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# Receiverships and Integration: A Primer on Acquiring the Rights to Develop the Interest of a Lost or Recalcitrant Mineral Owner

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## A PRIMER ON ACQUIRING THE RIGHTS TO DEVELOP THE INTEREST OF A LOST OR RECALCITRANT MINERAL OWNER

Arkansas provides two methods by which to lease the mineral interest of an individual/entity which is either not locatable or arbitrarily refuses to lease. Basically, the procedure to be followed is dependent upon whether or not drilling units have been established by the Arkansas Oil and Gas Commission for a producing field when drilling is imminent. If no such unit exists, and the minerals are owned by more than one party and there is no existing production of the minerals from the land involved, any of the owners or any lessee of the owners can petition the Court for the appointment of a Receiver to execute a lease on behalf of the mineral owner who is either not locatable or has arbitrarily refused to lease. Ark. Code Ann. §15-56-304. If the Arkansas Oil and Gas Commission has established a unit for that acreage, then an integration procedure through the Arkansas Oil and Gas Commission is available. This paper will discuss both options and the procedures to be followed with each.

## I

## RECEIVERSHIP PROCEDURE

It is quickly apparent to anyone who is leasing for oil or gas in South Arkansas, which has a long established oil and gas industry, that the fact that mineral ownership in Arkansas is perpetual can create serious problems involving mineral conveyances executed in years gone by. Ownership of these minerals may be lodged in individuals who have long disappeared from the area leaving no trace

and making it impossible to further develop the mineral estate at this time. Such a mineral estate has all the sanctity of an estate in land generally in that title to it cannot be lost by abandonment, and yet it is virtually immune to the various title curative devices such as adverse possession, the tax deed and the marketable title act which keep land in a stream of commerce. In addition, situations arise in leasing efforts where a mineral owner, for whatever reason, refuses to lease even when they are located. In such situations, parties can take advantage of Ark. Code Ann. §15-56-304, and petition the Court for the appointment of a Receiver to execute a lease on behalf of such a mineral owner. A Petition must be filed in the Chancery Court seeking the Court to "appoint a Receiver, who shall be authorized to .... execute, acknowledge and deliver a lease on the lands described in the Petition for the best interest of the owners of such land". Ark. Code Ann. §15-56-305. The Petition shall include all persons whose names or whereabouts are unknown to Petitioner by the name and "ALL WHOM IT MAY CONCERN". Ark. Code Ann. §15-56-302(b). The Petition should state as far as known to the party the interest that is held by each named Defendant. Ark. Code Ann. §15-56-304. Service is obtained by publication of a Warning Order and by Certified, Restricted Delivery Mail to the last known address of the Defendant. Generally, the Circuit/Chancery Clerk of the County is appointed by the Court as Receiver to deposit all funds in the Registry of the Court. At the time of the filing of the Petition, we generally request that the lease broker provide an Affidavit of Efforts made to lease each of the Defendants named in the lawsuit to assure the Court that

every reasonable effort has been made to locate and/or lease these mineral owners. Additional testimony to this regard will also be given to the Court at the time of the hearing in order that the Judge may note such testimony in the docket. At the hearing, if the Judge is convinced that all efforts have been made to lease these unleased mineral interests and that it is in the best interest that a Receiver be appointed and that the terms being offered are fair and reasonable, the Judge will execute a Decree indicating that the lands are not presently producing oil, gas and minerals and that the Plaintiff has made diligent efforts to locate and obtain an oil and gas lease from the Defendant(s), and that it is in the best interest of the parties that the land be developed for oil and gas and that a Receiver be appointed to lease all the interest in the oil, gas and minerals in the land in issue owned by the Defendant on reasonable terms. The Court will then appoint a Receiver, who upon execution of the Lease, will execute a Report to the Court outlining actions taken pursuant to the Decree. The Judge will then further execute an Order upon review of the Report of the Receiver, and, generally, we request that the Judge also marginally approve the Lease on its face before recording. The Receiver shall report to the Court within thirty days of executing the Lease. In Davis vs. Schimmel, 252 Ark. 1201, 482 S.W.2d 785 (1972), the Court reviewed thoroughly the receivership procedure and upheld the constitutionality of certain provisions, although the case did not involve a frontal assault on constitutional questions. The Court did go to great lengths to interpret various provisions so as to bring them within constitutional requirements

of due process.

On the whole, it is now accepted that the Receiver procedure obtained a judicial blessing in the Davis case so as to remove critical doubts of constitutionality. However, serious problems still exist in the practicality of the present law and may be summarized as follows:

1) The expense of judicial proceeding;

2) The problem of jurisdication over Defendants whose existence or whereabouts are unknown and cannot be determined; and

3) The effectiveness of the Receiver, who, usually serving as an accommodation to the Plaintiff/Lessee, is placed in serious conflict of interest situations vis-a-vis the Lessee and the absent Defendant.

II

INTEGRATION

If Field Rules have been promulgated by the Arkansas Oil and Gas Commission for the acreage in question, and the Commission has established units, the Lessee has the option of appearing before the Arkansas Oil and Gas Commission and requesting that unleased mineral interests be integrated. This integration procedure is provided in Ark. Code Ann. §15-72-301 to 324. It allows the Commission to integrate the interests of mineral owners who refuse to act to select from the three options outlined below:

1) The nonconsenting owner has the option to lease their interest to the Applicant at a reasonable price to be fixed by the Arkansas Oil and Gas Commission.

