Oil and Gas Law and Taxation, Dallas, Texas, February 23-24, 1995.

"Implied Covenants in Oil and Gas Leases - Past, Present & Future," Symposium on The Future Course of Oil and Gas Jurisprudence, Washburn University School of Law, March 18-19, 1994, Topeka, Kansas.

"Recent Trends in Pooling, Unitization and Conservation Regulation," PLANO'S Fifth Annual Oil and Gas Seminar, Beaver Creek, Colorado, January 20 - January 23, 1994.

"Gas Prorationing - A Review," 40th LSU Mineral Law Institute, Baton Rouge, Louisiana, March 25, 1993.

"Royalty Issues on Lands Owned by State or Local Governments," Rocky Mountain Mineral Law Foundation Special Institute on Oil and Gas Royalties on Non-Federal Lands, Santa Fe, New Mexico, April 19, 1993.

"Louisiana and Texas Oil & Gas Law - An Overview of the Differences," 52 La. L. Rev. 769 (1992)(with J. L. Yeates).

"Gas Prorating - A Review of the Issues," Mineral Law Section, Louisiana State Bar Association Annual Meeting, Destin, Florida, June 12, 1992.

Louisiana and Texas Oil & Gas Law - A Comparison; PLANO'S Third Annual Oil and Gas Seminar, Breckenridge, Colorado, January 30 - February 2, 1992.

"The Gas Balancing Agreement: What, When, Why and How," 36th Rocky Mountain Mineral Law Institute, Santa Fe, New Mexico, July 19-21, 1990.

"Pooling and Unitization: A Review of Recent Cases on Regulatory Developments," 41st Annual Institute on Oil and Gas Law and Taxation, February 22, 1990, Dallas, Texas.

"Louisiana and Texas Oil & Gas Law: An Overview of the Differences," Advanced Oil & Gas Short Course, University of Houston Law Center, Houston, Texas - January 25-26, 1990, New Orleans, Louisiana - February 1-2, 1990; repeated 1991 and 1992.

"Jurisdiction of Commission and Court: The Public Right/Private Right Distinction in Oklahoma Law," 25 Tulsa L.J. 535 (1990) (with Kramer).

"Federalism and State Regulation of the Production of Natural Gas - The Supreme Court Revisits Preemption," 5 J. Min. L. & Pol. 207 (1990).

"Recent Legal Developments in State Oil and Gas Administrative Hearings," 15th Annual Meeting and Seminar, National Association of Administrative Law Judges, October 12, 1989, New Orleans, Louisiana.

"Federalism and State Regulation of the Production of Natural Gas - The Supreme Court Revisits Preemption," Oil, Gas and Mineral Law Section, Dallas Bar Association, July 27-28, 1989, Dallas, Texas.

"Solving the Natural Gas Problem," presented to the organizational meeting of the Mississippi Independent Producers and Royalty Owners Association, Jackson, Mississippi, August 22, 1989.

"Federalism and State Regulation of the Production of Natural Gas - The Supreme Court Revisits Preemption," Oil and Gas Section, Louisiana State Bar Association, New Orleans, Louisiana May 5, 1989.

"Lease Maintenance in Louisiana: the Effects of Voluntary and Compulsory Pooling," 36th LSU Institute on Mineral Law, March 30-31, 1989.

"Regulation of Gas Production Rates and Imbalances after Transco v. Oil & Gas Board," presented for Hugoton Reservoir Symposium, Wichita Kansas, November 13, 1987. 27 Washburn L. J. 298 (1988).

"State Regulation of Natural Gas Production," presented at Eighth Annual Natural Gas Conference, Executive Enterprises, Washington, D. C. January 25-26, 1988.

"Jurisdiction of State Conservation Agencies," presented at Conference on Natural Gas Issues, Rocky Mountain Mineral Law Foundation, Houston, Texas, April 21-22, 1988.

"Introduction," Public Utilities Law Anthology, Vol. IX, International Library (1987).

"State Regulation of Natural Gas Production After Transco v. Oil & Gas Board," Oil, Gas and Mineral Law Seminar, Alabama Bar Institute for Continuing Legal Education May 8, 1987, Law Center, Tuscaloosa, Alabama.

"State Regulation of Natural Gas Production: Is There Life After Transco?," Thirty-Eighth Annual Institute on Oil and Gas Law Dallas, Texas - February 26, 1987. 38 Inst. on Oil & Gas L. & Tax'n 10-1 (1987).

