

Special Institute on

Oil and Gas Agreements: Purchase and Sale Agreements

January 19-20, 2023

Hyatt Regency Galleria, Houston, TX

This Special Institute is the 16th in the Foundation's highly successful Oil and Gas Agreements series. A broad range of issues associated with oil and gas acquisition and divestiture (A&D) transactions will be addressed by a faculty that is highly experienced in the A&D market. Topics that will be discussed and analyzed include deal and market trends, structuring the transaction, tax considerations, the due diligence process, title defect procedures, environmental issues, representations and warranties, closing conditions, allocating liabilities and indemnities, tough deal issues, ethical considerations in negotiating complex contracts, and many others. A practical focus will provide valuable insights into key contract provisions and issues for those who are less experienced, while providing more experienced attendees with new ideas and a refresher on critical concepts. Although the focus will be on drafting, negotiating, and litigating A&D contracts, anyone who participates in oil and gas purchase and sale transactions will greatly benefit from this specialized oil and gas course.

Program Committee:

AMY E. SENESHEN, Program Co-Chair; Managing Partner, Welborn Sullivan Meck & Tooley, P.C., Denver, CO

SAM NIEBRUGGE, Program Co-Chair; Partner, Davis Graham & Stubbs LLP, Denver, CO

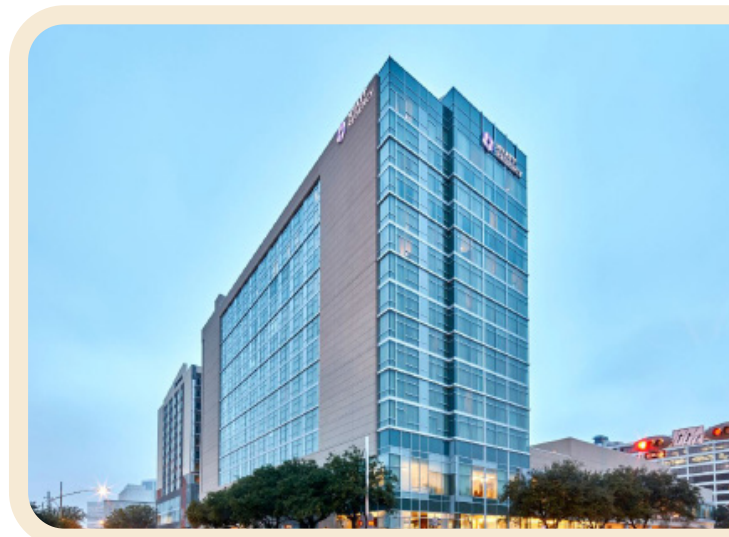
JOLISA MELTON DOBBS, Partner, Holland & Knight, Dallas, TX

LAMONT C. LARSEN, Partner, Davis Graham & Stubbs LLP, Denver, CO

ALLISON F. MACKINNON, Shareholder, Welborn Sullivan Meck & Tooley, P.C., Denver, CO

M. SCOTT REGAN, General Counsel, Chord Energy, Denver, CO

STEPHEN C. SZALKOWSKI, Partner, Latham & Watkins LLP, Houston, TX



Day 1: Thursday, January 19, 2023

7:00 – 8:30 am: Registration

8:30 – 8:50 am: Introduction and Opening Remarks

ALEX RITCHIE, Executive Director, The Foundation for Natural Resources and Energy Law, Westminster, CO
RACHAEL E. SALCIDO, President, The Foundation for Natural Resources and Energy Law; Professor of Law, University of the Pacific, McGeorge School of Law, Sacramento, CA
AMY E. SENESHEN, Program Co-Chair; Managing Partner, Welborn Sullivan Meck & Tooley, P.C., Denver, CO
SAM NIEBRUGGE, Program Co-Chair; Partner, Davis Graham & Stubbs LLP, Denver, CO

8:50 – 9:30 am: Recent Developments in the U.S. Oil and Gas M&A Market

- Trends regarding consolidation and deal structuring
- Investor and financing trends and developments
- Legal trends relating to provisions that are currently “market”
- Emerging opportunities

SEAN T. WHEELER, Partner, Kirkland & Ellis LLP, Houston, TX

9:30 – 10:20 am: Structuring Oil and Gas Transactions – Equity vs. Asset Considerations

- Fundamental considerations between choosing to purchase assets vs. purchasing the company
- Analysis of continuing liability and related due diligence considerations
- Tax analysis of structure
- Alternative deal structures

ZACKARY PULLIN, Partner, Sidley, Houston, TX
MARC ROSE, Partner, Sidley, Dallas, TX

10:20 – 10:40 am: Hosted Refreshment Break

10:40 – 11:30 am: Federal and State Tax Considerations for Oil and Gas Purchase and Sale Agreements

