

September 9, 2014 | Houston, TX

Oil & Gas Transactions Seminar

Drilling Through the Details of Acquisitions, Divestitures & JVs

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Surveying the Landscape: State of the Global Oil & Gas Market and Current Industry Trends

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State of the Global Oil and Gas Market

- North American Unconventional Plays
- Foreign Investment in US Unconventional Plays
- Impact on Global Energy Markets and Export Relations
- Effect on US Downstream Industry

Current Industry Trends

- Undeveloped Acreage Transactions vs. Producing Assets Transactions
- Inclusion of Financing in Transaction
- New Players
- What We are Seeing on:
 - Asset Deals vs. Share Deals
 - Upstream Transactions vs. Midstream Transactions

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Reading Between the Lines: Acquisition & Divestiture Agreements

PSA Key Considerations & Issues
Joint Development Agreements

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Primary PSA Components

- Definitions; Description of Assets
- Purchase and Sale; Purchase Price Adjustments
- Title Defect Provisions
- Environmental Defect Provisions
- Representations and Warranties
- Interim Covenants; Post-Closing Covenants
- Closing Conditions and Closing Procedures
- Termination Provisions
- Allocation of Liability; Indemnification Provisions
- Tax Provisions
- Miscellaneous Provisions

Description of Assets

- “Inclusive” or “Exclusive” definition
 - Delineated by geographic area or a specific list
- All-depths or “Subject Formation” specific
- “Excluded Asset” scope
- “Shared” asset considerations if depth severances

Title Standards and Allocations

- Title Standard – Definition of “Defensible Title”:
 - Represented NRI, WI and/or Net Acres (depending on type of Asset base and what has been values)
 - No liens or encumbrances except “Permitted Encumbrances”
 - Exceptions to what constitutes a “Title Defect”
 - Existing Wells
 - Future Locations
 - Leases
 - Permitted Encumbrances

Title Defect Provisions

- Title Defect Notices
 - Title Defect Notice contents; delivery requirements
 - Defect Claim Date; waiver of Title Defects thereafter
- Title Defect Amounts
 - Capped at Allocated Value
 - Mutual agreement; liquidated encumbrances
 - Formulas (WI; Net Acres); ad hoc basis
- Remedies for Title Defects
 - Cure rights and period
 - Right to elect remedies
 - Title Defect Amount Adjustment
 - Exclusion of Title Defect Property
 - Indemnification from Seller
 - De minimis threshold and deductible

Title Defect / Benefit Provisions

- Title Benefits
 - Title Benefit Notice contents; remedies; de minimis threshold
- Dispute Resolution
 - Title Arbitrator
 - Post-Closing Title Defect (and/or cure) escrows
- Special Warranty
 - Contractual (contained in the PSA)
 - “Of Record” (contained in the applicable Assignment)
 - Potential Limitations
 - Subject to thresholds and/or deductible
 - Limited Survival
 - Subject to matters of records as of a certain date

Other Title Provisions

- **Preferential Rights**
 - Timing for delivery of notices
 - Exclusion of affected Assets at Closing; Subsequent Closings
- **Consents**
 - Timing for delivery of notices
 - “Hard Consents” vs. “Soft Consents”
 - Exclusion of Hard Consent Assets; Subsequent Closings
 - Liability for Consents
- **Casualty Losses**
 - Obligation to notify of Casualty event
 - De minimis threshold and/or deductible
 - Remedies
 - Purchase Price adjustment; repair/replace damage; and/or assignment of insurance proceeds

Environmental Standards and Diligence

- Environmental Defect Standards
 - Violation of “Environmental Law” only
 - Environmental liabilities arising under contracts or Leases
- “Remediation Amounts”
 - Not capped at Allocated Value
 - “Lowest Cost Remediation”
- Environmental Diligence / Access
 - Limitations on access to Assets
 - Limitations on Phase II assessments
 - Access indemnity; insurance

Environmental Defect Provisions

- Environmental Defect Notices
 - Environmental Defect Notice contents; delivery requirements
 - Defect Claim Date; waiver of Environmental Defects thereafter
- Remedies for Environmental Defects
 - Cure rights and period
 - Right to elect remedies
 - Remediation Amount Adjustment
 - Exclusion of Environmental Defect Property
 - Indemnification from Seller
 - De minimis threshold and deductible

