



THE A.A.P.L. FORM 610-2015 MODEL FORM JOINT OPERATING AGREEMENT

Dallas Petroleum Engineers Club

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John Holden has more than 40 years' experience representing clients in the natural resources area. Mr. Holden has advised clients with respect to all aspects of ownership, exploration, production, transportation, processing, sale and marketing of oil and gas, and other natural resources. He is experienced in the formation of and use of various entities, both public and private and the financing of the acquisition and development of hydrocarbons and related assets.

Mr. Holden advises clients with respect to the preparation and negotiation of merger and acquisition agreements, joint exploration agreements, lease acquisition agreements, seismic option agreements, leases, operating agreements, farmouts, oil and gas sales contracts, storage and transportation agreements, processing agreements, pipeline construction and operating agreements, and other related documents. In addition, he prepares surface use agreements to provide for the protection and development of the interests of both surface and mineral owners.

Mr. Holden also has significant experience in energy lending and debt and equity financing. He has represented borrowers and financial and financing institutions with respect to the negotiation and documentation of financing transactions. His experience includes transactions involving hydrocarbon and other mineral reserves, drilling rigs, service companies, landfill gas recovery projects, wind projects and other forms of natural resources, as well as fixed site power generation projects. He has worked with financial institutions in the foreclosure on and the subsequent sale of various energy assets. Mr. Holden has also negotiated and documented equity participation in the foregoing.



Mr. Holden directed the privatization of \$750 million worth of assets of YPF, the national oil company of Argentina. That process required the analysis of the applicable laws, rules, decrees and regulations of that country and the creation of appropriate entities to accomplish the country's objectives. Mr. Holden has participated in transactions in other foreign venues and has represented many foreign entities doing business in the United States.

Mr. Holden is Board Certified in Oil, Gas and Mineral Law by the Texas Board of Legal Specialization.

MEMBERSHIPS

Mr. Holden is a member of the State Bars of Texas and the District of Columbia, as well as the Dallas Bar Association. He is past Chairman of the Energy Law Section, and past Chairman of the International Law Section of the Dallas Bar Association. Mr. Holden also is a member of the State Bar's Corporate, Banking and Business Section and the Oil, Gas and Mineral Law Section. Mr. Holden is also a member of the Association of International Petroleum Negotiators and other regional and national energy associations. He is an Adjunct Professor of International Law at Baylor University Law School and an Associate Board Member of the Cox School of Business of the Southern Methodist University.

AWARDS

Mr. Holden was listed as the 2013 "Lawyer of the Year" in Energy Law (Dallas) by *Best Lawyers* and is listed in *The Best Lawyers in America* under Energy Law and Oil & Gas Law. He was also named to the *Dallas Business Journal's* 2012 "Who's Who in Energy" list. Mr. Holden was named a "Super Lawyer" by Thomas Reuters (2007 -2009). He was also named a "Best Lawyer in Dallas" by *D Magazine* in 2013, 2015 and 2016.

ADMITTED

Texas
District of Columbia

EDUCATION

Mr. Holden received his A. B. from Ohio University in 1965 and his J.D. from the George Washington School of Law in 1968. In 1976, he received his L.L.M. in oil and gas and taxation from Southern Methodist University School of Law.

PUBLICATIONS & SPEAKING ENGAGEMENTS

Mr. Holden is a frequent speaker on oil and gas and international topics to business and legal audiences.





- Founded in 1887
- Full-service firm with national practice
- 7 offices in Texas / 350+ attorneys
- Represented clients in more than 85 international jurisdictions
- Represent 50 of the Fortune 100
- Represent 230 of the Fortune 500 Companies
- Attorneys licensed in 24 states



BACKGROUND

- The American Association of Petroleum (now Professional) Landmen (“AAPL”) sanctioned the drafting of a uniform joint operating agreement (“JOA”) first in 1956, known as the “Form 610.”
- Form 610 was revised by AAPL in 1977, 1982 and 1989



THE PROCESS

- A Task Force was created and conducted its first telephonic meeting in November of 2011
- It polled numerous sources, from small non-operators to majors
- It collected various modifications commonly made by industry members as well as those to address horizontal operations
- Survey various papers were researched along with case law to identify other issues
- The Task Force first focused a Horizontal Modification Form
- After numerous meetings and teleconferences, drafts and extensive peer review, the Task Force submitted the Form 610-1989 Horizontal Modification Form
- The peer review group again was comprised of a wide variety of representatives: landmen from both small non-operators and large majors, academia, accountants, lawyers, etc.



