

PRESENTED AT

43rd Annual Ernest E. Smith Oil, Gas and Mineral Law Institute

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Houston, Texas

**WE ARE NOT OUT OF THE WOODS YET:
SELECTED ISSUES FOR CONSIDERATION IN AN
ECONOMICALLY STRESSED ENVIRONMENT**

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the paper presented by each author.

Perfection of Rights Under the Joint Operating Agreement

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The Documents

- The 1989 AAPL Model Form Joint Operating Agreement
- AAPL Form RS610

Which Party is a Creditor and Which is a Debtor?

JOA Article III.B:

Unless changed by other provisions, all costs and liabilities incurred in operations under this agreement shall be borne and paid, and all equipment and materials acquired in operations on the Contract Area shall be owned, ***by the parties as their interests are set forth in Exhibit "A."*** (Emphasis added.)

Each party to the JOA is both a creditor of every other party ***and*** a debtor to every other party.

Which Party is a Mortgagor\Debtor and Which is a Mortgagee\Secured Party

JOA Article VII.B.:

Each party grants to the other parties hereto a lien ... and a security interest and/or purchase money security interest ... to secure performance of all of its obligations under this agreement including but not limited to payment of expense, interest and fees, the proper disbursement of all monies paid hereunder, the assignment or relinquishment of interest in Oil and Gas Leases as required hereunder, and the proper performance of operations hereunder. ... (Emphasis added.)

Each party is also a mortgagor\debtor to every other party **and** a mortgagee\secured party of every other party.

The Collateral

JOA Article VII.B:

Each party grants to the other parties hereto a lien upon ***any interest it now owns or hereafter acquires in Oil and Gas Leases and Oil and Gas Interests in the Contract Area***, and a security interest and/or purchase money security interest in ***any interest it now owns or hereafter acquires in the personal property and fixtures on or used or obtained for use in connection therewith***. ... Such lien and security interest ... ***shall include such party's leasehold interests, working interests, operating rights, and royalty and overriding royalty interests in the Contract Area now owned or hereafter acquired and in lands pooled or unitized therewith or otherwise becoming subject to this agreement, the Oil and Gas when extracted therefrom and equipment situated thereon or used or obtained for use in connection therewith (including, without limitation, all wells, tools, and tubular goods), and accounts (including, without limitation, accounts arising from gas imbalances or from the sale of Oil and/or Gas at the wellhead), contract rights, inventory and general intangibles relating thereto or arising therefrom, and all proceeds and products of the foregoing***. (Emphasis added.)

Texas oil and gas in the ground before it is reduced to possession is real property. Texas oil and gas, once produced and reduced to possession becomes personal property.

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