Environmental Defect Provisions

- **Dispute Resolution**
 - Environmental Arbitrator
 - Post-Closing Environmental Defect (and/or cure) escrows
- **Environmental Representation and Warranty**
 - Interplay with Environmental Defect provisions
 - Typically limited by “Knowledge” and/or the receipt of notices
 - More expansive scope if Seller is the Operator

Allocation of Liability Provisions

- Assumption of Liabilities by Buyer
 - Post-Effective Time liabilities
 - Certain (or all) pre-Effective Time liabilities
 - Subject to Seller indemnification obligations
- Retention of Liabilities by Seller
 - Typically only certain, specified pre-Effective Time liabilities are retained
 - Negotiations around retention of such certain liabilities vs. special indemnification obligations regarding such liabilities

Indemnification Provisions

- Buyer indemnification of Seller
 - Representations & Warranties (including Closing certificate)
 - Covenants
 - Assumed Liabilities
- Seller indemnification of Buyer
 - Representations & Warranties (including Closing certificate)
 - Covenants
 - Retained Liabilities / special Seller indemnification obligations:
 - Offsite Environmental Disposal; Gross Negligence / Willful Misconduct; pre-Effective Time Taxes; Employee Matters (if applicable); mispayment of royalties, etc.; Excluded Assets; Personal Injury/Death; Scheduled Litigation

Limitations on Indemnification

- Limitations on indemnification obligations
 - De minimis threshold and deductible
 - Typically limit Seller's indemnity obligations only
 - Scope / exceptions
 - Indemnity Cap
 - Typically limit Seller's indemnity obligations only
 - Scope / exceptions
 - Bifurcated cap structures
 - Survival
 - Typically apply to both Parties' indemnity obligations
 - Oftentimes there are several different survival periods that apply to different indemnification obligations

Other Allocation of Liability Provisions

- Indemnification Procedures
- Exclusive Remedy Provisions
- Express Negligence Rule
- Waiver of Consequential Damages

Typical Joint Venture Structures

- JVs (particularly those involving upstream assets) are generally structured in one of two ways:
 - “Direct Ownership” JVs – each JV Partner has a direct interest in the JV Assets
 - Typically governed by a Joint Development Agreement or other similar document
 - “JV Entity” JVs – each JV Partner holds an equity interest in an entity that holds all of the JV Assets
 - Typically governed through the primary organizational document of the JV Entity (i.e. LLC Agreement, LP Agreement, etc.)

Primary JV Agreement Components

- **Governance of JV**
 - Voting splits between JV Partners
 - Delegation of day to day matters to an Operator (typically one of the JV Partners)
 - such delegation of authority is often tied to a JV budget or a management services agreement
- **Funding Mechanics**
 - Funding obligations of the JV Partners
 - Ownership percentages and funding obligations may not align
 - May be tied to an annual or multi-year JV development budget
- **Transfer Restrictions**
 - May be at the Asset and/or equity level depending on JV structure

Primary JV Agreement Components

- Exit Events
 - Termination of JVs
 - JV Off-Ramps
- JV “Alignment” Provisions
 - AMI provisions
 - Non-Compete provisions
- Tax Provisions
 - Depending on the type of JV, one or more Tax Partnerships may be necessary

Transfer Restrictions

- Direct Ownership Restrictions
 - Transfer of interest in JV Assets tied to transfer of corresponding interests in JV agreement
 - Change in Control provisions
 - Transfer “lock-up” periods
 - Preferential Purchase Rights
- JV Entity Restrictions
 - Transfer “lock-up” periods
 - Change in Control provisions
 - ROFR/ROFO rights
 - Tag-Along/Drag-Along Rights

Exit Events

- Termination of JVs
 - Direct Ownership JVs typically exist for a delineated period of time
 - Typically governed by two factors: (1) expenditure of the entire carry amount, and/or (2) a defined number of years
 - No typical analogous concept for JV Entities
- JV Off Ramps
 - Direct Ownership JVs may contain specific exit rights, including Pre-Payment Rights
 - Commodity Price Triggers that end or reduce a JV Partner's disproportionate funding obligations can be seen in either structure
 - JV Entity structures may allow a JV Partner to cause an "Exit Event"
 - Typically effected through the sale of its equity interest, the sale of the JV Assets, or the sale of the JV Entity as a whole

Questions?