- The Form 610-2015 JOA is thought to be a *national* template; but one size does not fit all circumstances
- The Task Force rejected some suggestions as too regionally specific
- They also contemplated further modifications (e.g., Article XVI provisions)
- They adopted the philosophy that “if it isn’t broke, don’t fix it.”
- The Task Force only adopted revisions upon which it had reached consensus



DEFINITIONS

- Numerous new definitions were adopted to address horizontal operations as part of the Form 610-1989 Horizontal Modification JOA
- “Affiliate” is defined as:
 - *For a person, another person that controls, is controlled by, or is under common control with that person. For purposes of this definition, “control” means the ownership by one person, directly or indirectly, of more than fifty percent (50%) of the voting securities of a corporation or, for other persons, the equivalent ownership interest (such as a partnership interest), and “person” means an individual, corporation, partnership, trust, estate, unincorporated organization, association, or legal entity.*



- This is consistent with the definition of the same term contained in the current COPAS Accounting Procedures usually attached as Exhibit “C.”
- “Extension” and “Extend”
 - An operation related to a Horizontal Well whereby a Lateral is drilled in the same Zone to a Displacement greater than (i) the Displacement contained in the proposal for such operation approved by the Consenting Parties, or (ii) the Displacement to which the Lateral was drilled pursuant to a previous proposal.



- The definition was previously incorporated into the term “Deepen”
- The new definition obviously also resulted in a modification to the definition of “Deepen”
- The definition of “Lateral” was modified
- “Workover” is defined as “*routine maintenance and repair work performed on a well but does not include a Rework operation*”
- Routine maintenance is treated separately from *Rework* operations, and has different procedures and consequences for approval
- The definition of “Rework” was modified to include the term “Workover” to exclude those types of operations



- Multiple terms were consolidated since they had the same meaning
- “Consenting Party” and Drilling Party” were consolidated into just “Consenting Party”



ARTICLE III – INTERESTS OF PARTIES

- One Task Force objective was to encourage parties to keep Exhibit “A” current?
- How and when can an Operator change and correct the interests of the parties on Exhibit “A”?
- Can the options available in the share obligation clause of Subsection B be improved?
- Language was added to Article III.B to allow the Operator to make changes to a party’s interest if the change is supported by a title opinion
- Changes are effective as of the effective date of the JOA unless the ownership changes occurred after the effective date



- After the JOA has been signed, the Operator is required to obtain the consent of the affected party or parties
- Article III.B addresses the payment of royalties, and requires each participant in a well to pay its proportionate share
- Blank space on Line 17, as it was in the previous form
- This provision does not apply when the Contract Area and the spacing unit are identical
- Companies in Texas began inserting “all burdens except the Subsequently Created Interest burdens of the other parties” in the blank space on Line 17



- The Task Force amended Article III.B to provide two options regarding the payment of royalties when a working interest unit has been formed
- Option No 1 – the blank space on Line 17 has been replaced with “all burdens except the Subsequently Created Interests of the other parties; and
- Option No 2 – the blank space on Line 17 remains blank, and the parties must negotiate what they are going to insert in the blank space



ARTICLE IV - TITLES

- The Task Force felt there was a need to revise the failure of title and loss of title provisions
- Failure of title occurs when a lease is determined to be invalid as of the effective date of the JOA
 - (1) a failure occurs when a lease is determined to cover a lesser interest
 - (2) a failure occurs when a lease covers less lands than those described
 - Aerial basis (vertical)
- Depth basis (horizontal)
- Expires as a result of failure to develop



- Was not renewed or extended
- Loss of these leases are joint losses
- Must be disclosed on Exhibit “A”



ARTICLE V - OPERATOR

- Article V.A designates which person shall serve as Operator and sets out that Operator's responsibilities
- "Contract Area" are replaced with "under this agreement"
- Operatorship is neither assignable nor forfeited except in accordance with Article V. The Task Force believed it was appropriate to include that sentence to dispel any belief that simply acquiring an Operator's interest in the contract area entitles the transferee to succeed
- Granting the Operator the very limited authority to file pooling declarations or communitization agreements, after notice to non-operators. It only applies to poolings or communitizations which are otherwise allowed by lease terms and conform to spacing rules.



- Operator's standard of performance has been modified, in response to Reeder v. Wood County Energy, LLC, (September 21, 2016) in which the court applied the gross negligence willful misconduct standard more broadly than the Task Force felt was appropriate
- The limitation of Operator's liability to a standard of gross negligence or willful misconduct applies only to authorized or approved operations as distinguished from breach of the Joint Operating Agreement itself
- The final paragraph of Article V.A is an entirely new provision dealing with Operators who own no interest in the minerals governed by the Operating Agreement



- Some are an Affiliate of an interest-owning party
- Unaffiliated contract operator
- The non-owning Operator must have a separate agreement with the interest-owning parties (which could be entirely separate agreement or one containing more Article XV provisions)
- It sets forth the Operator's tenure, compensation, authority and duties
- Non-Owning Operator is explicitly bound by provisions of the Operating Agreement applicable to Operator
- Provisions relating to removal of a non-owning Operator are also applicable



