

PRESENTED AT

50th Annual Ernest E. Smith Oil, Gas & Mineral Law Institute

April 4, 2024
Houston, TX

COPAS ACCOUNTING PROCEDURES: FROM A LITIGATION PERSPECTIVE

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COPAS Accounting Procedures: from a Litigation Perspective

By Austin Brister* and Alejandra Salas**

I. INTRODUCTION AND PURPOSE

The Joint Operating Agreement (“JOA”) is typically the principal contract governing the joint development and production operations for onshore oil and gas properties in Texas. Most commonly, this is one of the several model form operating agreements published over the decades by the American Association of Professional Landmen.¹ The JOA sets forth the rights, duties, and obligations between the operator and non-operators, handles the general allocation of costs, revenues, and liabilities among the parties, and provides the overall framework for conducting joint operations, elections, selection of operator, and remedies for defaults. However, while the JOA itself does contain a handful of provisions touching on accounting concepts (such as basic allocation of interests, non-consent penalties, cash calls and non-payment remedies), the JOA does not cover nuts-and-bolts accounting matters.

The COPAS Accounting Procedure (commonly referred to as the “COPAS”), typically attached as an exhibit to the JOA, is the principal source of contract provisions governing accounting matters under a JOA. The COPAS form governs the accounting methodology, including procedures for billing and payment of the joint account, classification of costs and expenses, and procedures for handling audit rights and accounting exceptions.

Many papers have explored the structure and breadth of the COPAS, detailed the

essentials of negotiating and completing a COPAS, and discussed routine accounting matters and exceptional accounting issues under the COPAS.

This paper will not retread that ground. Instead, this paper will examine the COPAS from the perspective of a lawyer representing operators and non-operators in litigation related to joint development and production of oil and gas properties which often turns, directly or indirectly, on interpretation and application of the JOA and/or the COPAS.

Despite the widespread use of COPAS accounting procedures in the oil and gas industry, there is a notable lack of case law in Texas directly interpreting COPAS provisions. While existing oil and gas cases frequently mention that a JOA at issue has a COPAS attached, it is quite rare for a court to delve into the substance and interpretation of the COPAS form.

This lack of case law is likely attributable to several factors. First, the COPAS organization appears to have done an exemplary job of working with broad industry participation to establish and refine its model forms over time. This collaborative process arguably resulted in the publication of COPAS accounting procedures that are generally well-understood and accepted by oil and gas accountants and other industry participants. Second, the COPAS audit procedures provide a mechanism that is effective for resolving many accounting disputes without the need for litigation. The diligent efforts of oil and gas

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¹ References herein to articles of a JOA will be to the A.A.P.L.’s Model Form 610-2015 Operating Agreement, unless specified otherwise.

accountants in conducting these audits and working through issues undoubtedly helps to minimize the number of disputes that end up in court. Finally, many accounting issues can be resolved outside of litigation by reference to the COPAS organization's other related publications, which seek to provide guidance on resolving common issues and complications.

Nevertheless, litigation can (and does) arise between operators and non-operators regarding a multitude of common law and contractual issues. Those disputes often turn on interpretation of the JOA and other related agreements. While it is rare for reported cases to directly address COPAS issues, the reality is that many disputes between operators and non-operators will involve COPAS issues to some degree. This paper will endeavor to survey some of the perspectives of a litigator regarding the COPAS model form accounting procedures.

II. THE COPAS ORGANIZATION AND THEIR NAMESAKE ACCOUNTING PROCEDURE

The most common form of accounting procedure attached to Texas onshore JOAs is published by the Council of Petroleum Accountants Societies, Inc. (COPAS). The COPAS organization is a non-profit professional organization of oil and gas accountants, with dozens of local chapters throughout the United States. According to COPAS, the organization's membership consists of thousands of individual oil and gas accountants, with participation from more than 600 oil and gas companies, including operators, non-operators, and oilfield service companies.

The COPAS organization is best known for its Model Form Accounting Procedures. The COPAS organization first published its Model Form Accounting Procedures in 1962, and since then the COPAS organization has periodically published updated forms. The most recent onshore form was published by COPAS in 2005 (known as the "2005 COPAS"). The COPAS organization also publishes accounting procedures for offshore operations, most recently publishing a 2012 version of its deepwater accounting procedure.

The COPAS Model Form Accounting Procedures has become so widespread that it is commonly referred to by its namesake, as "the COPAS." According to some commentators, the COPAS form has become so ubiquitous that, even in situations where there is no JOA in place, the COPAS form may still be relevant to the extent of providing "a point of reference as to what is reasonable and customary."²

III. BASIC STRUCTURE OF THE COPAS FORM ACCOUNTING PROCEDURE

The COPAS form is divided into several main sections that govern different aspects of accounting for joint operations. From a high level, the COPAS covers the following:

1. Section I defines key terms, establishes general provisions for joint accounting, including the operator's obligation to maintain records and bill the non-operators, and the non-operator's obligation to pay the invoices.
2. Section I.4. addresses adjustments to joint interest billings, including a provision setting forth a 24-month

² Karia Bower, Jonathan D. Baughman, "COPAS Accounting Procedures, and Legal and practical Considerations," Joint Operations and the New

AAPL Form 610-2015 Model Form Operating Agreement 16-1 (Rocky Mt. Min. L. Fdn. 2017).

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First appeared as part of the conference materials for the
50th Annual Ernest E. Smith Oil, Gas and Mineral Law Institute session
"COPAS Accounting Procedures: From a Litigation Perspective"