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Facing the Challenges: Shale Specific Issues and the Impact on the Industry

Focusing on the Utica, Bakken and Marcellus

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Drilling Ahead: Developments in Upstream Contracts

Joint Operating Agreement Issues and
Area of Mutual Interest Provisions

Christopher B. Bennett, Associate, Latham & Watkins LLP
Elizabeth Howard More, Associate, Latham & Watkins LLP

Agenda

Part I. Horizontal Well Modifications to AAPL JOA Form

- A. New and Revised Definitions
 - B. New Provisions and Key Revisions
-

Part II. Considerations in Drafting a JOA

- A. Horizontal Well Specific Issues
 - B. General Issues
-

Part III. Considerations in Drafting an AMI Provision

- A. What is an AMI?
 - B. Property Interests Subject to the AMI
 - C. Term of the AMI
 - D. Notice and Exercise Procedures under the AMI
 - E. Properties Both Inside and Outside the AMI Area
-

Part IV. Common Pitfalls

- A. General
 - B. Overlapping AMI Issues
 - C. Key Antitrust Issues
-

Q&A

Modified AAPL JOA Form

- A. New and Revised Definitions to Address the Realities of Horizontal Drilling:
 - *Key New Definitions Include:*
 - “Displacement”
 - “Horizontal Rig Move-On Period;” “Spudder Rig”
 - “Horizontal Well;” “Lateral;” “Terminus”
 - *Key Revised Definitions Include:*
 - “Deepen;” “Plugback;” “Sidetrack;”
 - “Drillsite;” “Initial Well;” “Total Measured Depth”

Modified AAPL JOA Form

- B. New Provisions and Key Revisions
 - *Article VI.A – Initial Well.*
 - Operator must list the Lateral's surface location and Terminus.
 - *Article VI.B.1. –Proposed Operations.*
 - A Horizontal Well proposal must include certain, listed information.
 - *Article VI.B.4 and Article VI.B.5 – Deepening and Sidetracking.*
 - A non-consenting party does not have the ability to elect to participate upon the Deepening, or the Sidetracking, of a Horizontal Well.
 - *Article VI.B.9 – Spudder Rigs.*
 - To extend the Horizontal Rig Move-On Period or to initiate the use of a Spudder Rig Operator must obtain the approval of a certain percentage of the consenting parties.
 - Operator is deemed to have commenced drilling operations upon a Spudder Rig's commencing actual drilling operations.

Modified AAPL JOA Form

- B. New Provisions and Key Revisions (*con't*)
 - *Article VI.B.10 – Multi-Well Pads.*
 - If multiple Horizontal Wells are (or are proposed to be) drilled from a single pad, the associated costs shall be allocated to the Consenting Parties of each of the Horizontal Wells.
 - *Article VI.C.1 – Casing Point Election.*
 - There is no casing point election with respect to a Horizontal Well.
 - *Article XVI – Operator's Duty.*
 - Unless drilling operations are appropriately terminated, Operator shall drill a Horizontal Well to the objective Zone(s) and drill the Lateral to the Zone(s) at least to a Displacement to which a reasonably prudent operator would deem further drilling is neither justified nor required.

Considerations in Drafting a JOA

- A. Horizontal Well Specific Drafting Issues
 - *Non-Consenting Parties Issues*
 - Penalties
 - Information provided
 - *Re-Spacing of Horizontal Wells Issues*
 - Reclassification of a Horizontal Well from gas to oil
 - Revisions to the length of the proposed Lateral

- B. General Drafting Issues
 - *Exculpatory Clause Issues*
 - *Issues caused by AFE Overruns*
 - *Additional Well Proposals Issues*
 - *Lien and Security Issues*
 - *Confidentiality Issues*
 - *Issues Caused by Overlapping JOAs*

- A. What is an AMI?
 - An agreement governing the rights of specified parties (or a party) to acquire interests in mineral fees and/or oil and gas leases within a specified area.
- B. Property Interests Subject to the AMI
 - Size of the AMI
 - Are all depths covered? Any areas to be excluded?
 - Property description
 - Description of the area must satisfy the statute of frauds
 - Can the lands be described by metes and bounds, by section or quarter section, by survey, or by GPS coordinates?
 - Plat descriptions typically are not sufficient unless the area outlined on the map follows survey or tract lines
 - To bind successors and assigns, notice of the AMI should be given by recording the AMI instrument or a memorandum thereof