"The Changing Gas Marketplace: FERC Order No. 436, the Transco Decision and Implications for the Future," for The Practice of Oil and Gas Law in New Mexico: The Old and The New, (New Mexico Bar Association) Albuquerque, New Mexico, May 23, 1986.

"Private Royalty Owner Issues in Today's Natural Gas Markets: An Overview," to be presented for American Bar Association Workshop on "Valuing Natural Gas for Royalty Purposes," New Orleans, Louisiana October 29-30, 1985.

"Status of State Jurisdiction and Activities," presented at program on "Natural Gas Certification and Ratemaking under New FERC Rules," Executive Enterprises, Houston, Texas, November 18-19, 1985.

"The Jurisdiction of State Oil and Gas Commissions," Institute on Oil and Gas Conservation Law and Practice, Rocky Mountain Mineral Law Foundation, Santa Fe, New Mexico--September 26-27, 1985.

"The Establishment of Allowables for Production of Gas in Louisiana," presented to "Workshop on Natural Gas Prorationing and Ratable Take," Natural Resources Law Center, University of Colorado, June 26-28, 1985.

Panel member, "Contract Issues in the Changing Energy Industry," Joint Showcase Program Natural Resources Section with the Administrative Law and Public Utility Law Sections, American Bar Association Annual Meeting, Chicago, August 7, 1984.

"Natural Gas Policy Act--Introduction to the Problem Areas," Short Course on Natural Gas Regulation, Southwestern Legal Foundation, October 25-26, 1984, Dallas, Texas.

"Discovery and use of proprietary data," 15 Nat. Resources Law. 799 (1983)(A.B.A. Natural Resources Law Section Task Force Report on Federal Oil and Gas Royalty Matters).

Short Course, Oil and Gas Law and Taxation, Southwestern Legal Foundation, May 1981, May 1982, May 1983, May 1984, May 1985, May 1987, May 1988, June 1989, June 1990 and June 1991 (Four days of lectures on Pooling and Unitization, Conservation Regulation, Windfall Profit Tax, and Natural Gas Policy Act).

"Judicial Review of Agency Action in Pooling and Unitization in Mississippi and Alabama: Observations of a Louisiana Lawyer," Mississippi Oil & Gas Law Seminar, April 22, 1983, Jackson, Mississippi, (published in 28 Landman 43 (July, 1983)).

"The Challenge of Change in Natural Gas Pricing: The Path of Decontrol," 78th Annual Meeting of the Midwest Gas Association, March 7, 1983, Chicago, Illinois.

Editor, 26th and 27th Institutes on Mineral Law (both published 1980).

"Administrative Law and Practice before the Louisiana Office of Conservation," 29th Institute on Mineral Law (published in 30 L.S.U. Min. L. Inst. 461).

"Brambles in the Gas Patch: Problems of Natural Gas Decontrol," 33 Mercer L. Rev. 751 (1982).

"Louisiana Oil & Gas Law," Tulane Law School program on Louisiana Oil and Gas Law and Taxation, New Orleans, Louisiana, May 17-21, 1982.

Workshop on Oil and Gas Conservation Practice, November 29-30, 1979; Seminar by Southwestern Legal Foundation (3 hour talk on Principles of Administrative Law). Updated presentation, same seminar October 13-14, 1980.

Fundamentals of Federal Oil & Gas Regulation, two day short course by Executive Enterprises, Inc., presented with Richard J. Pierce in Houston, Denver, and Los Angeles, August 2-10, 1979; Tulsa, December 13-14, 1979; New Orleans, January 24-25, 1980; Houston, March 6-7, 1980; New Orleans, May 1-2, 1980; Denver, June 12-13, 1980; Houston, October 23-24, 1980; New Orleans, December 11-12, 1980; Dallas, March 9-10, 1981.

"Implementation of the Natural Gas Policy Act in Louisiana," Seminar by the Institute for Energy Development, Dallas, October 26-27, 1979.

"Oil and Gas: Impacts of Price and Allocation Controls," Special Institute for Natural Resources Law Teachers, Boulder, Colorado, May 28-30, 1981, Rocky Mountain Mineral Law Foundation.

"Implied Covenants in Oil and Gas Leases," Tulane Oil and Gas Policy Symposium, New Orleans, Louisiana December 11, 1981.

