

The background image shows several oil pumpjacks (jackals) in silhouette against a sunset sky. The sky transitions from a deep blue at the top to a warm orange and yellow near the horizon. The pumpjacks are dark, industrial structures with long, angled arms and counterweights. The overall mood is industrial and serene.

Purchase Agreements (Upstream Deals)

Description of Assets and Excluded Assets

- Include assets necessary to operate, administer, maintain or produce from the leases and wells:
 - Leases, mineral interests, wells, water wells, gathering system, frac tanks, rights in units, permits, licenses, easements, surface leases, equipment and fixtures, files and records, certain claims and causes of action, imbalances, hydrocarbons in storage or pipelines
- Other assets that may be negotiated for:
 - Proprietary geological data or data licenses
 - Consents or payment of fees may be necessary to transfer
 - Field office, other surface property, etc.
- Certain assets may be specifically excluded:
 - Master service contracts, blanket agreements with other service providers, etc.

Allocated Value, Purchase Price, Purchase Price Adjustments and Settlement Statements

- Payment Mechanics
 - Interim period between signing and closing
 - Deposit, escrow agent and escrow agreement
 - Purchase price adjustments and settlement statements
 - Allocation of revenues and expenses
- Purchase Price Adjustments
 - Hydrocarbons in storage or pipelines; operating expenses, overhead costs, tax payments and certain capital expenditures made during interim period; well or pipeline imbalances
 - Cap on adjustments
- Allocated Values
 - Wells and producing acreage
 - PUDs
- Settlement statements
 - Preliminary and final settlement statements

Title and Environmental

- Title and Environmental Defects
 - Process
 - Thresholds and Deductibles
 - Title Defects
 - Definition of Defensible Title
 - Definition of Permitted Encumbrances
 - Definition of Title Defect
 - Environmental Defects
 - Definition of Environmental Defect
 - Testing, Phase I, Phase II
 - Resolution of Disputed Defects
 - Consents to Assign and Preferential Rights to Purchase

Representations and Warranties (Seller)

- General Corporate Reps:
 - Organization, Existence and Qualification
 - Authorization, Approval and Enforceability
 - No Conflicts
 - Consents
 - Bankruptcy
 - Litigation
 - Violation of Laws
 - Brokers' Fees
- Asset Specific Reps:
 - Material Contracts
 - Imbalances
 - Suspense Accounts
 - Equipment
 - Payout Balances
 - Environmental Matters
 - Permits
 - Wells and Plugging and Abandonment Liability
 - Liens
 - Hedge Contracts
 - Payment of Burdens
 - Current Commitments
 - Tax Matters
 - Condemnation

Representations and Warranties (Buyer)

- General Corporate Reps:
 - Organization, Existence and Qualification
 - Authorization, Approval and Enforceability
 - No Conflicts
 - Consents
 - Bankruptcy
 - Litigation
 - Financing
 - Brokers' Fees
- Asset Specific Reps:
 - Regulatory
 - Independent Evaluation

Assumption of Obligations, Liabilities and Retained Liabilities

- Definition of Assumed Obligations
 - Decommissioning Obligations
 - Environmental Obligations
- Definition of Retained Liabilities
- Definition of Liabilities

Indemnification

- Thresholds and deductibles
 - Carve-outs (Fundamental Reps)
- Survival Period
 - Reps/Warranties
 - Fundamental Reps, Tax and Environmental
 - Covenants
 - Other potential areas of liability
 - Royalties
 - Environmental
 - Personal injury or death
- Materiality Scrape
- Anti-Sandbagging
- Mechanics of claims

Indemnification (cont'd)

- Other considerations
 - Credit-worthy party providing indemnity?
 - Escrow, holdback, guaranty, NAV covenant?
 - Multiple Parties
 - Joint and Several Liability
 - Not Joint and Several

Closing Conditions

- Representations and Warranties
- Performance
- No Legal Proceedings
- Title Defects and Environmental Defects
- Closing Deliverables