- B. Property Interests Subject to the AMI (*cont'd*)
 - What types of interests should be covered?
 - Producing and/or non-producing interests?
 - Royalties, ORRIs, production payments, NPI, and other non-operating interests?
 - Facilities (gathering or transportation systems, processing plants, central production facilities, etc.)?
 - Rights associated with acquired interest (*e.g.*, associated easements, access rights)?
 - Renewals/extensions of existing mineral leases?
 - Acquisitions of interests in the AMI by merger or equity acquisitions of an entity? Acquisitions by tax-free exchange?
 - Possible exclusions
 - Existing interests in the AMI area and transfers of the same
 - Other business lines (*e.g.*, midstream business)
 - Acreage trades; Large package sales; Other interests (*e.g.*, overriding royalties)

- C. Term of AMI
 - Set term, or set term with evergreen provision?
 - Same term as underlying agreement, or shorter?
 - Early termination if no acquisitions, elections to participate in acquisitions, or participation in exploratory wells drilled within the AMI during a defined period?
- D. Notice and Exercise Procedures under the AMI
 - When does the obligation to offer participation in an interest attach – upon closing or binding acquisition agreement?
 - What information must the acquiring party provide to make a valid offer to participate?
 - When must notice be given and what is the response period?
 - What response is required?
 - Written agreement to pay acquisition costs or actual payment?
 - Will the acquiring party be deemed to have elected not to participate if payment is not timely?

- E. Properties Both Inside and Outside the AMI Area
 - Must parties elect to acquire either all or none of the lands included in an acquired interest, or may they elect to acquire only lands lying within the AMI area?
 - Does the acquisition of lands outside the AMI change the AMI area?
 - If only a certain formation or depth interval is covered by the AMI, how are acquisition costs to be allocated among the depths included in the AMI and those excluded from the AMI?

- A. General
 - Who is bound? One Party or mutual?
 - Affiliates, e.g., public company affiliates, private equity backers, MLP general partners, etc.?
 - Balance need to prevent circumvention of the AMI vs. need to exclude certain related entities.
 - Are transfers solely between affiliates carved-out?
 - Does the AMI expressly bind successors/assigns? Covenant running with the land vs. personal covenant?
 - If a transferor reserves any non-cost bearing interest, does that interest remain bound by the AMI?
 - Failing to identify outstanding AMIs during due diligence review
 - Failing to be specific about the property subject to the AMI (upstream vs. midstream, or geographic/depth restrictions)
 - Failing to address acquisitions for non-cash or package sales
 - Failing to include mechanism for the parties to offer, accept and pay for a subsequently acquired interest
 - Failing to establish a term

- B. Overlapping AMI Issues
 - Unclear how courts would address
 - Could the description of the lands burdened in either AMI be attacked for not satisfying statute of frauds or lack of notice?
 - Can either of the AMIs be treated as personal covenants rather than as covenants running with the land?
 - Is an entity being acquired an affiliate/related party to one of the parties to either AMI, and are affiliates or related parties covered by both AMIs?
 - Which of the AMIs has the earliest date? Is there a basis to argue that the later-dated AMI is “subject to” the first AMI?
 - What would be the shortfall if all parties were offered and elected to acquire their proportionate shares of the interest?
 - Could each party to the AMI take its proportionate part of the interest acquired based on the blended ownership of all the parties in the overlapping acreage?

- C. Antitrust Considerations for AMIs
 - Two principal concerns under US antitrust law:
 - 1- Competitors will use collaborations (including AMIs) to eliminate competition, resulting in lower bid amounts, higher prices to consumers and fewer competitors
 - 2- Competitor collaborations create antitrust risk if they require that the collaborating competitors share “competitively sensitive information.”
 - Antitrust concerns arise when: 1) A collaborator uses the joint bid to link up with a competitor that they would otherwise bid against for the same rights and 2) The collaboration lacks a pro-competitive benefit.
 - US antitrust law allows competitively sensitive information to be shared to the extent such information: 1) is necessary to facilitate the collaboration (*i.e.*, the AMI), and 2) is only shared with those individuals that “need to know” such information in order for the collaborators to receive the benefits of the collaboration.