"Mineral Law: Leases and Title Problems," Fourth Post Graduate Summer School for Lawyers, LSU Law Center, June 23, 1981.

Short Course on Louisiana Property and Mineral Law, Baton Rouge, December 3-7, 1979; May 5-9, 1980.

"Current Developments in Oil Regulation," Denver Association of Petroleum Landmen, September 24, 1980, Denver, Colorado.

"Principles of Administrative Law (applicable to unemployment compensation case review)," presentation to unemployment compensation referees and Board of Review, Office of Employment Security, Louisiana Department of Labor, September 11, 1980, Many Louisiana.

"The Mineral Leasing Act of 1920: An Overview," Seminar on Federal Lands, Law and Policy Affecting Development of Natural Resources, University of Colorado, July 30, 1980.

"Energy Law: The Uncertain Response to Crisis and Change," Annual Meeting of the American Association of Law Libraries, St. Louis, Missouri, June 23, 1980.

"Cecil D. Andrus v. Shell Oil Company and D. A. Shale, Inc.," case analysis in Preview of United States Supreme Court Cases, Oct. 1979 term No. 31 (April 2, 1980).

"Current Trends in Gas Purchase Contracts," 25th Institute on Mineral Law (printed in 26th Institute on Mineral Law 359).

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27th Annual Institute on Oil and Gas Law and Taxation 177 (1976).

OXY'S REQUESTED ACTION

- 1. OXY is asking you to declare Hartman's application to be an inappropriate collateral attack on a valid and final order issued in 1994.**

- 2. OXY is asking you to find that Hartman had adequate notice of the 1994 hearing which involved:**
 - a request by OXY for approval to drill 16 new injection wells in a 760-acre portion of the unit in order to reduce the injection pattern to 40-acre patterns and to approve that project for the EOR tax credit.**

- 3. OXY is asking you to find that Hartman had the opportunity at the 1994 hearing where he could have raised issues he is now asserting.**

- 4. OXY is asking you to find that Hartman FAILED TO EXHAUST HIS ADMINISTRATIVE REMEDIES & waited too long to raise these issues and that it is now too late to do so and he is in default.**

- 5. OXY asks you to find that Section 70-7-9 of the Statutory Unitization Act which deals with amending units plans was not applicable to the 1994 project.**

6. Oxy asks you to find that Hartman's predecessors and now Hartman were not parties who were forced into this unit by the 1980 statutory unitization order.

7. I ask you to take time to review your decisions in Marathon's Tamano unit Case and Pelto's Twin lake unit case and the others analyzed in our Memorandum and to remember how the non-consent election described in 7F of the Act was specifically held to apply only to those WIO who failed to initial commit their interest to the unit.

8. Oxy asks you to find that ACT does not mandate the type of non-consent carried interest provision which Hartman wants.

9. Oxy asks you to find that Order R-6447 did not prescribe the type of carried interest provision he wants.

10. OXY asks you to affirm your prior interpretations in the Pelto Case, in the Tamano Unit Case and in Corbin Queen Case that 70-7-7.F means any working interest owners who fails to contractually join the unit is to be carried on some type of basis which the Division finds to be just and reasonable.

11. OXY Ask that you enter a finding that the Division 17 years after the fact is not going to modify the 1973 contracts.

12. Oxy therefore ask you to dismiss Hartman's attempt set aside the valid & final injection order. Instead we recommend you docket a case as follows:

"Division on its own motion in order to determine appropriate action, if any, hereby requires Hartman to appear and show cause that water being injected into the Langlie Mattix Pool by OXY operated Myers Langlie Mattix Waterflood project pursuant to Division authorized injection has migrated into the Yates formation and has caused recoverable gas reserves in the Yates formation to be wasted which would otherwise have been produced by Hartman's Myers "B" Federal Well No. 30."

13. OXY requests that (with the exception of the Yates water claim which Hartman had not properly plead) all issues raised by Hartman be dismissed simply as an effort by Hartman to create a partial defense to the fact that he is indebted to OXY as the unit operator for more than \$700,000 and he won't pay his debt.

ARTICLE 7

Statutory Unitization Act

Sec.

