



## Update on Midstream Agreements in Bankruptcy: From *Sabine* to *Southland* and Beyond

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## Real Covenants—Elements

1. Intended to run with the land
2. Successor has notice
3. Writing sufficient to satisfy the statute of frauds
- 4. Touch and concern**
  - The dedication must impact the use, enjoyment and/or value of the burdened real property
- 5. Privity of Estate (Traditional View)**
  - Vertical Privity
  - Horizontal Privity



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## *The Midstream Approach—In re Badlands Energy, Inc.*

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### *In re Badlands* Touch & Concern



#### **Badlands dedicated its oil and gas leases to Monarch:**

“the interest of Producer in **all Gas reserves in and under**, and all Gas owned by Producer and produced or delivered from ... the Leases and ... other lands within the AMI”

#### **The Agreements Burdened Badlands’ oil and gas Leases:**

“The burdens imposed under the Agreements directly affect the Producers’ use and enjoyment of its interests in the Leases” by limiting their right seek an alternative gatherer to gather and dispose of their minerals

#### **The Agreements’ Objective:**

“The underlying objective of the agreements [is] is to compensate for the burdens imposed by and upon the mineral estate and surface estates’ property interests” ... for the production of natural gas.

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# *In re Badlands*

## Horizontal Privity



### **Conveyance of gathering system and floating easement was sufficient to satisfy horizontal privity**

#### **Conveyance of gathering system:**

- The dedication was created simultaneously with the conveyance of the gathering system itself from Badlands to Monarch. This was deemed a transfer of a real property interest that satisfied horizontal privity.

#### **Conveyance of floating easement:**

- Gathering agreement granted gatherer a right of way and surface easement across producers' leases to install and operate the gathering system
  - Satisfied horizontal privity because the leases subject to the easement were also subject to the dedication



## *The Midstream Approach—In re Alta Mesa Resources, Inc.*

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