2) The owner of an unleased mineral interest has the option to join as a working interest owner.

3) The owner of an unleased mineral interest has the option of being integrated and assessed a reasonable risk factor penalty to be established by the Commission subsequent to the hearing.

In order to take advantage of the integration procedure before the Arkansas Oil and Gas Commission, the Lessee/Applicant must file an Application requesting a hearing at least twenty days prior to the monthly hearing date of the Arkansas Oil and Gas Commission. The Commission normally meets the 4th Tuesday of each month either in Hot Springs, El Dorado, Russellville, or Fort Smith, Arkansas. There is a combined meeting for the months of November and December. Anyone interested in appearing before the Commission can check the schedule that is available from the Arkansas Oil and Gas Commission, which is established in January of every year for the entire twelve months.

The Application must be filed, together with a List of Interested Parties and all Exhibits to be introduced during the hearing. A check in the amount of $250.00 payable to the Arkansas Oil and Gas Commission must also accompany the Application. The following are the recommended Exhibits to be filed for an Application for an Integration:

Exhibit No. 1: <u>A Unit Plat.</u> This Exhibit should show the outline of the Unit which is the subject of this integration procedure indicating the relationship of the proposed unit with the surrounding area.

Exhibit No. 2: An Affidavit of the Efforts to Lease. It is a good idea to outline all leasing efforts made within two to three months prior to the hearing date. This information can be updated through testimony during the hearing. It is important that unleased mineral owners be contacted at least three times before the Application is filed. These contacts may be either by telephone or by mail, but it is important to keep a record of all contacts made. Unleased mineral owners must also be provided a copy of the Oil and Gas Lease as well as a copy of the JOA and AFE mailed by certified mail at least thirty days prior to the hearing. The JOA and the AFE must provide the option of either leasing at the highest royalty and bonus per net mineral acre being offered by the Operator, or participating on a proportionate share of the drilling cost of proposed well.

Exhibit No. 3: An AFE. An Authority For Expenditure indicates the location of the well with the name of the field, the anticipated dry hole costs, and the well completion costs.

Exhibit No. 4: The Joint Operating Agreement.

Exhibit No. 5: Geological Exhibits. A Structure Map and/or Isopach Map are necessary to provide geological information and indicate the proposed well location. These geological exhibits are important for the Commission's review in establishing the risk penalty to be assessed.

Exhibit No. 6: The List of Interested Parties. It is necessary to provide names and addresses of all unleased mineral owners in the unit. The List of Interested Parties is also typed on gummed labels to be used by the Commission to attach to a copy of the Docket to be mailed by First Class Mail to each of the individuals/ entities indicated on this list. We usually recommend that copies be made of the gummed labels to be used as the List of Interested Parties Exhibit.

Exhibit No. 7: Notice of Publication. Notice of the requested hearing must be published in the newspaper in the County where the well is to be located at least one time prior to the

hearing, no later than ten days before the hearing date. A copy of the Notice is included with the Application and the certified proof of notice is filed with the Commission during the hearing as one of the Exhibits.

As noted above, the interest of nonconsenting mineral owners cannot be integrated unless Field Rules have been established for the particular unit to be integrated.

It is interesting that the Receivership Proceeding is used frequently in South Arkansas, but rarely in North Arkansas. This may be due to a great extent because there is an exception to the above regulation which was enacted in Ark. Code Ann. §15-72-302(e) which provides that any drilling unit that is comprised of a governmental section, or the equivalent thereof, can be integrated regardless of whether or not Field Rules have been established for the unit, when an undivided 50% interest or more of the parties owning the right to drill agree to the integration. This procedure is the same as outlined above except for the necessity of acquisition of the approval of 50% or more of the parties who have the right to drill to proceed with such wildcat integration. Gas units often comprise a governmental section, but rarely do oil units comprise such acreage and, therefore, this statute is not available for the most part in South Arkansas.

**Cross References.** Mineral leases, § 15-73-201 et seq.

**Effective Dates.** Acts 1911, No. 159, § 2: effective on passage.

Acts 1975, No. 126, § 3: Feb. 7, 1975. Emergency clause provided: "It is hereby found and determined by the General Assembly that some uncertainty exists as to the meaning of the term "mineral" as used herein, and that the development of the mineral resources of this state is being thereby retarded by such uncertainty of meaning. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

### RESEARCH REFERENCES

**C.J.S.** 58 C.J.S., Mines, § 164 et seq.

**UALR L.J.** Wright, The Arkansas Law of Oil and Gas, 9 UALR L.J. 223.

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## 15-56-301. Multiple owner authority to lease mineral lands — Mineral defined.

(a) Whenever any mineral lands in fee, or severed mineral rights and interests in, on, and under any lands situated in the State of Arkansas shall be owned, or held by two (2) or more persons, firms, or corporations in joint tenancy, in common or in coparceny, and there shall be no operation thereof under existing valid mining and operating leases, any one (1) or more of the owners or holders of mineral lands in fee, or severed mineral interests, in, on, and under the land, or the lessees of any one (1) or more of any such mineral owners may have the lands or mineral interests, leased and operated, in the manner provided in this subchapter.

(b) The word "mineral" as used herein shall include oil, gas, asphalt, coal, iron, zinc, lead, cinnabar, bauxite, and salt water whose naturally dissolved components or solutes are used as a source of raw materials for bromine and other products derived therefrom in bromine production.