- 70-7-1. Purpose of act.
 70-7-2. Short title.
 70-7-3. Additional powers and duties of the oil conservation division.
 70-7-4. Definitions.
 70-7-5. Requisites of application for unitization.
 70-7-6. Matters to be found by the division precedent to issuance of unitization order.
 70-7-7. Division orders.
 70-7-8. Ratification or approval of plan by owners.
 70-7-9. Amendment of plan of unitization.
 70-7-10. Previously established units.
 70-7-11. Unit operations of less than an entire pool.

Sec.

- 70-7-12. Operation; expressed or implied covenants.
 70-7-13. Income from unitized substances.
 70-7-14. Lien for costs.
 70-7-15. Liability for expenses.
 70-7-16. Division orders.
 70-7-17. Property rights.
 70-7-18. Existing rights, rights in unleased land and royalties and lease burdens.
 70-7-19. Agreements not violative of laws governing monopolies or restraint of trade.
 70-7-20. Evidence of unit to be recorded.
 70-7-21. Unlawful operation.

70-7-1. Purpose of act.

The legislature finds and determines that it is desirable and necessary under the circumstances and for the purposes hereinafter set out to authorize and provide for the unitized management, operation and further development of the oil and gas properties to which the Statutory Unitization Act [70-7-1 to 70-7-21 NMSA 1978] is applicable, to the end that greater ultimate recovery may be had therefrom, waste prevented, and correlative rights protected of all owners of mineral interests in each unitized area. It is the intention of the legislature that the Statutory Unitization Act apply to any type of operation that will substantially increase the recovery of oil above the amount that would be recovered by primary recovery alone and not to what the industry understands as exploratory units.

History: 1953 Comp., § 65-14-1, enacted by Laws 1975, ch. 293, § 1.
Law reviews. — For article, "On an Institutional

Arrangement for Developing Oil and Gas in the Gulf of Mexico", see 26 Nat. Resources J. 717 (1986).

70-7-2. Short title.

This act [70-7-1 to 70-7-21 NMSA 1978] may be cited as the "Statutory Unitization Act."

History: 1953 Comp., § 65-14-2, enacted by Laws 1975, ch. 293, § 2.

70-7-3. Additional powers and duties of the oil conservation division.

Subject to the limitations of the Statutory Unitization Act [70-7-1 to 70-7-21 NMSA 1978], the oil conservation division of the energy, minerals and natural resources department, hereinafter referred to as the "division", is vested with jurisdiction, power and authority and it shall be its duty to make and enforce such orders and do such things as may be necessary or proper to carry out and effectuate the purposes of the Statutory Unitization Act.

History: 1953 Comp., § 65-14-3, enacted by Laws 1975, ch. 293, § 3; 1977, ch. 255, § 109; 1987, ch. 234, § 67.

The 1987 amendment, effective July 1, 1987,

substituted "energy, minerals and natural resources" for "energy and minerals" and made minor changes in language.

70-7-4. Definitions.

For the purposes of the Statutory Unitization Act [70-7-1 to 70-7-21 NMSA 1978], unless the context otherwise requires:

A. "pool" means an underground reservoir containing a common accumulation of crude petroleum oil or natural gas or both. Each zone of a general structure, which zone is completely separate from any other zone in the structure, is covered by the word pool as used herein. Pool is synonymous with "common source of supply" and with "common reservoir";

B. "oil and gas" means crude oil, natural gas, casinghead gas, condensate or any combination thereof;

C. "waste," in addition to its meaning in Section 70-2-3 NMSA 1978, shall include both economic and physical waste resulting, or that could reasonably be expected to result, from the development and operation separately of tracts that can best be developed and operated as a unit;

D. "working interest" means an interest in unitized substances by virtue of a lease, operating agreement, fee title or otherwise, excluding royalty owners, owners of overriding royalties, oil and gas payments, carried interests, mortgages and lien claimants but including a carried interest, the owner of which is primarily obligated to pay, either in cash or out of production or otherwise, a portion of the unit expense; however, oil and gas rights that are free of lease or other instrument creating a working interest shall be regarded as a working interest to the extent of seven-eighths thereof and a royalty interest to the extent of the remaining one-eighth thereof;

E. "working interest owner" or "lessee" means a person who owns a working interest;

F. "royalty interest" means a right to or interest in any portion of the unitized substances or proceeds thereof other than a working interest;

G. "royalty owner" means a person who owns a royalty interest;

H. "unit operator" means the working interest owner, designated by working interest owners under the unit operating agreement or the division to conduct unit operations, acting as operator and not as a working interest owner;

I. "basic royalty" means the royalty reserved in the lease but in no event exceeding one-eighth; and

J. "relative value" means the value of each separately owned tract for oil and gas purposes and its contributing value to the unit in relation to like values of other tracts in the unit, taking into account acreage, the quantity of oil and gas recoverable therefrom, location on structure, its probable productivity of oil and gas in the absence of unit operations, the burden of operation to which the tract will or is likely to be subjected, or so many of said factors, or such other pertinent engineering, geological, operating or pricing factors, as may be reasonably susceptible of determination.

