UT LAW CLE THE UNIVERSITY OF TEXAS SCHOOL OF LAW

PRESENTED AT

46th Annual Ernest E. Smith

Oil, Gas and Mineral Law Institute

March 27, 2020

Houston, Texas

Working Interest Disputes Under AAPL 2015 Form 610 JOA

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INTRODUCTION

Disputes between working interest owners are almost as old as the oil & gas industry itself. In 1926, a dispute between Prairie Oil & Gas Company and Camp Oil & Gas Company led to litigation and a reported appellate opinion.[1] Prairie and Camp had an operating agreement and disagreed over expenses charged by Camp as operator. Their lawsuit occurred long before the promulgation of the first form operating agreement.[2]

Decades after the battle between Camp and Prairie, the American Association of Professional Landmen[3] ("AAPL") published its first form operating agreement.[4] The AAPL 1956 Form 610 Model Form Operating Agreement was the first of several forms published by the AAPL. Form 610 is designed for onshore operations. Later versions of Form 610 came out in 1977, 1982, and 1989.[5] Additionally, the AAPL published form operating agreements designed for Outer Continental Shelf operations, Deepwater operations, and secondary recovery units. The American Petroleum Institute and the Rocky Mountain Mineral Law Foundation have also generated form operating agreements. After many years of work, the AAPL issued the 2015 Form 610 Model Form Operating Agreement ("2015 Form") in 2016.

Even with decades of refinements in form operating agreements, working interest owners still frequently disagree. Disputes can involve the applicability, interpretation, and application of the operating agreement. Frequent areas of disagreement include the operator's standard of conduct, the election and removal of the operator, and a non-operator's failure to pay its share of the expenses incurred during the joint operations.

This article will discuss several areas of potential disputes between working interest owners and explain whether the outcomes in prior cases would be different had the parties used the 2015 Form. Although some offshore cases will be discussed, this paper will focus on disputes between working interest owners in onshore operations. In this article, the differences in language between the 2015 Form and prior versions of Form 610 will be highlighted. Consideration will then be given to whether the 2015 Form would have resulted in a different outcome. This paper will also serve as an introduction to, or reminder of, various types of disputes that arise between working interest owners.

I. FORM OPERATING AGREEMENTS

[1] *Camp Oil & Gas v. Robertson*, 286 S.W. 990 (Tex. Civ. App.—Amarillo 1926, writ refused).
[2] Jeff Weems, *Significant Changes in the AAPL 2015 610 Model Form Operating Agreement,* 29th Annual Energy Law Institute for Attorneys and Landmen, South Texas College of Law-Houston (2016). Jeff Weems served on the drafting committee for the 2015 Form. His article on the differences between the 1989 Form and the 2015 Form will be cited frequently in this paper, and the author would like to extend his thanks to Jeff.
[3] At the time, known as the American Association of Petroleum Landmen. Weems, at 2.
[4] *Id*.
[5] Referred to herein as the 1977 Form, 1982 Form, and 1989 Form respectively. The AAPL also published the 1989-H version of Form 610, designed for horizontal wells, in 2013. Weems, at 3.

Instead of proceeding under common law co-tenancy principles, most working interest owners enter into a written operating agreement to govern their joint operations.[6] In the absence of a written operating agreement, co-owners of working interests are simply mineral co-tenants.[7] Under the common law, the operating co-tenant must pay the non-operating owner its proportionate share of the production proceeds less its proportionate share of the reasonable and necessary drilling and operating expenses.[8] This situation can lead to disputes over what expenses are deductible,[9] whether the expenses were necessary and reasonable,[10] and how the accounting should be conducted (on a well-by-well basis or on the basis of all operations conducted on the co-owned tract).[11] A written operating agreement provides answers to these questions and reduces the chances such disputes will arise. Originally, operating agreements were relatively simple and based on each company's own form of agreement.[12]

As noted above, the 1950s saw the advent of form operating agreements.[13] Over the decades, written operating agreements became more prevalent and a standard part of joint operating procedure. One court described an operating agreement as:

> A contract typical to the oil and gas industry whose function is to designate an "operator, describe the scope of the operator's authority, provide for the allocation of costs and production among the parties to the agreement, and provide for recourse among the parties if one or more default in their obligations."[14]

The number of different forms published over the years highlights the importance of written operating agreements to the oil & gas industry. Of all the various forms, the AAPL Form 610 is the most commonly used. After six versions and countless customizations by working interest owners, disputes still arise among parties to the Form 610 operating agreement.

II. OPERATOR'S STANDARD OF CONDUCT

The operator's standard of conduct can frequently become central to a working interest dispute, and it has been substantially revised in the last three iterations of Form 610. The parties often contest the meaning and effect of the exculpatory clause. The non-operating working interest owners usually can recover damages from the operator only when the operator was grossly negligent or engaged in willful misconduct. The scope of the exculpatory clause and when the

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[6] 2-19A Kuntz, Law of Oil and Gas § 19A.6.
[7] 2-5 Williams & Meyers, Oil and Gas Law § 504; 1 Smith & Weaver, Texas Law of Oil and Gas §2.3[A]; Christopher S. Kulander, *Old Faves and New Raves: How Case Law Has Affected Form Joint Operating Agreements—Problems and Solutions (Part One)*, 1 OIL & GAS, NAT. RESOURCES & ENERGY J. (2015).
[8] *Byrom v. Pendley*, 717 S.W.2d 602, 605 (Tex. 1986).
[9] *BoMar Oil & Gas v. Loyd*, 2009 Tex. App. LEXIS 5505 (Tex. App.—Waco 2009, pet. denied), modified on rehearing, 298 S.W.3d 832; 1 Smith & Weaver §2.3[A][3].
[10] *BoMar Oil & Gas* at * 22-31.
[11] 1 Smith & Weaver §2.3[A][3].
[12] *Id.*
[13] *Id.*
[14] *Tawes v. Barnes*, 340 S.W.3d 419, 426 (Tex. 2011) (quoting *Seagull Energy E & P, Inc. v. Eland Energy, Inc.*, 207 S.W.3d 342, 344 n. 1 (Tex. 2006).

Title search: Working Interest Disputes under AAPL 2015 Form 610 JOA

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First appeared as part of the conference materials for the
46th Annual Ernest E. Smith Oil, Gas and Mineral Law Institute session
"Working Interest Disputes under AAPL 2015 Form 610 JOA"