**History.** Acts 1937, No. 220, § 1; Pope's Dig., § 11195; Acts 1963, No. 85, § 1; 1975, No. 126, § 1; A.S.A. 1947, § 52-201.

### CASE NOTES

**Salt Water.**

Since salt water is a mineral under Arkansas law, it is reasonable to treat damages for the taking of salt water in the same manner as the taking of other minerals such as coal. Young v. Ethyl Corp., 581 F.2d 715 (8th Cir. 1978), cert. denied, 439 U.S. 1089, 99 S. Ct. 871, 59 L. Ed. 2d 56 (1979).

**Cited:** Davis v. Schimmel, 252 Ark. 1201, 482 S.W.2d 785 (1972).

### 15-56-302. Summons — Validity of lessee's title.

(a) Summons shall be issued and served as in other cases in chancery.

(b) All persons, if any, whose names or whereabouts are stated in the petition to be unknown to the plaintiff shall be deemed and taken as defendants by the name or designation of "all whom it may concern", and such persons may be constructively summoned, as provided in § 16-58-130. However, the validity of the lessee's title under the lease, when approved by the court, shall not thereafter be subject to attack by any person whatsoever, including, but not limited to, nonresidents, minors, or other incompetents, except by direct appeal in the manner provided by law.

**History.** Acts 1937, No. 220, § 3; Pope's Dig., § 11197; Acts 1963, No. 85, § 3; A.S.A. 1947, § 52-203.

CASE NOTES

**Construction.**

The language in this section barring any attack upon a lease entered into by a receiver "except by direct appeal in the manner provided by law" must be construed as meaning "by direct attack," thus including a motion to set aside the orders of the court filed by nonresident defendants who had not been properly served by constructive notice of the proceedings, for to hold otherwise would clearly require that this section be held unconstitutional as in violation of the due process clause of U.S. Const. Amend. 14. Davis v. Schimmel, 252 Ark. 1201, 482 S.W.2d 785 (1972).

### 15-56-303. Parties in interest — Right to appear or intervene.

Any persons having or claiming an interest in mineral lands in fee, or in any segregated mineral rights, not made a party in the petition, may appear and unite or intervene in the cause.

**History.** Acts 1937, No. 220, § 4; Pope's Dig., § 11198; Acts 1963, No. 85, § 4; A.S.A. 1947, § 52-204.

### 15-56-304. Petition to lease or operate — Parties defendant.

Any owners, partners, or corporate shareholders, or parties as set forth in § 15-56-301 desiring the leasing and operating of mineral lands or mineral interests shall file, in the chancery court in the county in which the mineral lands or mineral interests or the greater part thereof lie, a written petition describing the lands under which the mineral interests exist and shall make as parties defendant owners of the various interests or their lessee, if any, in the mineral lands or mineral rights in, on, and under the lands. The petition shall state, as far as known, the amount of interest held by each, with a prayer that the unleased interests or any part thereof or certain portions of the mineral lands and interests be leased and that the money derived from

leases be paid to the owners as the court may direct. Any lessor whose lessee is either a plaintiff or defendant shall not be a necessary party to the suit.

**History.** Acts 1937, No. 220, § 2; Pope's Dig., § 11196; Acts 1963, No. 85, § 2; A.S.A. 1947, § 52-202.

## 15-56-305. Receiver — Disposition of proceeds.

(a) Upon the filing of the petition, the chancery court shall appoint a receiver, who shall be authorized to negotiate for and to execute, acknowledge, and deliver a lease on mineral lands or severed mineral interests for a cash, commodity in kind, or tonnage royalty, as is the customary manner, and terms for the product, for the best interest of, or compensation to, the parties holding thereunder, and to collect, divide, and pay over the proceeds, secured for the leases, pro rata to and among owners, as their interests may appear.

(b) Any rents, bonus money, royalties, or other proceeds that may accrue to any unknown persons shall be paid by the receiver into the registry of the clerk of the court to be held by the clerk, and any bond of the receiver shall be eliminated thereby.

**History.** Acts 1937, No. 220, § 6; Pope's Dig., § 11200; Acts 1963, No. 85, § 6; A.S.A. 1947, § 52-206.

### CASE NOTES

**Pendency of Suit.**

Although this section authorizes the appointment of a receiver to negotiate a lease upon the filing of a petition, appointment and negotiation are ultimate remedies and the pendency of a suit is an absolute prerequisite to the appointment of a receiver and, unless made in a pending action, the court is without jurisdiction. Davis v. Schimmel, 252 Ark. 1201, 482 S.W.2d 785 (1972).

## 15-56-306. Reporting and approval of leases.

(a) A lease executed by a receiver, when acknowledged and delivered, shall be binding on all parties subject only to approval or rejection by the court as herein provided.

(b) Not later than thirty (30) days after making the lease, the receiver shall report the making of the lease to the court. If it shall appear to the court that the consideration for the lease was fair and equitable at the time the consideration was made, the court shall approve the consideration and the lease shall be binding as though executed by the various owners and their wives.

**History.** Acts 1937, No. 220, § 7; Pope's Dig., § 11201; Acts 1963, No. 85, § 7; A.S.A. 1947, § 52-207.

### 15-56-307. Sale of land or mineral rights — Lease unaffected.

The lease executed by the receiver under the approval of the court as provided in § 15-56-306 shall not terminate with the sale of the lands or mineral interests therein, thereon, or thereunder. Any person purchasing or holding thereafter shall take the land or mineral rights subject to the lease executed by the receiver pursuant to § 15-56-306.