History: 1953 Comp., § 65-14-4, enacted by
Laws 1975, ch. 293, § 4; 1977, ch. 255, § 110.

70-7-5. Requisites of application for unitization.

Any working interest owner may file an application with the division requesting an order for the unit operation of a pool or any part thereof. The application shall contain:

A. a description of the proposed unit area and the vertical limits to be included therein with a map or plat thereof attached;

B. a statement that the reservoir or portion thereof involved in the application has been reasonably defined by development;

C. a statement of the type of operations contemplated for the unit area;

D. a copy of a proposed plan of unitization which the applicant considers fair, reasonable and equitable;

E. a copy of a proposed operating plan covering the manner in which the unit will be supervised and managed and costs allocated and paid; and

F. an allegation of the facts required to be found by the division under Section 70-7-6 NMSA 1978.

History: 1953 Comp., § 65-14-5, enacted by Laws 1975, ch. 293, § 5; 1977, ch. 255, § 111.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 38 Am. Jur. 2d Gas and Oil §§ 164, 172.

Compulsory pooling or unitization statute or ordinance requiring owners or lessees of oil and gas lands to develop their holdings as a single drilling unit and the like, 37 A.L.R.2d 434.

70-7-6. Matters to be found by the division precedent to issuance of unitization order.

A. After an application for unitization has been filed with the division and after notice and hearing, all in the form and manner and in accordance with the procedural requirements of the division, and prior to reaching a decision on the petition, the division shall determine whether or not each of the following conditions exists:

(1) that the unitized management, operation and further development of the oil or gas pool or a portion thereof is reasonably necessary in order to effectively carry on pressure maintenance or secondary or tertiary recovery operations, to substantially increase the ultimate recovery of oil and gas from the pool or the unitized portion thereof;

(2) that one or more of the said unitized methods of operations as applied to such pool or portion thereof is feasible, will prevent waste and will result with reasonable probability in the increased recovery of substantially more oil and gas from the pool or unitized portion thereof than would otherwise be recovered;

(3) that the estimated additional costs, if any, of conducting such operations will not exceed the estimated value of the additional oil and gas so recovered plus a reasonable profit;

(4) that such unitization and adoption of one or more of such unitized methods of operation will benefit the working interest owners and royalty owners of the oil and gas rights within the pool or portion thereof directly affected;

(5) that the operator has made a good faith effort to secure voluntary unitization within the pool or portion thereof directly affected; and

(6) that the participation formula contained in the unitization agreement allocates the produced and saved unitized hydrocarbons to the separately owned tracts in the unit area on a fair, reasonable and equitable basis.

B. If the division determines that the participation formula contained in the unitization agreement does not allocate unitized hydrocarbons on a fair, reasonable and equitable basis, the division shall determine the relative value, from evidence introduced at the hearing, taking into account the separately owned tracts in the unit area, exclusive of physical equipment, for development of oil and gas by unit operations, and the production allocated to each tract shall be the proportion that the relative value of each tract so determined bears to the relative value of all tracts in the unit area.

C. When the division determines that the preceding conditions exist, it shall make findings to that effect and make an order creating the unit and providing for the unitization and unitized operation of the pool or portion thereof described in the order, all upon such terms and conditions as may be shown by the evidence to be fair, reasonable, equitable and which are necessary or proper to protect and safeguard the respective rights and obligations of the working interest owners and royalty owners.

History: 1953 Comp., § 65-14-6, enacted by Laws 1975, ch. 293, § 6; 1977, ch. 255, § 112.

70-7-7. Division orders.