Covenants

- Pre-Closing
 - Conduct of Business
 - Governmental Bonds
 - Other Regulatory Matters
 - Release of Liens
 - Knowledge of Breach of Representations and Warranties
 - Amendment to Schedules
 - Evidence of Buyer's Financial Commitment
- Post-Closing
 - Successor Operator
 - Record Retention

Termination Rights

- Termination upon certain events
 - Mutual Consent
 - Outside Date
 - Closing Conditions
- Effect of Termination
 - Survival of certain provisions
 - Definitions
 - Disclaimers
 - Miscellaneous provisions
 - Return of Documentation
 - Distribution of Deposit

Miscellaneous Provisions

- Assignment of Agreement
- Publicity/Confidentiality
- Notices
- Further Cooperation
- Filings, Notices and Certain Governmental Approvals
- Entire Agreement, Non-Reliance and Conflicts
- Parties in Interest
- Amendment
- Cumulative Rights and Waiver
- Governing Law and Jurisdiction
- Severability
- Removal of Name/Seller's Marks
- Counterparts
- Specific Performance
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Ancillary Documents

- Officer's Certificate
- Non-Foreign Affidavit (FIRPTA; Certificate of Non-Foreign Status)
- Assignment and Bill of Sale
- Escrow Agreement
- Transition Services Agreement
- Guaranty Agreement
- Letter-in-Lieu of Transfer Order

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Purchase Agreements (Midstream Deals)

Description of Assets and Excluded Assets

- Assets include Gathering Systems (pipelines, valves, compressor stations, related facilities), Fee Interests, Plants, Rights of Way, Equipment, Permits, Applicable Contracts and Records
- Excluded Assets include unrelated interests and rights, Hydrocarbons (including oil and gas leases) and Software/IP
- Determine if any assets are currently in the process of being built

Allocated Value, Purchase Price, Purchase Price Adjustments and Settlement Statements

- Purchase price and deposit amounts
 - Resolution of disputes regarding purchase price adjustments
 - Determine which party bears the costs of the dispute resolution mechanism
- Value of the linefill
- If there is an interim period between the effective date and the closing date, determine which party is entitled to overhead payments made by third parties during such period
- Adjustments for major capital expenses incurred by Seller prior to the effective date

Title and Environmental

- Title
 - Different levels of warranties may be granted for different assets (Seller may grant a special warranty covering right-of-ways, but a general warranty covering the gathering system)
 - Title Defect definition:
 - Consider the definitions of Permitted Encumbrances and Defensible Title
 - Method and timing of defect notice by Buyer upon discovery of defect
 - Deadline for making all title defect claims
 - Resolution of title defects and available remedies
 - Determine which party has the right to select the remedy
 - Deadline for Seller to attempt curing the defect, along with a post-closing cure option
 - Inclusion of a title deductible which must be met before a remedy may be sought
 - Determine if gaps exist in the rights-of-way/easements overlaying the pipelines

Title and Environmental (cont'd)

- Environmental
 - Environmental Defect definition:
 - Consider the definitions of Environmental Law and Environmental Liabilities

Representations and Warranties (Seller)

- Organization, existence, and qualification
- No conflicts
- Contracts and permits are in full force and effect
- Title and condition of the assets
- Taxes have been paid
- No violations of law
- Litigation
- No third-party options (preferential rights, rights of first refusal)
- Environmental laws – Seller is in material compliance therewith
 - Consider adding knowledge qualifiers
- Condition of property

Representations and Warranties (Seller) (cont'd)

- Imbalances
 - Dollar thresholds for which imbalances must be scheduled
 - Exception for imbalances accrued in the ordinary course of business
- Affiliate transactions
- Historical throughput data
- Relationships with key customers or suppliers
- Capital commitments
- Compliance with laws and permits

Representations and Warranties (Buyer)

- Organization, existence and qualification
- No conflicts
- Governmental approvals will be obtained
- Qualified to own and/or operate assets; acquisition is an investment with no eye towards resale
- Independent Evaluation
- Litigation
- Financing