**History.** Acts 1937, No. 220, § 9; Pope's Dig., § 11203; Acts 1963, No. 85, § 9; A.S.A. 1947, § 52-209.

### 15-56-308. Discharge of receiver — Accounting.

Upon any lease or contract being executed by the receiver appointed by the chancery court as provided in this subchapter, and upon the lease or contract being reported, and approved by the court, and all considerations, if any, being accounted for by the receiver, with any money left in the hands of the receiver being paid into the registry of the court, the receiver shall be discharged, and the lessee or assigns shall thereafter account to the respective owners for all royalties arising or accruing under the term of the lease or contract, with payment to be made by the lessee or operator for any unknown persons into the registry of the court as the interest of the persons may appear.

**History.** Acts 1937, No. 220, § 13; Pope's Dig., § 11207; Acts 1963, No. 85, § 13; A.S.A. 1947, § 52-213.

### 15-56-309. Execution of agreements subsequent to discharge of receiver.

After discharge of the receiver, if it should become necessary for unit operating agreements, royalty unitization agreements, royalty pooling agreements, field unitization and repressure agreements, or other agreements and contracts relative thereto to be executed, the clerk of the court is authorized to petition the chancery court for the authority to execute the agreements, with notice to such persons, if any, as the court may direct.

**History.** Acts 1963, No. 85, § 15; A.S.A. 1947, § 52-213.1.

### 15-56-310. In rem proceedings against unleased interest in minerals.

The proceedings provided for in this subchapter shall be for all purposes an action in rem against the unleased interest in minerals as described in this subchapter.

**History.** Acts 1963, No. 85, § 14; A.S.A. 1947, § 52-213.2.

### 15-56-311. Failure of lessee to report output.

Any person, firm, or corporation leasing lands in this state under written contracts providing for a royalty to be paid the lessor for ore deposits or minerals taken out of or off of the land, or any officer, agent, or employee of the lessee, who, with the intent to defraud the lessee out of any part of the royalty, fails, neglects, or refuses to report the true amount or quantity of ore, deposits, or minerals taken from the lands, or who conceals the true amount so taken, or who falsely reports the amount so taken shall be deemed guilty of a felony and upon conviction shall be imprisoned in the penitentiary for not less than one (1) year nor more than five (5) years.

**History.** Acts 1911, No. 159, § 1; C. & M. Dig., § 7286; Pope's Dig., § 9342; A.S.A. 1947, § 52-214.

## Subchapter 4 — Leases by Life Tenants



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**Effective Dates.** Acts 1961, No. 94, § 10: Feb 16, 1961. Emergency clause provided: "It is hereby found and declared by the General Assembly that much confusion exists with respect to mineral leases on lands in which a life estate has been created pursuant to Arkansas Code Section 50-405 [§ 18-12-301]; that to avoid waste of valuable mineral deposits it is necessary to prescribe a procedure where such life tenants may execute mineral leases on such lands; and that this act will provide such procedure. Therefore an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

### 15-72-301. Applicability of §§ 15-72-307 — 15-72-314.

The provisions of §§ 15-72-307 — 15-72-314 shall be applicable to each pool, or any portion thereof, in the State of Arkansas.

**History.** Acts 1939, No. 105, § 15; 1965, No. 41, § 1; A.S.A. 1947, § 53-115.

**CASE NOTES**

**Cited:** Fife v. Thompson, 288 Ark. 620, 708 S.W.2d 611 (1986).

### 15-72-302. Just and equitable shares — Preventing waste, avoiding risks, etc. — Drilling units.

(a) Whether or not the total production from a pool is limited or prorated, no rule, regulation, or order of the Oil and Gas Commission shall be such in terms or effect:

(1) That it shall be necessary at any time for the producer from, or the owner of, a tract of land in the pool, in order that he may obtain the tract's just and equitable share of the production of the pool, as the share is set forth in this section, to drill and operate any well or wells on the tract in addition to the well or wells as can without waste produce the share; or

(2) As to occasion net drainage from a tract unless there is drilled and operated upon the tract a well or wells in addition to the wells thereon as can without waste produce the tract's just and equitable share, as set forth in this section, of the production of the pool.

(b)(1) For the prevention of waste and to avoid the augmenting and accumulation of risks arising from the drilling of an excessive number of wells, the commission shall, after a hearing, establish a drilling unit or units for each pool, except in those pools which, prior to February 20, 1939, have been developed to an extent and where conditions are such that it would be impracticable or unreasonable to use a drilling unit at the present stage of development.

(2) As used in this subchapter, unless the context otherwise requires, "drilling unit" means the maximum area which may be efficiently and economically drained by one (1) well, and the unit shall constitute a developed unit as long as a well is located thereon which is capable of producing oil or gas in paying quantities.

(c) Each well permitted to be drilled upon any drilling unit shall be drilled approximately in the center thereof, with such exception as may be reasonably necessary where it is shown, after notice and upon hearing, and the commission finds, that the unit is partly outside the pool or, for some other reason, a well approximately in the center of the unit would be nonproductive or where topographical conditions are such as to make the drilling approximately in the center of the unit

unduly burdensome. Whenever an exception is granted, the commission shall take action to offset any advantage which the person securing the exception may have over other producers by reason of the drilling of the well as an exception, and so that drainage from developed units to the tract with respect to which the exception is granted will be prevented or minimized and the producer of the well drilled as an exception will be allowed to produce no more than his just and equitable share of the oil and gas in the pool, as such share is set forth in this section.