The order providing for unitization and unit operation of a pool or part of a pool shall be upon terms and conditions that are fair, reasonable and equitable and shall approve or prescribe a plan or unit agreement for unit operation which shall include:

A. a legal description in terms of surface area of the pool or part of the pool to be operated as a unit and the vertical limits to be included, termed "the unit area";

B. a statement of the nature of the operations contemplated;

C. an allocation to the separately owned tracts in the unit area of all the oil and gas that is produced from the unit area and is saved, being the production that is not used in the conduct of operations on the unit area or not unavoidably lost;

D. a provision for the credits and charges to be made in the adjustment among the owners in the unit area for their respective investments in wells, tanks, pumps, machinery, materials and equipment contributed to the unit operations;

E. a provision governing how the costs of unit operations, including capital investments, shall be determined and charged to the separately owned tracts and how the costs shall be paid, including a provision providing when, how and by whom the unit production allocated to an owner who does not pay the share of the costs of unit operations charged to that owner or the interest of that owner may be sold and the proceeds applied to the payment of costs;

F. a provision for carrying any working interest owner on a limited, carried or net-profits basis, payable out of production, upon such terms and conditions determined by the division to be just and reasonable and allowing an appropriate charge for interest for such service payable out of the owner's share of production; provided that any nonconsenting working interest owner being so carried shall be deemed to have relinquished to the unit operator all of its operating rights and working interest in and to the unit until his share of the costs are repaid, plus an amount not to exceed two hundred percent of such costs as a nonconsent penalty, with maximum penalty amount in each case to be determined by the division;

G. a provision designating the unit operator and providing for the supervision and conduct of the unit operations, including the selection, removal or substitution of an operator from among the working interest owners to conduct the unit operations;

H. a provision for a voting procedure for the decision of matters to be decided by the working interest owners in respect to which each working interest owner shall have a voting interest equal to its unit participation;

I. the time when the unit operation shall commence and the manner in which and the circumstances under which the operations shall terminate and for the settlement of accounts upon termination; and

J. such additional provisions as are found to be appropriate for carrying on the unit operations and for the protection of correlative rights and the prevention of waste.

History: 1953 Comp., § 65-14-7, enacted by Laws 1975, ch. 293, § 7; 1977, ch. 255, § 113; 1986, ch. 55, § 1.

The 1986 amendment, at the end of Subsection F, added the language following "in and to the unit

until" and made minor stylistic changes throughout the section.

Effective dates. — Laws 1986, ch. 55 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 21, 1986.

70-7-8. Ratification or approval of plan by owners.

A. No order of the division providing for unit operations shall become effective unless and until the plan for unit operations prescribed by the division has been approved in writing by those persons who, under the division's order, will be required initially to pay at least seventy-five percent of the costs of the unit operations, and also by the owners of at least seventy-five percent of the production or proceeds thereof that will be credited to interests which are free of cost such as royalties, overriding royalties and production payments, and the division has made a finding either in the order providing for unit operations or in a supplemental order that the plan for unit operations has been so

approved. Notwithstanding any other provisions of this section, if seventy-five percent or more of the unit area is owned, as to working interest, by one working interest owner, such working interest owner must be joined by at least one other working interest owner in ratifying and approving the plan of unit operations, unless such working interest owner is the owner of one hundred percent of the working interest in said unit area; provided, however, if a single owner is one who, under the division's order will be required initially to pay at least twenty-five percent, but not more than fifty percent, of the costs of unit operation, such owner must be joined by at least one other owner of the same type interest in disapproving, or failure to approve, the plan of unit operations to defeat the plan.

B. If one owner is the owner of at least twenty-five percent, but not more than fifty percent, of the production or proceeds thereof that will be credited to interests which are free of costs, such owner must be joined by at least one other owner of the same type interest in disapproving, or failure to approve, the plan of unit operations to defeat the plan.

C. If the persons owning the required percentage of interest in the unit area do not approve the plan for unit operations within a period of six months from the date on which the order providing for unit operations is made, such order shall cease to be of further force and effect and shall be revoked by the division, unless the division shall extend the time for ratification for good cause shown.

D. When the persons owning the required percentage of interest in the unit area have approved the plan for unit operations, the interests of all persons in the unit are unitized whether or not such persons have approved the plan of unitization in writing.

History: 1953 Comp., § 65-14-8, enacted by
Laws 1975, ch. 293, § 8; 1977, ch. 255, § 114.

70-7-9. Amendment of plan of unitization.