RESIGNATION OR REMOVAL OF OPERATOR AND SELECTION OF SUCCESSOR

- Article V.B was completely rewritten to make it more readable rather than making substantive changes
- V.B.1 covers voluntary resignation
- V.B.2 covers involuntary resignation (i.e., events deemed to be a resignation)
- Article V.B.2 permits parties to stipulate a minimum percentage of ownership which an interest-owning Operator must have to avoid a deemed resignation
- Former V.B.3, dealing with Operator bankruptcy is substantively unchanged



- V.B.5 is new providing, unless otherwise agreed, for the removal of a non-owning Operator at any time, with or without cause, by a majority in interest of the owners (the owning Affiliate of the non-owning Operator is excluded from the removal vote)
- V.B.6 is a revision of former V.B.2
 - Provides for the election of a successor Operator
 - Election is by the vote of one (1) or more parties holding a majority interest (formerly the votes of “two (2) or more” parties were required)
 - Resolves a tie vote in favor of the contestant favored by the former Operator or the majority of the former Operator’s transferees



- Article V.C dealing with Employees and Contractors is substantively unchanged
- Article V.D.1 dealing with Rights and Duties of Operator
 - “An Affiliate” replaces “affiliates and related parties”
- Article V.D.5, dealing with a parties’ right of access to Contract Area and Records
 - Revised to limit free access to Consenting Parties
 - Non-consenting Parties do not have access until the earlier of recoupment of the sums provided for or two years after commencement of the non-consented operation
 - Does not prohibit the Operator or another consenting party from sharing such well information with a Non-Consenting Party voluntarily



- Article V.D.6 deals with Filing and Furnishing Governmental Reports
 - “All such filings shall be made in accordance with the provisions of this agreement”
 - Merely makes what is implicit, explicit
 - Article V.D.7 deals with Drilling and Testing Operations
- First, V.D.7(a) was modified to require the operator to “use reasonable efforts” to advise non-operators of the date of the commencement of operations
- “Commencement of Operations’ replaces the words, “the well is spudded or drilling operations are commenced”



- Article V.D.7(c) adds the words “that are within the Contract Area”
 - Some zones encountered may be outside the contract area
- Article V.D.8 dealing with the Operator’s duty to provide estimates of current and cumulative costs, was modified slightly to require a Consenting Party’s request for such estimates to be in writing



ARTICLE VI – DRILLING AND DEVELOPMENT

- Subsequent Operations – Proposals
 - The Task Force discovered that there were no standards for the content of proposals
 - “AFE” had been added to the Form 610-1989 JOA
 - In the 610-1989 Horizontal Modification Form, the information to be included in a proposal for a horizontal well is specifically set forth, including the requirement for AFE
- The Article VI.B.1 requires proposals to include:
 - Drilling and completion plans
 - Depth
 - Surface and bottom hole locations (if deviated)
 - Objective Zone



- Rig utilization
- Stimulation operations – sizing and staging
- Established drilling and completion costs as set forth in the AFE
- Article VI.B.4, relating to “Deepening” was modified
- New Article VI.B.6
 - Control the financial and mechanical risk of drilling a longer lateral by requiring written notice and consent if the extension exceeds a given percentage of the original proposal
- Article VI.B.8 (formerly subsection 7) was modified to clarify that exceptions to existing well patterns granted by the governing regulatory agency are authorized



Other Operations

- “Rework” was defined in the Form 610-1989 JOA
- Usually includes adding perforations and/or fracking a zone in a well
- Workover operations are defined as routine maintenance and repair work conducted on a well pursuant to Article VI.D
- Workover operation is not a Rework operation
- Workover operations can range from cleaning out a wellbore with soap bars or acid to remove paraffin or other buildup, repairing equipment such as tank batteries, heaters, treaters and pumping units



- Approval requires only a majority vote for an Other Operations
- Routine maintenance and repair work
- The revision changes the types of operations covered by the Other Operations provision by including Workovers and artificial lift equipment but does not include or cover SWD wells
- Form 610-1989 Horizontal Modification Form added a special provision exonerating the Operator from liability for deviation from an approved proposal based on new information or facts and circumstances occurring after the commencement of operations, this was included in the Form 610-215 JOA



- Operator must act reasonably
- Incorporated as a new Article VI.E in the Form 610-2015 JOA
- Form 610-2015 JOA now provides that any party may propose the abandonment of wells, which while producing, are no longer economic



- Article VII.C allows the Operator to demand advanced payments
- Payments must be made within thirty days following receipt of the demand (previously payments required of Non-Operators had to be made within fifteen days of the demand)
- A usury savings clause has now been included