Assumption of Obligations, Retained Liabilities

- Assumption of Obligations by Buyer:
 - Buyer may assume obligations either at the effective date or closing date
- Retained Liabilities by Seller:
 - Property damage or personal injury that occurred before the effective date or the closing date
 - Liability resulting from the disposal or transportation of hazardous substances prior to the effective date or the closing date
 - Environmental Liabilities attributable to the subject property before the effective date or closing date

Indemnification

- Indemnity deductible – Seller will not have liability until the aggregate amount of all losses exceeds a certain point
- Limitations on liability – capped as a percentage of the purchase price
- Survival Period variance:
 - Indefinite survival periods for more fundamental representations and warranties
 - Shorter (6 to 18 months is standard) survival period for most others

Closing Conditions

- No threatened litigation
- Representations of the other party are true
- Required consents are obtained
- Casualty losses have not occurred or exceeded a threshold

Covenants

- Pre-Closing Covenants
 - Reasonable efforts to cause closing to occur
 - Seller to operate assets in ordinary course of business prior to closing
 - Seller to provide access to buyer and its agents
 - Seller's maintenance of insurance on the assets
- Post-Closing Covenants
 - Further assurances
 - Cooperation regarding tax returns and other tax matters
 - Retention of books and records
 - Deadline to prepare and deliver the Final Settlement Statement
 - Deadline for parties to agree
 - Method for resolving disputes

Termination Rights

- By mutual agreement
- Failure by one party to meet closing conditions
- Specific performance
- If Buyer is denied the right to sample, bore, drill, etc. after Buyer's initial due diligence activities indicate such activity is warranted, Buyer may terminate

Miscellaneous Provisions

- Casualty Losses: Between the execution date and the closing date, which party bears the loss for damage to the subject assets caused by fire, storm, flood, etc.
- Consider if any employees are being transferred with the asset and the appropriate transition period
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Ancillary Documents

- Officer's Certificate
- Assignment and Bill of Sale covering Rights of Way
- Escrow Agreement
- Transition Services Agreement
- Gas Gathering Agreement
- Gas Transportation Agreement
 - Firm or interruptible
 - Intrastate or interstate
- Crude Oil Purchase Agreements
- Gas Processing Agreements

The background image for the slide is a photograph of several oil pumpjacks (jackals) silhouetted against a sunset sky. The sky transitions from a deep blue at the top to a warm orange and yellow near the horizon. The pumpjacks are in the foreground and middle ground, their mechanical structures clearly visible. The overall mood is industrial and serene.

Purchase Agreements (Other Assets)

Description of Assets and Excluded Assets

- Purchased Assets
 - Real Property
 - Property owned
 - Leases
 - Personal Property
 - Vehicles
 - Equipment
 - Inventory
 - Books and records
 - Contracts
 - Claims and rights of actions
 - Accounts Receivable
 - Goodwill
 - Intellectual Property

Description of Assets and Excluded Assets (cont'd)

- Excluded Assets
 - Reserved real and personal property
 - Cash
 - Affiliate contracts
 - Benefit plans
 - Corporate minute books and records
 - Insurance policies
 - Tax refunds
 - Inventory

Allocated Value, Purchase Price, Purchase Price Adjustments and Settlement Statements

- Base Purchase Price
- Purchase Price Adjustment Mechanism
- Final Closing Balance Sheet

Representations and Warranties (Seller)

- Fundamental Representations
- Compliance with Laws; Permits
- Capitalization; Subsidiaries
- Litigation
- Intellectual Property Rights
 - Ownership
 - Non-infringement
 - Free of encumbrances
 - Maintained
- Financial Statements
 - Accuracy
- Taxes

Representations and Warranties (Seller) (cont'd)

- Benefit Plans; ERISA
 - Compliance with laws
 - No additional liability
 - No claims or actions
 - ERISA compliance
- Assets
 - Good and valid title
 - Suitability for use
 - No other real property
 - Maintenance of leases
 - Permits
- Contacts
 - Collective bargaining

Representations and Warranties (Seller) (cont'd)