An order providing for unit operations may be amended by an order made by the division in the same manner and subject to the same conditions as an original order providing for unit operations, provided:

A. if such an amendment affects only the rights and interests of the working interest owners, the approval of the amendment by the royalty owners shall not be required; and

B. no such amendment shall change the percentage for the allocation of oil and gas as established for any separately owned tract by the original order, except with the consent of all working interest owners and royalty owners in such tract, or change the percentage for the allocation of costs as established for any separately owned tract by the original order, except with the consent of all working interest owners in such tract.

History: 1953 Comp., § 65-14-9, enacted by
Laws 1975, ch. 293, § 9; 1977, ch. 255, § 115.

70-7-10. Previously established units.

The division, by order, may provide for the unit operation of a pool or parts thereof that embrace a unit area established by a previous order of the division. Such order, in providing for the allocation of unit production, shall first treat the unit area previously established as a single tract, and the portion of the unit production allocated thereto shall then be allocated among the separately owned tracts included in such previously established unit area in the same proportions as those specified in the previous order.

History: 1953 Comp., § 65-14-10, enacted by
Laws 1975, ch. 293, § 10; 1977, ch. 255, § 116.

70-7-11. Unit operations of less than an entire pool.

An order may provide for unit operation on less than the whole of a pool where the unit area is of such size and shape as may be reasonably suitable for that purpose, and the conduct thereof will have no adverse effect upon other portions of the pool.

History: 1953 Comp., § 65-14-11, enacted by
Laws 1975, ch. 293, § 11.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 38
Am. Jur. 2d Gas and Oil §§ 164, 172.

70-7-12. Operation; expressed or implied covenants.

All operations, including but not limited to, the commencement, drilling or operation of a well upon any portion of the unit area shall be deemed for all purposes the conduct of such operations upon each separately owned tract in the unit area by the several owners thereof. The portions of the unit production allocated to a separately owned tract in a unit area shall, when produced, be deemed, for all purposes, to have been actually produced from such tract by a well drilled thereon. Operations conducted pursuant to an order of the division providing for unit operations shall constitute a fulfillment of all the express or implied obligations for each lease or contract covering lands in the unit area to the extent that compliance with such obligations cannot be had because of the order of the division.

History: 1953 Comp., § 65-14-12, enacted by
Laws 1975, ch. 293, § 12; 1977, ch. 255, § 117.

70-7-13. Income from unitized substances.

The portion of the unit production allocated to any tract, and the proceeds from the sale thereof, shall be the property and income of the several persons to whom, or to whose credit, the same are allocated or payable under the order providing for unit operations.

History: 1953 Comp., § 65-14-13, enacted by
Laws 1975, ch. 293, § 13.

70-7-14. Lien for costs.

Subject to such reasonable limitations as may be set out in the plan of unitization, the unit shall have a first and prior lien upon the leasehold estate and other oil and gas rights (exclusive of a one-eighth royalty interest or exclusive of the interest provided in the unit operating plan which allocates costs, if it is different than one-eighth) in and to each separately owned tract, the interest of the owners thereof in and to the unit production and all equipment in the possession of the unit, to secure the payment of the amount of the unit expense charged to and assessed against such separately owned tract.

History: 1953 Comp., § 65-14-14, enacted by
Laws 1975, ch. 293, § 14.

70-7-15. Liability for expenses.

The obligation or liability of each working interest owner in the several separately owned tracts in the unit for the payment of unit expense at all times shall be several and not joint or collective, and a working interest owner shall not be chargeable with, obligated or liable for, directly or indirectly, more than the amount apportioned, assessed or otherwise charged to his interest in the separately owned tract pursuant to the order of unitization.

History: 1953 Comp., § 65-14-15, enacted by
Laws 1975, ch. 293, § 15.

70-7-16. Division orders.

A. No division order or other contract relating to the sale or purchase of production from a separately owned tract shall be terminated by the order providing for unit operations, but shall remain in force and apply to oil and gas allocated to such tract until terminated in accordance with the provisions thereof.

B. For purposes of this section, "division order" shall mean a contract of sale to the purchaser of oil and gas.

History: 1953 Comp., § 65-14-16, enacted by Laws 1975, ch. 293, § 16; 1977, ch. 255, § 118.

70-7-17. Property rights.

Except to the extent that the parties affected so agree, no order providing for unit operations shall be construed to result in a transfer of all or any part of the title of any person to the oil and gas rights in any tract in the unit area. All property, whether real or personal, that may be acquired in the conduct of unit operations hereunder shall be acquired for the account of the working interest owners within the unit area, and shall be the property of such working interest owners in the proportion that the costs of unit operations are charged.