- Distinguishing a property sale transaction from a leasing transaction
- Methods to determine purchase price allocated values, strategies to negotiate allocated values, and executing the IRS Form 8594
- Tax consequences for the property sale transaction to seller and to buyer
- Tax representations and warranties in the Oil and Gas Purchase and Sale Agreement
- Other standard tax provisions in the Oil and Gas Purchase and Sale Agreement
- Provisions in the Oil and Gas Purchase and Sale Agreement for alternative tax efficient transactions such as like-kind exchanges, acreage trades, and “cash and carry” joint development agreements
- Special problems in dealing with ad valorem tax apportionments

KENDRA HALEY MERCHANT, Of Counsel, Liskow & Lewis, New Orleans, LA

11:30 am – 1:30 pm: Lunch – On Your Own

1:30 – 2:20 pm: LOIs and MOUs in Oil and Gas M&A – from Texaco v. Pennzoil through ETP v. Enterprise to the Present

- Considerations when drafting a letter of intent or non-binding term sheet
- Survey of major oil and gas case law on the subject
- Examples of actual LOIs from the cases presented

PETER B. HAYS, Partner, King & Spalding, Houston, TX

2:20 – 3:20 pm: The Due Diligence Process in Oil and Gas Transactions

- Due Diligence checklist items
- Public and private record review
- Asset review (excluding environmental assessments)
- Working with hired professionals
- Preparing a due diligence report and defect notices
- Defining value priorities and how they are preserved

MARK L. JONES, Partner, Norton Rose Fulbright, Houston, TX
MAC MARSHALL, Partner, Norton Rose Fulbright, Houston, TX

3:20 – 3:40 pm: Hosted Refreshment Break

3:40 – 4:30 pm: The Oil and Gas Title Defect Procedure

- Defining the quality of title that the buyer expects to receive
- Structure of a typical title defect procedure
- How to define “Permitted Encumbrances” and the effect on a special warranty
- Special warranty considerations in assignments and what survives
- Procedures for handling consents to assign and preferential rights to purchase
- Pre- and post-closing cure rights and curing assets the seller no longer owns

CHRIS HEASLEY, Partner, Kirkland & Ellis, Houston, TX
ROY MITCHELL, Assistant General Counsel, Maverick Natural Resources, Houston, TX

4:30 – 5:20 pm: Environmental Due Diligence – Transactional and Litigation Considerations

- Common environmental considerations including differences between the buyer’s and the seller’s concerns
 - Environmental drafting considerations for the Purchase and Sale Agreement
 - On the ground practical environmental considerations
 - Potential impacts of bankruptcy on a sale
 - Litigation risks relating to environmental matters
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5:20 – 6:30 pm: Hosted Reception for Registrants, Speakers & Guests

DAY 2: Friday, January 20, 2023

8:30 – 9:20 am: Covenants Between Signing and Closing and Closing Conditions in Oil and Gas Purchase and Sale Agreements

- Covenants regarding the ongoing ownership and operation of the assets between signing and closing
- Establishing remedies in the event of a breach, and the use of deposits, break fees, and specific performance
- Standard and non-standard closing conditions
- How to protect against or advocate for a party walking from the deal
- Governmental approvals including Hart-Scott Rodino (HSR) and Committee on Foreign Investment in the United States (CFIUS)
- Post-Closing conditions (e.g., Bureau of Land Management approvals)
- Consents to assignment, preemptive rights, and other conditions to the deal

JESSICA RODRIGUEZ, Senior Associate, Norton Rose Fulbright US LLP, Houston, TX

9:20 – 10:10 am: Mind the Mainframe – Representations and Warranties in Oil and Gas Purchase and Sale Agreements

- Purpose of representations and warranties
- Types of representations and warranties
- Limitations on representations and warranties
- Survival of representations and warranties
- Remedies for breach of representations and warranties
- “Sandbagging” and “Anti-Sandbagging” considerations
- Availability and use of representation and warranty insurance
- Interplay between representations and warranties and other PSA provisions

MARK C. BUSSEY, Partner, Davis Graham & Stubbs, Denver, CO
ALMIRA MORONNE, Senior Associate, Davis Graham & Stubbs, Denver, CO

10:10 – 10:30 am: Hosted Refreshment Break

10:30 – 11:20 am: Allocating Liabilities and Indemnities Under Oil and Gas Purchase and Sale Agreements

- Allocating assumed and retained liabilities
- Indemnity procedures and pitfalls
- Issues to consider including anti-sandbagging, materiality scope, thresholds, deductibles, and caps
- Improving the quality of the indemnity including utilization of hold backs, representation and warranty insurance, or parent company guaranties

STEPHEN C. SZALKOWSKI, Partner, Latham & Watkins LLP, Houston, TX
MICHAEL SELLNER, Senior Vice President, Atlantic Global Risk, Houston, TX