(d) Subject to the reasonable requirements for prevention of waste, a producer's just and equitable share of the oil and gas in the pool, also sometimes referred to as a tract's just and equitable share, is that part of the authorized production for the pool, whether it is the total which could be produced without any restriction on the amount of production, or whether it is an amount less than that which the pool could produce if no restriction on amount were imposed, which is substantially in the proportion that the quantity of recoverable oil and gas in the developed area of his tract in the pool bears to the recoverable oil and gas in the total developed area of the pool, insofar as these amounts can be practically ascertained. To that end, the rules, regulations, permits, and orders of the commission shall be such as will prevent or minimize reasonably avoidable net drainage from each developed unit, that is, drainage which is not equalized by counter drainage, and will give to each producer the opportunity to use his just and equitable share of the reservoir energy.

(e) The commission may, after public hearing held pursuant to notice given as required by law and by any rules or orders of the commission, establish a drilling unit as defined in subsection (b) of this section for an exploratory well to be drilled therein. Any drilling unit so established shall be comprised of a governmental section or the equivalent thereof determined by the commission to be prospective of oil or gas, or both, and the commission shall have the authority to integrate separately owned tracts embraced therein when the owners thereof fail or refuse voluntarily to do so, provided that persons who own at least an undivided fifty percent (50%) interest in the right to drill and produce oil or gas, or both, from the total proposed unit area agree thereto. However, any such order of the commission and drilling unit as established for exploratory purposes thereunder shall remain in force for a period no longer than the later of one (1) year following the effective date thereof or one (1) year following the cessation of drilling operations or production within the unit, whereupon the order of the commission and the provisions thereof shall automatically terminate.

**History.** Acts 1939, No. 105, § 14; 1941, No. 305, § 1; 1951, No. 28, § 1; 1985, No. 881, § 1; A.S.A. 1947, § 53-114.

CASE NOTES

ANALYSIS

Royalties.
Use of surface.

**Royalties.**

For a discussion of apportionment of royalties, see Dobson v. Arkansas Oil & Gas Comm'n, 218 Ark. 160, 235 S.W.2d 33 (1950).

**Use of Surface.**

The owner of oil and gas rights in one tract of land may use the surface of that tract to gain access to an adjacent tract to drill on the adjacent tract. Reimer v. Gulf Oil Corp., 281 Ark. 377, 664 S.W.2d 456 (1984).

Where the mineral owner's lease granted the mineral owner the express right to construct such roads as were necessary to drill for gas on the surface owner's lands and also provided that if the well site was within the same drilling unit as was the surface estate, the well would be considered as upon the surface owner's land, since the well was within the drilling unit, the mineral owner had an express right to cross the surface estate and could be liable only for unreasonable use. Reimer v. Gulf Oil Corp., 281 Ark. 377, 664 S.W.2d 456 (1984).

**Cited:** Arkla Exploration Co. v. Texas Oil & Gas Corp., 734 F.2d 347 (8th Cir. 1984).

## 15-72-303. Authority to integrate production in drilling units.

(a) When two (2) or more separately owned tracts are embraced within an established drilling unit, when there are separately owned interests in all or part of the drilling unit, or when there are separately owned tracts and separately owned interests in all or part of such drilling unit, the owners thereof may voluntarily pool, combine, and integrate their tracts or interests for the development or operation of that drilling unit.

(b) Where the owners fail or refuse voluntarily to integrate their interests, the commission, upon the application of any such owner, shall, for the prevention of waste or to avoid the drilling of unnecessary wells, enter its order integrating all tracts and interests in the drilling unit for the development or operation thereof and the sharing of production therefrom.

**History.** Acts 1939, No. 105, § 15; 1963, No. 536, § 1; A.S.A. 1947, § 53-115.

CASE NOTES

**Cited:** Fife v. Thompson, 288 Ark. 620, 708 S.W.2d 611 (1986).

## 15-72-304. Integration orders generally.

(a) All orders requiring integration shall be made after notice and hearing and shall be upon terms and conditions which are just and reasonable and which will afford the owner of each tract or interest in the drilling unit the opportunity to recover or receive his just and equitable share of the oil and gas in the pool without unnecessary

expense and will prevent or minimize reasonably avoidable drainage from each developed unit which is not equalized by counter drainage.

(b) In the event the drilling of a well has not been commenced, or if commenced, the well has not been completed as a well capable of producing oil and gas in commercial quantities on the lands comprising the drilling unit on the effective date of the order requiring integration, the order shall:

(1) Authorize the drilling or completion and the equipping and operation of a well on the drilling unit;

(2) Provide who shall drill, complete, and operate the well;

(3) Prescribe the time and manner in which all owners in the drilling unit who may desire to pay their share of the costs of such operations and participate therein may elect to do so;

(4) Provide that an owner who does not affirmatively elect to participate in the risk and cost of the operations shall transfer his rights in the drilling unit and the production from the unit well to the parties who elect to participate therein for a reasonable consideration and on a reasonable basis, which in the absence of agreement between the parties, shall be determined by the commission. The transfer may be either a permanent transfer or may be for a limited period pending recoupment out of the share of production attributable to the interest of the nonparticipating owner by the participating parties of an amount equal to the share of the costs that would have been borne by the nonparticipating party had he participated in the operations, plus an additional sum to be fixed by the commission.