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- US Federal Regulatory Developments
- State Regulatory Developments
- Litigation Developments
- Q&A

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- August 2011: 115 organizations petition EPA under TSCA §21 to use its authorities to obtain information on oil & gas exploration and production (E&P) chemicals
- November 2, 2011: EPA's Partial Response
 - Denied §4 test rule request - petition did not provide sufficient information to meet requirements for requiring testing of E&P chemical substances and mixtures
- November 23, 2011: EPA's Partial Grant of Petition
 - Agency will use §8(a) and §8(d) to obtain information on chemicals used in hydraulic fracturing
 - Denied petition with respect to other E&P chemicals
 - Acknowledged Administration's policy identifying natural gas as an important component of domestic energy portfolio (reflected in statements of desire to minimize reporting burden)

- 2012: Placed on Regulatory Agenda
- 2013: Reiterated intention for stakeholder process to discuss design and scope of reporting rules
- March 2014: Rule sent to OMB
- May 2014: Advanced Notice of Proposed Rulemaking published in Federal Register
- September 2014: Public comment period closes

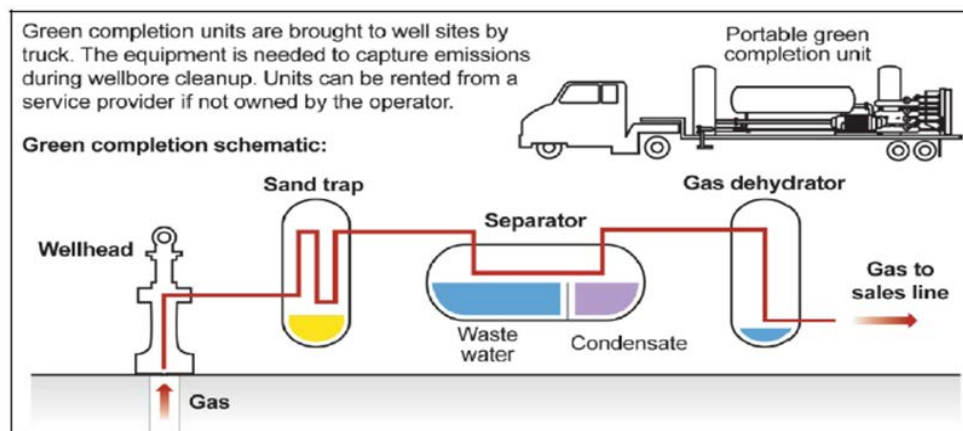
- Large number of chemicals potentially subject to Section 8
- Overlap with state and other federal programs
- CBI protections
- Scope of applicability, 40 CFR 712.5(b) and 716.5
 - Petition requests rules for manufacturers, processors and distributors
 - EPA seldom applies rules to processors and never to distributors – would be largely unprecedented if applied to services sector
- TRI reporting
 - Aggregation issues
 - Use of TRI data for other purposes (e.g., litigation)

- 17 environmental advocacy groups filed petition for EPA to add Oil & Gas Industry, SIC Code 13, to list of facilities required to report to the Toxics Release Inventory (TRI) under the Emergency Planning and Community Right-to-Know Act (EPCRA)
- TRI (EPCRA 313; SARA 313) applies to:
 - Facilities in specified SIC/NAICS codes (mostly manufacturing)
 - 10 or more employees
 - Manufactured, processed or used threshold amount of a listed chemical within the calendar year (generally, 25,000 lbs manufactured/processed or 10,000 lbs otherwise used)
 - Submit annual report detailing TRI chemical use, emissions to air and water, treatment, disposal, source reduction and recycling

- Oct 24, 2012: Petition filed
- July 24, 2013: EPA quietly opened a public docket
- July 29, 2013: EPA held a listening session with petitioners
 - “Notes” of meeting placed in docket on Jan 3, 2014
- Jan 3, 2014: EPA notice of public docket, 79 Fed. Reg. 393
 - No mention of listening session
 - No comments solicited
- Jan 30, 2014: Petitioners submit supplemental letter with data on air emissions from oil & gas facilities
- Feb 25, 2014: API meeting with EPA
 - “Notes” of meeting placed in docket on Feb 27, 2014
- Apr 30, 2014: API responds to petition
- May 2014: Petitioners submit additional data regarding the oil & gas sector

- May 16, 2013: BLM released Revised Proposed Rule regulating hydraulic fracturing operations on public and Indian lands
- August 2014: Rule sent to OMB
 - Final step in regulatory process
- Late Fall 2014: Final rule possible
- Main features:
 - The public disclosure of chemicals used in hydraulic fracturing operations on Federal and Indian lands;
 - Confirmation that wells used in hydraulic fracturing operations meet appropriate construction standards;
 - A requirement that operators put appropriate plans in place for managing flowback waters from hydraulic fracturing operations; and
 - Integration with existing state and tribal standards.