History: 1953 Comp., § 65-14-17, enacted by Laws 1975, ch. 293, § 17.

70-7-18. Existing rights, rights in unleased land and royalties and lease burdens.

Property rights, leases, contracts and other rights or obligations shall be regarded as amended and modified only to the extent necessary to conform to the provisions and requirements of the Statutory Unitization Act [70-7-1 to 70-7-21 NMSA 1978] and to any valid order of the division providing for the unit operation of a pool or a part thereof, but otherwise shall remain in full force and effect. A one-eighth part of the production allocated to each tract under an order providing for the unit operation of a pool or a part thereof shall in all events be and remain free and clear of any cost or expense of developing or operating the unit and of any lien therefor as an encumbered [unencumbered] source from which to pay the royalties or other cost-free obligations due or payable with respect to the production from such tract. If a lease or other contract pertaining to a tract or interest stipulates a royalty, overriding royalty, production payment or other obligation in excess of one-eighth of the production or proceeds therefrom, then the working interest owner subject to such excess payment or other obligation shall bear and pay the same.

History: 1953 Comp., § 65-14-18, enacted by Laws 1975, ch. 293, § 18; 1977, ch. 255, § 118.

70-7-19. Agreements not violative of laws governing monopolies or restraint of trade.

No agreement between or among lessees or other owners of oil and gas rights in oil and gas properties entered into pursuant hereto or with a view or for the purpose of bringing about the unitized development or operation of such properties shall be held to violate any of the statutes of this state prohibiting monopolies or acts, arrangements, agreements, contracts, combinations or conspiracies in restraint of trade or commerce.

History: 1953 Comp., § 65-14-19, enacted by Laws 1975, ch. 293, § 19.

70-7-20. Evidence of unit to be recorded.

A copy of each unit agreement shall be recorded in the office of the county clerk of the county or counties in which the unit is situated.

History: 1953 Comp., § 65-14-20, enacted by Laws 1975, ch. 293, § 20.

70-7-21. Unlawful operation.

From and after the date designated by the division that a unit plan shall become effective, the operation of any well producing from the pool within the area subject to said unit plan, by persons other than persons acting under the authority of the unit plan, or except in the manner and to the extent provided in such unit plan, shall be unlawful and is hereby prohibited.

History: 1953 Comp., § 65-14-21, enacted by Laws 1975, ch. 293, § 21; 1977, ch. 255, § 120.

ARTICLE 8**Emergency Petroleum Products Supplies**

Sec.

- 70-8-1. Short title.
- 70-8-2. Purpose and findings.
- 70-8-3. Definitions.
- 70-8-4. Consent as a condition of doing business.

Sec.

- 70-8-5. Prohibited acts.
- 70-8-5.1. Exemption.
- 70-8-6. Right of action; injunction; damages.

70-8-1. Short title.

This act [70-8-1 to 70-8-6 NMSA 1978] may be cited as the "Emergency Petroleum Products Supply Act."

History: 1953 Comp., § 65-10-1, enacted by Laws 1974, ch. 22, § 1.

Meaning of "this act". — The term "this act" means Laws 1974, Chapter 22, which appears as

70-8-1 to 70-8-5 and 70-8-6 NMSA 1978. However, Laws 1979, Chapter 174 added present 70-8-5.1 NMSA 1978 to the Emergency Petroleum Products Supply Act.

70-8-2. Purpose and findings.

The legislature hereby determines that:

A. shortages of petroleum products caused by discontinuance or significant reductions of normal and customary availability in New Mexico of petroleum supplies create severe economic dislocations and hardships, including loss of jobs, closing of factories and businesses, reduction of crop plantings and harvesting, and curtailment of vital public services, including the transportation of food and other essential goods;

B. such hardships and dislocations are a threat to the public health, safety and welfare and can be averted or minimized through the operation of the Emergency Petroleum Products Supply Act [70-8-1 to 70-8-6 NMSA 1978];

C. the purpose of the Emergency Petroleum Products Supply Act is to avert or minimize such threats to the public health, safety and welfare; and

D. the preservation of existing marketing and distribution facilities of petroleum products in the state is necessary to prevent chaos and promote the public health, safety and welfare.

History: 1953 Comp., § 65-10-2, enacted by Laws 1974, ch. 22, § 2.