(c) In the event there is a well capable of producing oil or gas in commercial quantities on the lands comprising the drilling unit on the effective date of the order requiring integration, the order shall:

(1) Authorize the operation of the well;

(2) Provide who shall operate the well; and

(3) Provide that, within the time stipulated in the order, any owner in the drilling unit who did not participate in the drilling of the well shall either reimburse the drilling parties in cash for his share of the actual cost of drilling, completing, and equipping the well or shall transfer his rights in such drilling unit and the production from the well to the drilling parties until those parties have received out of the share of production attributable to the interest so transferred an amount equal to the share of the costs that would have been borne by the transferring party had he participated in drilling, completing, equipping, and operating the well, plus an additional sum to be fixed by the commission.

(d) In the event there is an unleased mineral interest or interests in any drilling unit, the owner thereof shall be regarded as the owner of a royalty interest to the extent of a one-eighth (1/8) interest in and to the unleased mineral interest. This royalty interest shall not be affected by the provisions of subsections (b) and (c) of this section.

**History.** Acts 1939, No. 105, § 15; 1963, No. 536, § 1; A.S.A. 1947, § 53-115.

**CASE NOTES**

**Cited:** Fife v. Thompson, 288 Ark. 620, 708 S.W.2d 611 (1986).

## 15-72-305. Allocation of production and cost following integration order — Procedure.

(a)(1) The order of the commission creating a drilling unit shall provide that effective as of the commencement of the drilling of a well upon the drilling unit, or if a well capable of producing oil and gas in commercial quantities has already been completed upon some part of the lands included within the drilling unit, all royalty, overriding royalty, production payment, or similar interests in the drilling unit shall be integrated without the necessity of any additional order or action by the commission or owners. In the event any unit includes an unleased mineral interest upon the effective date thereof, one-eighth (1/8) of the unleased mineral interest shall be deemed as royalty for the purposes of this subsection.

(2) For the purpose of making distribution to the owners of royalty, overriding royalty, production payment, or similar interests, there shall be allocated to each tract in the established drilling unit that percentage of the total production from such drilling unit, except any part thereof unavoidably lost or used for production or development purposes, which the area of each tract bears to the total area of the drilling unit. The interests shall be paid or delivered to each owner thereof in conformance with the provisions of the appropriate lease, agreement, or contract creating it, but computed upon the production allocated to each tract as hereinabove provided, rather than upon the actual production therefrom.

(3) One-eighth (1/8) of all gas sold on or after the first day of the calendar month next ensuing after March 6, 1985, from any such unit shall be considered royalty gas, and the net proceeds received from the sale thereof shall be distributed to the owners of the marketable title in and to the leasehold royalty and royalty as defined under § 15-72-304(d). Marketability of title shall be determined according to principles of real property law governing title to oil and gas interests. Unless all royalty owners within the drilling unit agree to a different method for distribution of the royalty, the distribution shall be coordinated by the operator of the well as follows:

(A)(i) Within thirty (30) days of the receipt of the proceeds from gas sale, each working interest owner shall furnish to the working interest owner designated as operator, in a form acceptable to the operator, the following information:

(*a*) The names and addresses of all owners of royalty under the working interest owner's leasehold interests;

(*b*) Each royalty owner's tax identification or social security number and any other information needed to meet the requirements of the Internal Revenue Service or other governmental agencies; and

(*c*) The fractional or decimal interests in the unit of each tract in which interests are owned and each royalty owner's fractional or decimal interest therein;

(ii) Thereafter, each working interest owner shall notify the operator of any changes of ownership and provide the necessary information to facilitate the necessary changes promptly upon receiving proof thereof;

(iii) If any working interest owner should fail or refuse to discharge its obligation to provide the information outlined in subdivision (a)(3)(A)(i) in a timely manner, to facilitate payments, the operator may, at its option, either:

(*a*) Notify the working interest owner by certified or registered mail of the name, address, and decimal interests of the royalty owner believed to be entitled to receive payments pursuant to the terms hereof under the working interest owner's leasehold on the basis of the best information then available to the operator. If the working interest owner fails to respond to the notification within thirty (30) days of the receipt thereof, the operator shall be entitled to pay royalty moneys in accordance with its prior notification and usual procedures. Further, the operator's payment in this manner shall constitute a complete defense to any claim or in any legal proceeding or cause of action and the responsible working interest owner shall indemnify and hold the operator harmless from all liability and reimburse the operator for any and all costs and expenses, including attorney's fees, interest, or penalty incurred with respect to the proceeding or action; or

(*b*) File an application with the Oil and Gas Commission, setting forth sufficient facts to identify the well concerned and the responsible working interest owner, requesting that the commission issue an order requiring the working interest owner to appear at the next regularly scheduled hearing and show cause with respect to its failure to timely comply with the provisions of this section. Subsequent to the hearing, the commission shall impose upon a working interest owner who has failed to meet its obligations hereunder such sanctions as are reasonably calculated to enforce compliance with this section. These sanctions shall include, but not be limited to, a civil penalty of up to, but not more than, five hundred dollars ($500). The commission shall have the authority to suspend the imposition of any sanction for a maximum period of sixty (60) days in order to allow the noncompliant owner the opportunity to furnish proof to the commission of his compliance with any commission order. All civil penalties levied by the commission as a result of this provision shall be collected by the Oil and Gas Commission and shall be deposited in the State Treasury to the credit of the Oil and Gas Commission Fund. The commission may promulgate such other rules and regula-

tions as it deems appropriate and necessary to carry out the purposes of this section;