- August 2012: EPA published new emission standards for the oil and natural gas sectors (“Quad O”)



- “Reduced emission completions” or “green completions” required for all onshore natural gas wells that are hydraulically fractured after January 1, 2015
- Rules also establish NSPS and NESHAP standards for storage vessels, certain controllers, certain compressors, onshore processing plants and glycol dehydration units

- GHG Emissions Reporting (Subpart W)
- EPA signed a proposed rule package on February 20, 2014 to revise Subpart W of the Greenhouse Gas Reporting Program (GHGRP).
- Effective for 2015 reporting year (3/31/16 report)
- The rule package includes a number of proposed revisions to Subpart W. Including:
 - Comprehensive modifications to calculation methodologies
 - Updated definitions (e.g. associated gas venting and flaring)
 - Confidentiality determinations
 - New burdensome reporting requirements [e.g. §98.236(aa)]

- EPA hydraulic fracturing wastewater discharge standards
 - Proposed rule expected to be released in 2014
- EPA Hydraulic fracturing study
 - Final draft expected for peer review and public comment in 2014
- EPA National Enforcement Initiative
 - Increased inspection/NOV activity upstream and midstream
- OSHA Silica Exposure
 - Proposed rule to tighten standard issued August 2013
 - Public hearings held March-April 2014

- OSHA Process Safety Management Revisions
 - Dec. 2013 RFI
 - Impacts to hydraulic fracturing activities
 - Eliminate exemption for oil and gas drilling and servicing operations
 - Include additional management system elements
 - Expand mechanical integrity requirements to cover safety critical equipment
 - Clarify MOC requirements
 - Require coordination of response activities
- EPA Risk Management Plan Revisions
 - July 2014 RFI
 - Impacts to hydraulic fracturing activities
 - Drills to test emergency response programs
 - Automated detection and monitoring systems
 - Siting requirements
 - Root cause investigations of incidents, process upsets, near-misses
 - Worst case scenarios based on sum of all small vessels used in a process

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- Increased regulatory activity by states
- Power of local governments to regulate development
- Induced Seismicity
- Water Availability
- Air Quality and Emissions Inventories

- Requires the state Department of Oil, Gas & Geothermal Resources (DOGGR) to adopt regulations regarding well-stimulation permits, public disclosure, neighbor notification, and water well testing
 - Governor has indicated cleanup legislation may be needed.
- “Well stimulation treatment”—treatment of a well designed to enhance oil and gas production or recovery by increasing the permeability of the formation, including:
 - Hydraulic fracturing
 - Acid fracturing
 - Acid matrix stimulation
- “Well stimulation treatment” does not include traditional waterflood injection or CO2 enhanced oil recovery

- Interim regulations effective January 1, 2014
- DOGGR must finalize regulations by January 1, 2015
- Final regulations to be effective July 1, 2015
 - Draft regulations published November 15, 2013
 - First public comment period ended January 14, 2014
 - Second public comment period ended July 28, 2014
- July 1, 2015: Final Environmental Impact Report certification
- Local governments also actively regulating fracturing
 - Santa Barbara County ballot measure for November ballot
 - City of Los Angeles ordinance an effective ban

- Hydraulic Fracturing Regulatory Act (June 17, 2013)
 - Presumption of liability for water contamination
 - Prohibits open-air ponds for wastewater storage
 - Contains wastewater management, water monitoring, disclosure and public participation (including citizen suits), setback, and well construction standards/requirements
- Draft regulations released November 15, 2013
 - Presumption of liability applies within 1,500 feet of operations
 - Revised draft released August 29, 2014
 - Strengthened public disclosure rules
 - Stronger penalties for violations
 - Covers waterless fracturing operations
 - Cannot store flowback in open pits for more than 7 days
 - Under review by Legislature's administrative rules committee