ARTICLE VIII – ACQUISITION, MAINTENANCE OR TRANSFER OF INTEREST

- Article VIII.A deals with the surrender of leases
- Clarified that when a party wishes to surrender a lease and not all parties consent, the assignment to the non-consenting parties will be for all of its right, title and interest
- Significant changes to Article VIII.D were prompted by Texas Supreme Court's decision in *Seagull Energy E & P, Inc. v. Eland Energy, Inc.*, 207 S.W.3d 342 (Tex. 2006), holding that the transferor of a working interest subject to an offshore JOA similar to the Form 610 remained liable to the operator under the JOA for expenses incurred after it had conveyed its interest



- The Task Force followed the industry consensus that the parties to an operating agreement needed some certainty in determining when and how a party transferring its interest in the Contract Area could be relieved of responsibility for expenses incurred following the transfer
- Under the new version of Article VIII.D, disposition of a party's interest in the Contract Area will not become effective until thirty days following the operator's receipt of the instrument(s) documenting the transfer
- After such thirty-day period, **the transferor is relieved of liability for costs and expenses occurring after the thirty-day period**



- An exception arises if, prior to the transfer of its interest, the transferor approves an operation from which the costs and expenses arise
- Transferor and transferee shall be held jointly and severally liable for costs and expenses attributable to the previously approved operation



ARTICLE X – CLAIMS AND LAWSUITS

- Article X was revised to provide that the defense and settlement of uninsured third party claims will be undertaken by the operator, unless, within fourteen (14) days of receiving the notice of the claim sent by the operator, a party notifies all other parties that it elects to undertake its own defense
- The party undertaking its own defense, non-the-less remains liable to the operator for its share of the legal expenses attributable to the defense of the joint account



ARTICLE XII - NOTICES

- Permits notice through electronic mail
- Must be sent as an attachment to an email and it must state it is a notice under the applicable operating agreement to be effective
- It will be deemed delivered when the recipient affirmatively acknowledges the notice by return email and not by automatic delivery receipt
- Best practices consider using multiple methods of providing notice
- Notice by telegram, telex and telecopier have been deleted



ARTICLE XIV.C – COMPLIANCE WITH REGULATORY AGENCIES

- Provision clarifies the scope of the Operator's release for actions, losses and damages stemming from its interpretation of governmental rules and regulations
- Clarifies that Operator is responsible for its proportionate share of any losses stemming from such a misinterpretation
- In the prior version, it appeared that the Operator would share in none of the loss occasioned
- Expanded to include the interpretation of any government agency having jurisdiction



ARTICLE XV.A - EXECUTION

- Revised to address a situation stemming from its termination of a proposed activity because of insufficient participation
- Where there is insufficient participation, Operator returns the funds advanced by the parties that prepaid them, but the operator is allowed to retain the proportionate share of the costs it had incurred prior to the termination



ARTICLE XVI – OTHER PROVISIONS

- In the Form 610-1989 Horizontal Modification JOA, three sections of text were added. In the Form 610-2015 JOA, the Task Force moved the first two provisions of this article into the body of agreement
- It also dealt with the priority of operations for horizontal wells
- The order of priority was eliminated because industry comments indicated that such an order of priorities did not necessarily enjoy nationwide uniformity



RECORDING SUPPLEMENT

- Revised to conform to the Form 610-2015 JOA to insure constructive notice of the provisions is adequately imparted



EXTRA PROVISIONS



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RELATION OF EXTRA PROVISIONS TO THE BOILERPLATE

- Notwithstanding anything in this agreement to the contrary, in the event of any conflict between the provisions of Article I through XV of this agreement and the provisions of this Article XVI, the provision of this Article XVI shall prevail
- Modifying the consequences of non-consent elections
 - Enforceability issues
 - Required wells only?
 - How much is forfeited?
- Expanding coverage of the Operating Agreement
 - Seismic



REGULATING OPERATIONS

- Order of Preference of Operations/Priority of Further Operations in a Well
- Modifying the consequence of non-consent elections
 - Enforceability issues
 - Required wells only?
 - How much is forfeited?
- Expanding coverage of the operating agreement
 - Seismic
 - Downstream
 - Secondary recovery
 - SWD



- AMI
- Power the Operator and Non-operators
 - Promoter/Investor issues
 - Dealing with fragmentation of ownership
 - Enhancing Operator’s position against Non-Operator regarding payments
 - Increase the power of non-operators to remove the Operator
 - Effect the duty of Operator or non-operator to pay royalty
 - Enhance the ability of non-operators to challenge Operator charges
 - Provision for supplemental AFEs and cost overrun issues
 - Tag-along and drag along in sale situations
 - Lien and power of sale provisions
 - Arbitration



- Lien provisions
 - LA – do you really want a lien?
 - TX – power of sale issues
- DJ Basin horizontal offset policy
- Arbitration