(iv) The terms of subdivision (a)(3)(A) of this section shall not be applicable to any producing unit or well that produces liquid hydrocarbons only, or liquid hydrocarbons associated with the production of gas, or gas produced associated with the production of liquid hydrocarbons;

(B)(i) Commencing no later than six (6) months after the date of first sale, and thereafter no later than the earlier of thirty (30) days after first payment is received or thirty (30) days after the sixty-day period within which the first purchaser is to make payment pursuant to §§ 15-74-501 and 15-74-601 — 15-74-603, or a total of ninety (90) days after the end of the calendar month within which subsequent production is sold, each working interest owner or marketing party who has sold gas shall remit or cause to be remitted to the operator one-eighth (1/8) of the revenue realized or royalty moneys from gas sales computed at the mouth of the well, less all lawful deductions, including, but not limited to, all federal and state taxes levied upon the production or proceeds and shall indemnify and hold the other working interest owner free from any liability therefor. However, if any portion of the price received by a marketing party is subject to possible refund to the gas purchaser pursuant to the regulations or orders of any governmental authority, the refundable portion need not be included in the amount remitted to the operator for distribution hereunder until the possibility of refund has terminated. The funds or amounts as so remitted shall be held in trust by the operator for the account of the royalty owner or owners entitled thereto until distributed and paid as provided in this section;

(ii) If any operator should fail or refuse to discharge its obligation to remit revenues in a timely manner as provided in this section, the working interest owner whose royalty owner's obligations have not been paid may, to facilitate payment, either:

(*a*) File an application with the Oil and Gas Commission, setting forth sufficient facts to identify the well concerned and the responsible operator, requesting that the commission issue an order requiring the operator to appear at the next regularly scheduled hearing and show cause with respect to its failure to timely comply with the provisions of this section. Subsequent to the hearing, the commission shall impose upon an operator who has failed to meet its obligations hereunder such sanctions as are reasonably calculated to enforce compliance with this section. The sanctions shall include, but not be limited to, a civil penalty of up to, but not more than, five hundred dollars ($500). The commission shall have the authority to suspend the imposition of any sanction for a maximum period of sixty (60) days in order to allow the noncompliant the opportunity to furnish proof to the commission of his compliance with any commission order. All civil penalties levied by the commission as a result of this provision shall be collected by the Oil and Gas Commission and

deposited in the State Treasury to the credit of the Oil and Gas Commission Fund. The commission may promulgate such other rules and regulations as it deems appropriate and necessary to carry out the purposes of this section; or

(*b*) File a legal proceeding or cause of action to compel the operator's compliance with the terms hereof. The operator shall reimburse the complaining working interest owner for any and all costs or expenses, including attorney's fees, incurred with respect to the proceeding or action;

(iii) The operator shall not be held liable for failure to distribute royalty hereunder where its failure is due to the failure of a working interest owner to timely provide or cause to be provided the information and royalty moneys described in subdivisions (a)(3)(A) and (B) of this section. Each working interest owner shall indemnify and hold the operator harmless for all costs, including reasonable attorney's fees, incurred as a result of the failure;

(iv) The terms of subdivision (a)(3)(B) of this section shall not be applicable to any producing unit or well that produces liquid hydrocarbons only, or liquid hydrocarbons associated with the production of gas, or gas produced associated with the production of liquid hydrocarbons.

(4)(A) Any working interest owner may arrange for the royalty moneys to be remitted directly to the operator by the purchaser to whom the gas is sold, but, in that case, shall continue to hold the operator harmless for all costs, including reasonable attorney's fees, incurred as a result of failure to provide or cause to be provided the information and royalty moneys required by subdivisions (a)(3)(A) and (B) of this section.

(B) The terms of subdivision (a)(4) of this section shall not be applicable to any producing unit or well that produces liquid hydrocarbons only, or liquid hydrocarbons associated with the production of gas, or gas produced associated with the production of liquid hydrocarbons.

(5)(A) On or before the thirtieth day of the next calendar month following its receipt of the royalty moneys as provided above, the operator shall distribute the moneys to all royalty owners as provided in this subsection. The distribution may be made annually for the aggregate of up to twelve (12) months of accumulated royalty moneys where the aggregate amount due any royalty owner is twenty-five dollars ($25.00) or less. The payment shall be made in a form evidencing the following:

(i) The name of the party entitled to payment;

(ii) Identification of the wells for which payment is being made by well number or division order;

(iii) The time period for which payment is made;

(iv) The decimal interest of the party being paid;

(v) The total production from each well for which payment is being made;

(vi) The gross price received for each unit of production from each well;

(vii) Any and all deductions from the payment which shall be itemized as to the nature of the deduction; and

(viii) An address and telephone number at which additional information may be obtained and questions may be answered.

(B) In the event that the operator stops the royalty payments for a period of more than sixty (60) days for any reason, the operator shall send a letter of explanation.

(C) If a royalty interest owner requests information or answers to questions concerning a payment made pursuant to this subdivision and the request is made by certified mail with return receipt requested, the party making payment must respond to the request by certified mail with return receipt requested not later than forty-five (45) days after the request is received.

(D)(i) If a royalty interest owner fails to receive an answer to his or her request for information or to his or her questions, the royalty interest owner may file a complaint with the Oil and Gas Commission on a form provided by the commission, describing:

(*a*) The information requested or the questions to be answered;

(*b*) The party responsible for making the royalty payments;

(*c*) The date the information or answers were requested; and

(*d*) The date the requested information or answers were due from the paying party.