- Wyoming: New water monitoring regulation requires testing within 12 months before drilling begins, 36-48 months after drilling, and again at 60-72 months after drilling (applies within 0.5 miles of drilling site)
- *Powder River Basin Resource Council et al. v. Wyoming Oil & Gas Conservation Commission*
 - Whether agency acted arbitrarily in finding that individual ingredients in formulas constituted trade secrets and denying petitioners request to inspect public records
 - Agency decision upheld in lower court; appealed to state supreme court, which reversed March 12, 2014
 - Agency has the burden of justifying the use of a trade secrets exemption
 - Colorado Air Quality Control Commission rules requiring drillers to find and fix methane leaks and install technology to capture 95% of VOCs and methane

- **Moratoriums/Bans**
 - New York: municipalities can use zoning laws to limit drilling
 - Pennsylvania: municipalities can use zoning laws to limit drilling
 - Colorado: state law preempts local/municipal laws
 - California: local moratoriums/bans being considered
 - Ohio: local moratoriums/bans being considered
 - Texas: local moratoriums/bans being considered

- Concern especially for disposal well owners/operators
- Regulatory Activity
 - Disposal Wells Shut-In: Arkansas, Ohio
 - Regulations: Colorado (not limited to disposal wells), Ohio
 - Proposals: California (well-stimulation activities), Kansas, Oklahoma
- Studies
 - USGS: Concluded that SWD wells likely cause of Oklahoma earthquakes
 - EPA: (1) stressed faults, (2) pressure buildup, and (3) pathways for increased pressure to communicate with faults key factors for induced seismicity
 - Cornell: SWDs likely cause of Oklahoma earthquakes
 - Journal of Geophysical Research: SWD wells caused Ohio earthquakes
 - OK Geological Survey: unable to link earthquakes to hydraulic fracturing
 - Oklahoma's Coordinating Council on Seismic Activity: in progress

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Drilling Through the Details of Acquisitions, Divestitures & JVs

- Private Plaintiff Groundwater Contamination Litigation
- Nuisance Litigation
- Range Resources Emergency Order
- Trade Secrets Litigation

- Challenges
 - Getting hydraulic fracturing deemed “abnormally dangerous”
 - Causation a major impediment
 - *Lone Pine* orders not gaining traction
- Suits not being brought by cities or water districts
- Private nuisance cases – some limited success
 - Limited widespread applicability:
 - not susceptible to class certification
 - depends on unique facts in each case
 - damage generally limited to property value rather than non-economic damages

- *Parr v. Aruba Petroleum*, No. 11-1650 (Dallas Co. Ct. at Law)
 - March 2011: Suit filed against several companies alleging claims for negligence per se, common law negligence, gross negligence, nuisance, strict liability, trespass, assault, and IIED in connection with hazardous air emissions (amended Sept. 2013)
 - April 2014: Jury rendered \$2.95 million verdict
 - Pain and suffering, future physical pain and suffering, mental anguish, loss of market value on family home
 - Why? Aruba Petroleum's drilling activities were a private nuisance
 - Private nuisance only claim submitted to jury
 - Aruba only defendant; others settled or dismissed
 - June 2014: Aruba's motion for judgment notwithstanding the verdict denied; Aruba has appealed the verdict

- Office of Inspector General (OIG) issued an opinion regarding EPA's emergency order to Range Resources and withdrawal of the same
 - EPA's and the Texas Railroad Commission's findings regarding the source of contamination in two residential wells were at odds
 - EPA issued an emergency order citing Range Resource's production well as causing or contributing to the contamination. Range Resources (and the TX. Railroad Commission) disagreed with EPA's conclusion and litigation ensued, which was settled by Range Resource's agreement to sample 20 water wells in Parker County every three months for a year

- The OIG concluded that EPA had acted properly in withdrawing the emergency order, but suggested further litigation by EPA may be warranted by saying:
 - That the EPA should collect and evaluate the testing results being provided by Range Resources to determine whether they are of sufficient quality and utility, and that it should take “appropriate actions” should it determine the data are not sufficient for it to reach a conclusion concerning the level of contamination of the underground source of drinking water
 - That by using quality data detected and analyzed, EPA should determine whether an imminent and substantial endangerment (ISE) still exists at the original wells that prompted the order and other wells where Range Resources has identified contamination and commit to taking action if it determines an ISE exists

- On March 12, the Wyoming Supreme Court ordered the lower court to determine whether the information on hydraulic fracturing chemicals that environmental groups sought qualified as trade secrets
 - The Wyoming Supreme Court directed the lower court to use the Freedom of Information Act definition of trade secrets in considering claims under the Wyoming Public Records Act