11:20 am – 1:00 pm: Lunch – On Your Own

1:00 – 1:50 pm: Buying or Selling a Midstream Oil and Gas Asset

- How to define the midstream asset
- Special diligence considerations including long-term purchase and sale contracts, dedication agreements, and volume commitments
- Unique representations and warranties
- Valuation issues and the interplay with defect procedures
- Governmental approvals on state and federal levels including public utilities commissions and the Federal Energy Regulatory Commission

SETH R. BELZLEY, Partner, Holland & Knight, Denver, CO
JOSHUA P. DOWNER, Partner, Holland & Knight, Houston, TX
NNEKA C. OBIKOYE, Senior Counsel, Holland & Knight, Denver, CO

1:50 – 2:40 pm: Examining a Typical Oil and Gas Exchange Agreement – Motivations and Key Considerations

- Motivations for entering into an exchange
- Exchange structures and considerations
- Key provisions of an oil and gas exchange agreement

JAMES H. COLE, Partner, Latham & Watkins LLP, Houston, TX
MICHAEL R. KING, Partner, Latham & Watkins LLP, Houston, TX

2:40 – 3:00 pm: Hosted Refreshment Break

3:00 – 3:50 pm: Accounting Adjustments

- Basic structure of accounting adjustments
- Interface with other provisions of Purchase Agreement
- Overhead and other indirect costs
- Relationship with COPAS and other accounting standards

DAVID H. SWEENEY, Partner, Akin Gump, Houston, TX

3:50 – 4:50 pm: Ethical Considerations in Negotiating Complex Contracts

- Negotiating with opposing counsel
- Negotiating with parties not represented by counsel
- Attorney-client privilege and confidentiality under ABA Model Rule 1.6
- Representing both the buyer and the seller

SARAH RICE CARLSON, Associate, Davis Graham & Stubbs, Denver, CO
BEN STRAWN, Partner, Davis Graham & Stubbs, Denver, CO

4:50 pm: Course Adjournment

Oil and Gas Agreements: Purchase and Sale Agreements

REGISTRATION - <https://www.fnrel.org/programs/PSA23/registration>

Pricing – Early registration ends December 22, 2022

Foundation Member \$795/\$895 | Nonmember \$1075/\$1175
Government/Nonprofit \$735/\$835 | Law Professor Member \$465/\$565
Senior Member \$465/\$565 | New Professional Member \$100/\$200
Foundation Student Member \$0

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Consider becoming a member of the Foundation. Also consider that attorneys in their first 4 years of practice may takeout a membership for only \$75 and then register for only \$100! For membership information go to: <https://www.fnrel.org/membership>

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General Information

Room Reservations: The Hyatt Regency Galleria, 2626 Sage Rd., Houston, TX, 77056, is offering discounted rooms for this program until January 4, 2023, or until our block sells out at the rate of \$159 per night. Refundable rooms outside of our block are at least \$194 per night. Contact the Hyatt at:

- Online: <http://tinyurl.com/FNREL-PSA23>
- Toll Free: 877-803-7534 (use Group Code G-FNRE)

Please contact info@fnrel.org if you have any problems making a reservation.

Registration Fee: Includes electronic course materials, refreshments, and hosted functions as listed in this brochure. Does not include hotel costs or transportation. Registrations will be accepted only when accompanied by a check, money order, government purchase order or training form, credit card information, or wiring information. No registrations can be processed without payment.

Recording: Audio and video recording, streaming, or other types of live or stored dissemination are not permitted without express authorization from the Foundation.

Special Needs: If you have special needs addressed by the ADA, please notify us at least two weeks before the program.

COVID-19: COVID-19 and its variants have created a heightened degree of personal risk and responsibility in participating in this event. By registering for and attending this event, you acknowledge our COVID-19 Risk Acknowledgment, Waiver, and Release found on the webpage: (<https://www.fnrel.org/programs/psa23/overview#tab>)

Registration Cancellations: Refunds, less a \$50 administrative fee, will be given for cancellations received by 3:00 pm Mountain time on Thursday, January 5, 2023. No refunds will be given thereafter, although substitution of attendees may be made by contacting FNREL. Cancellations must be made in writing or email to info@fnrel.org. Registrants not entitled to a refund will receive a link to the written materials.

CLE Credit: This course offers continuing education credit of approximately 11.75 credits for 60-minute states and 14 for 50-minute states, including up to 1 hour of ethics. You must let us know, at least 45 days in advance of the course, the states or organizations for which you will need credit (see registration form). Credit hours for states will vary and are subject to each state's approval and credit rounding rules. Foundation courses are typically accredited by all mandatory CLE states and Canadian provinces, AAPL, NADOA, and NALTA, and other professional organizations. Attorneys from certain states may be required to pay an additional fee. The Foundation is a State Bar of California MCLE-approved provider.