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FUNDAMENTALS OF JOINT OPERATING AGREEMENTS

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As students of any Oil and Gas Law class quickly learn, once you have set the stage for drilling by taking an oil and gas lease, you are just getting started.[1] Often, drilling and development are planned over large areas in which leases are held by many parties. At other times, the development area is smaller, but the mineral interest is fractionated and held by different parties. In these and other situations, a party wishing to produce the minerals has to have a vehicle to allow for orderly development of these severally-held properties and interests. Over the years, the industry has accomplished this purpose by drafting and publishing form agreements to govern these joint operations.

Forms for joint operating agreements have been designed for many uses, including onshore United States, offshore, and international.[2] Each of these forms provides specialized guidance and rules for the particular use for which each was designed. For the purposes of this course, however, the discussion will focus on the most common and applicable joint operating agreement for onshore development, the AAPL 610 Model Form Joint Operating Agreement.

This discussion is not intended to be detailed or comprehensive. Rather, it is intended to give the reader an overview of the mechanics of a Joint Operating Agreement. Part 1 of this discussion will discuss the basic background of the development of the Model Form Joint Operating Agreement, and Part 2 will discuss the particular sections of model form Joint

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[1] Jeff Weems has litigated energy related disputes for over 28 years. In the Spring of 2016, he was the Adjunct Professor for Oil and Gas Law at the University of Houston Law Center. He also was a member of the AAPL Task Force formed to draft the new Model Form Joint Operating Agreement. This paper is largely derived from a similar presentation and paper he gave to the 34th Annual Advanced Oil, Gas and Energy Law Seminar in September 2016.

[2] *See generally* David E. Pierce, *Transactional Evolution of Operating Agreements in the Oil and Gas Industry,* ROCKY MTN. MIN. LAW FDN. Special Institute on Oil and Gas Agreements: Joint Operations, 1-10,11, 12 (2007);

Operating Agreement and explain why each section exists. Hopefully, this primer will acquaint you with the basic functions of the joint operating agreement and to give you an idea of the types of disagreements that can arise in their interpretation.

I. Introduction and Background

The development of land for the oil and gas found beneath the surface invokes many of the primary tenets of property law. One of these common concepts is the principle that fee simple ownership in land, both the surface and minerals, can be divided at the option of the owner. This division can occur in many ways, but a key aspect of this division is a split in a particular parcel of land, such as a governmental section (typically 640 acres), which can be divided as a whole (undivided interests in the whole) or can be split as to distinctive segments of the whole (such as four quarter-sections).

Recognizing that the ownership of land can be split in a myriad of ways, the next step in this process is to understand the realities of hydrocarbon development. Often, a reservoir of hydrocarbons will extend across multiple tracts of land with different owners. What are the options available to a party intent on developing its interests in such a reservoir?

In the early years of energy exploration and development, the owners of the right to develop these individual tracts did so on an "I'll get mine now" basis. Rampant over-drilling and waste ensued because these wells were drilled without regard for ultimate reservoir recovery, pressure maintenance and the like.[3] Over time, state regulators and industry participants recognized the need for and encouraged the development of rules and agreements that would

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[3] *See* Jacqueline Lang Weaver, *The Federal Government as a Useful Enemy: Perspectives on the Bush Energy/Environmental Agenda from the Texas Oilfields, 19* PACE ENVTL. L. REV.*1, 25-31 (2001).*

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