(ii) Upon the filing of the complaint form, the commission shall issue an order requiring the party making the payments to appear at the next regularly scheduled hearing and to show cause for its failure to respond to the royalty interest owner's request for information or answers.

(iii) If the party making the payments fails to respond to the royalty interest owner's inquiry after the complaint is filed or fails to show just cause for its failure to respond at the hearing, the commission shall impose such sanctions as are reasonably calculated to enforce compliance with this provision.

(iv) These sanctions shall include, but not be limited to, a civil penalty of up to, but not more than, five hundred dollars ($500). The commission shall have the authority to suspend the imposition of any sanction for a maximum period of sixty (60) days in order to allow the noncompliant party the opportunity to furnish proof to the commission of his compliance with any commission order.

(v) All civil penalties levied by the commission as a result of this provision shall be collected by the Oil and Gas Commission and shall be deposited in the State Treasury to the credit of the Oil and Gas Commission Fund.

(E) The commission may promulgate such other rules and regulations as it deems appropriate and necessary to carry out the purposes of this section.

(F) The terms of subdivision (a)(5) of this section shall not be applicable to any producing unit or well that produces liquid hydrocarbons only, or liquid hydrocarbons associated with the production of gas, or gas produced associated with the production of liquid hydrocarbons.

(6)(A) Payment of one-eighth (1/8) of the revenue realized from the sale of gas as provided in this section shall fully discharge all obligations of the operator and other working interest owners with respect to the payment of one-eighth (1/8) leasehold royalty, or royalty as described under § 15-72-304(d).

(B) The terms of subdivision (a)(6) of this section shall not be applicable to any producing unit or well that produces liquid hydrocarbons only, or liquid hydrocarbons associated with the production of gas, or gas produced associated with the production of liquid hydrocarbons.

(7)(A) The operator shall be entitled to reimbursement from each working interest owner, whether or not that party is marketing gas, the party's fair and equitable share of the costs of distributing the one-eighth (1/8) royalty required by this subsection. The amount of these charges shall be based upon the reasonable cost of administering these provisions and shall be subject to review by the commmission upon application of any working interest owner.

(B) The terms of subdivision (a)(7) of this section shall not be applicable to any producing unit or well that produces liquid hydrocarbons only, or liquid hydrocarbons associated with the production of gas, or gas produced associated with the production of liquid hydrocarbons.

(8)(A) Any gas taken in kind shall be excluded from royalty gas for which payment shall be made pursuant to this section, but the operator shall be promptly provided with written notification of the intent to exclude the gas.

(B) Additionally, any gas taken by a working interest owner to correct an imbalance in production between the working interest owners, which was created or existed prior to April 1, 1985, shall also be excluded from royalty gas for which payment shall be made pursuant to this subsection.

(C) Nothing contained in this section shall affect the obligations of working interest owners with respect to the payment of royalties, overriding royalties, production payments, or similar interests in excess of the one-eighth (1/8) royalty required to be distributed under this section.

(b) All operations, including, but not limited to, the commencement, drilling, or operation of a well upon any portion of a drilling unit for which an integration order has been entered shall be deemed for all purposes the conduct of operations upon each separately owned tract and interest in the drilling unit by the several owners thereof. The portion of the production allocated to the owner of each tract or interest included in a drilling unit formed by an integration order shall, when

produced, be considered for all purposes as if it had been produced from the tract or interest by a well drilled thereon.

**History.** Acts 1939, No. 105, § 15; 1963, No. 536, § 1; 1985, No. 272, § 1; A.S.A. 1947, § 53-115; Acts 1987, No. 94, §§ 1, 4.

**Publisher's Notes.** Acts 1987, No. 94, § 1, provided, in part, that the operator, or other working interest owner, shall not be held liable for failure to make distributions in the manner set out in this section for a period of six months from and after July 20, 1987.

CASE NOTES

**Cited:** Fife v. Thompson, 288 Ark. 620, 708 S.W.2d 611 (1986).

## 15-72-306. Limitation on production if no integration.

Should the owners of separate tracts embraced within a drilling unit fail to agree upon the integration of the tracts and the drilling of a well on the unit, and should it be established that the commission is without authority to require integration as provided by §§ 15-72-303 — 15-72-305, then, subject to all other applicable provisions of this act, the owner of each tract embraced within the drilling unit may drill on his tract. However, the allowable production from the tract shall be the proportion of the allowable for the full drilling unit as the area of the separately owned tract bears to the full drilling unit.

**History.** Acts 1939, No. 105, § 15; A.S.A. 1947, § 53-115.

**Meaning of "this act".** Acts 1939, No. 105, codified as §§ 15-71-101 — 15-71-112, 15-72-101 — 15-72-110, 15-72-205, 15-72-212, 15-72-216, 15-72-301 — 15-72-324, 15-72-401 — 15-72-407.

CASE NOTES

**Cited:** Fife v. Thompson, 288 Ark. 620, 708 S.W.2d 611 (1986).

## 15-72-307. Formation of units not in restraint of trade.

The formation of any drilling unit or salt water disposal unit as provided in this subchapter and the operation of that unit under order of the Oil and Gas Commission shall not be a violation of any statute of this state relating to trusts, monopolies, contracts, or combinations in restraint of trade.

**History.** Acts 1939, No. 105, § 15; 1951, No. 134, § 1; 1957, No. 401, § 1; 1965, No. 41, § 1; A.S.A. 1947, § 53-115.