- Employment contracts
- Licenses of intellectual property
- Confidentiality and non-disclosure contracts
- Ability to transfer
- Insurance
- Labor Matters
 - Compliances with laws
 - No unfair labor practices
 - No labor disputes
 - Authorization to work
 - Collective bargaining agreements
 - Closings, mass layoffs, terminations

Representations and Warranties (Seller) (cont'd)

- Environmental Matters
 - Compliance with laws
 - No hazardous materials
 - No allegations or notices
 - Delivery of reports, assessments and audits
- No Brokers or Finders
- Customers and Suppliers

Representations and Warranties (Buyer)

- Fundamental Representations
- Governmental Approvals
- No Brokers or Finders

Assumption of Obligations, Retained Liabilities

- My Watch/Your Watch
- Assumed Liabilities
 - Ordinary course of business
 - Obligations to complete or commence work
 - Specific liabilities identified in schedules
- Retained Liabilities
 - Tax liability pre-transfer

Indemnification

- Survival Periods
 - Fundamental Representations
 - Compliance Representations
 - Covenants
- Materiality Scrape
- Knowledge Qualifiers
- Thresholds and Deductibles
- Mechanics of Claims
- Defense of Claims
- Strict Liability and Indemnatee Negligence
- Exclusive Remedy

Closing Conditions

- Maintenance of Representations and Warranties
- Performance of Pre-Closing Covenants
- No Material Adverse Effects
- Delivery of Certificates
- Consents
- No Actions
- Bill of Sale
- Conveyance Instruments
- Title Insurance and Survey
- Lease Amendments
- Disposal Well Permits

Covenants

- Pre-Closing
 - Access to information
 - Preservation of the businesses
 - Non-solicitation and no-shop
 - Title insurance and title surveys
 - Consent to employment
 - Risk of loss
 - Accounts Payable
- Post-Closing
 - Confidentiality
 - Non-compete
 - Non-solicitation
 - Tax
 - Name change
 - Public announcements

Termination Rights

- Consent
- Illegality
- Material Misrepresentation
- Large Adjustment to Adjusted Working Capital

Miscellaneous Provisions

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Ancillary Documents

- Officer's Certificate
- Non-Foreign Affidavit (FIRPTA; Certificate of Non-Foreign Status)
- Assignment and Bill of Sale
- Escrow Agreement
- Transition Services Agreement
- Guaranty Agreement
- Assumption Agreement
- Assignment and Assumption of Leases
- Employment Agreement
- Subleases
- Letters of Credit
- Vehicle Bill of Sale
- IP Assignment Agreement

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Diligence Considerations

Title

- Process to confirm working interest/net revenue interest in oil and gas leases
- Process to confirm ownership of rights-of-way and easements
- Post-signing/pre-closing (but may extend beyond closing)
- Review of courthouse records, agency filings, company files and existing title opinions
- “Other Assets” typically handled solely through strong representation and warranty

Encumbrances

- Process to identify liens and other encumbrances burdening conveyed assets
- Post-signing/pre-closing (but may extend beyond closing)
- Review of courthouse records, agency filings, secretary of state filings, company files and existing title opinions

Material Contracts

- Process to identify contracts to which the conveyed assets are subject, or by which the conveyed assets, or the holder of the assets, is bound
- Typically pre-signing, and strongly supported by strong representation and warranty
- Review of courthouse records, agency filings, company files and existing title opinions

Environmental

- Process to determine whether, and the extent to which, oil and gas leases, rights-of-way or easements contain environmental defects
- Post-signing/pre-closing
- Phase I Environmental Assessment – review of agency filings and company records, physical inspection of properties
- Phase II Environmental Assessment (as follow-up to defect identified in Phase I) – invasive testing
- “Other Assets” typically handled solely through strong representation and warranty

Physical Inspection

- Process to confirm quality, status, usability, etc. of tangible assets being acquired
- Post-signing/pre-closing (but may also be pre-signing)
- Physical inspection of tangible assets
- Very important due to typical waiver/disclaimer in agreement