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JOA NEGOTIATION: OPERATOR AND NON-OPERATOR PERSPECTIVES

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TOPICS

- The Operating Agreement
- The 2015 and the 1989 Forms
- The 2015 vs. the 1989 Form
- Provisions Affecting the Relationship of the Parties
- Payment of Royalty/Subsequently Created Interests
- The Exculpatory Clause/Sentence
- Operator Removal/Replacement
- Remedies for Default
- The Single Expenditure Limit/Voting

THE OPERATING AGREEMENT

- When is it used?
  - Anytime more than one party owns an interest in the oil and gas leases/minerals in an area and they wish to join together to develop the area
  - May be used standalone or as a part of a farmout or exploration agreement
  - Most common form of Operating Agreement is the American Association of Petroleum Landmen Form 610
  - There are 1956, 1977, 1982, 1989 and 2015 versions
- Other Forms
  - AAPL Offshore Operating Agreement Forms 710 (Offshore) and 810 (Offshore Deepwater)
  - Rocky Mountain Unit Operating Agreement Form 2 (Divided Interest), used for Federal Exploratory Units
  - American Petroleum Institute Fieldwide Unit Form

THE 2015 AND THE 1989 FORM

- After the 1989 Form was adopted, it took some time for its use to become common, but eventually it became recognized as the standard
- Because of declining industry activity, no effort was made thereafter to modify the form, although companies did adopt standard modifications and added provisions that they attempted to have included
- In 2013, a version of the 1989 form was published which included modifications to cover horizontal drilling
- In 2015, an entirely new form was released that addressed questions raised by numerous court cases and otherwise streamlined the form

THE 2015 VS. THE 1989 FORM

- Change in Article IV gives certainty to individual loss/joint loss.
- Change in Article V standardizes terms and conditions for non-owning operators.
- New language adds “in connection with authorized or approved operations” to exculpatory language. Operators may not like the new exculpatory language.
- Change in Article VIII removes uncertainty about the consequences of assignments.

THE 2015 VS. THE 1989 FORM (Cont.)

- Article X specifies that the non-operator can hire its own attorney and clears up responsibility for attorneys’ fees.
- In addition, the 2015 form puts some burden on the operator to keep Exhibit A up to date, which is a huge help.

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