



***Drilling Down:  
Deals and Due Diligence  
in the Mid-Continent***

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## ***Permian & Mid-Con Energy Series: Upcoming Sessions***

- Legal Considerations for Renewable Energy Projects (July 26, 2023)
- Managing & Responding to Emergencies in the Energy Industry (August 23, 2023)

## *Our Energy Practice*

- Nationally recognized energy team
- Strategic locations covering all of the major U.S. shale plays, including Permian, Eagle Ford, Niobrara, Marcellus, and Utica
- More than 100 years of experience in energy law
- Expertise in oil & gas, mining, renewables, CCUS, geothermal, and rare earth minerals
- Transactions, operations, regulatory, environmental, litigation, and tax
- More than 50 attorneys cross-trained to understand title in multiple states and basins
- \$20B+ in recent complex energy transactions

# National Reach



## Office Locations

**18 offices**

**7 States**

### **WEST:**

Texas  
Oklahoma  
Colorado

### **EAST:**

Kentucky  
Ohio  
Pennsylvania  
West Virginia

 States where Steptoe & Johnson attorneys are licensed

## Overview

- Deals:
  - Recent Activity in the Mid-Con
  - Trends in Recent Deal Activity
- Due Diligence:
  - PSA: Key Diligence Terms and Provisions for Diligence
  - Conducting Due Diligence
    - Scope of Examination
    - Process
    - Confirming Title
    - Title Defects

# *Recent Activity in the Mid-Continent*

## Top 5 Upstream Deals of 4Q22

DATE	SELLERS	BUYERS	TYPE	AREA	VALUE
10/17/22	Continental Resources	Hamm Family	Corporate	Multiple	\$5.2 billion
11/2/22	Ensign Nat. Res.	Marathon Oil	Asset	Eagle Ford	\$3 billion
10/11/22	Firebird Energy	Diamondback	Asset	Midland	\$1.6 billion
11/16/22	Lario Oil & Gas	Diamondback	Asset	Midland	\$1.5 billion
11/2/22	ExxonMobil	Sable Offshore	Asset	Conventional	\$625 million

Source: Enverus

## Top 5 Upstream Deals of 1Q23

DATE	SELLERS	BUYERS	TYPE	AREA	VALUE
2/28/23	Ranger Oil	Baytex Energy	Corporate	Eagle Ford	\$2.5 Billion
1/24/23	Advance Energy (EnCap)	Matador Resources	Asset	Delaware	\$1.6 Billion
1/18/23	Chesapeake Energy	Wildfire Energy	Asset	Eagle Ford	\$1.425 Billion
2/21/23	Chesapeake Energy	INEOS	Asset	Eagle Ford	\$1.4 Billion
2/21/23	Diamondback Energy	Undisclosed	Asset	Midland	\$439 Million

Source: Enverus



# Notable 2023 M&A Activity

Buyer	Seller	Consideration in MM	Location	Acres/Wells
Verde Bio Holdings	Undisclosed	\$0.425	Haynesville Shale	8 wells
Elk Range Royalties	Tower Rock Oil & Gas	\$4	Permian Basin	2,300 acres
Black Mountain Energy	Earthstone Energy	\$5	Permian Basin	1,268 acres/8 wells
Permian Resources	Undisclosed	\$98	Permian Basin NM	1,100 boe/d
HNR Acquisition	Pogo Resources	\$120	Permian Basin	13,700 acres
Vital Energy	Driftwood Energy Operations	\$216	Permian Basin	11,200 acres
Diversified Energy	Tanos Energy Holdings	\$250	Permian Basin	150 wells
Riley Exploration Permian	Pecos Oil & Gas	\$330	Permian Basin	11,700 acres
Chord Energy	XTO Energy & affiliates	\$375	Permian Basin	62,000 acres
Undisclosed	Diamondback Energy	\$439	Midland	22,000 acres
Callon Petroleum	Percussion Petroleum Operating	\$475	Permian Basin	18,000 acres/70 wells
Vital Energy & Northern Oil & Gas	Forge Energy II	\$540	Permian Basin	10,200 acres/30 wells
INEOS	Chesapeake Energy	\$1,400	Eagle Ford	2,300 wells
WildFire Energy	Chesapeake Energy	\$1,425	Eagle Ford	37,7000 acres/1350 wells
Matador Resources	Advance Energy	\$1,600	Delaware	18,500 acres/203 wells
Baytex	Ranger Oil	\$2,500	Eagle Ford	undisclosed
Ovintiv	Black Swan Oil & Gas, Piedra Resources & PetroLegacy II	\$2,500	Permian Basin	65,000
BCP Resources	Chord Energy subsidiary	N/A	Permian Basin	153 wells
VTX Energy	Delaware Basin Resources	N/A	Permian Basin	12,000 acres
Arena Energy	Cox Operating	N/A	Permian Basin	1,000 boe/d
Elk Range Royalties	Undisclosed	N/A	Permian Basin	1,700 acres

# *Trends in Recent Deal Activity*

## *Trends in Recent Deal Activity*

- Sale of PE-backed portfolio companies
- Joint acquisition with non-op partners
- Divisive mergers
- Oil > gas
- Non-op interest divestitures

***Due Diligence***  
***PSA: Key Diligence***  
***Terms and Provisions***

# *PSA: Key Terms and Provisions*

- Type of Transaction:
  - Asset Purchase
  - Stock/Membership Purchase
- Negotiation of Key Terms:
  - Title Defect
  - Permitted Encumbrances
  - Calculation Methodology

# *PSA: Key Terms and Provisions*

- Seller:
  - Subsidiaries
  - Mergers/Acquisitions
- Type of Assets:
  - Lease Based Units/Multi-Lease Units
  - Private/Federal/State Leases
  - Seller Operated Units
  - PDP/PUD
  - Depth Limitations/Target Depths
  - Oil and/or Gas
  - Fee Mineral Properties

## *PSA: Key Terms and Provisions*

- Schedule of Assets/Allocated Values:
  - Contracts
  - Leases
  - Wells
  - Units
  - Surface Rights/ROWs
  - Excluded Assets
- Deadlines:
  - Title Defect Deadline
  - Interim Defect Reports
  - Closing Date
  - Post-closing Adjustments

## *PSA: Key Terms and Provisions*

- Purchase Price & Defect Thresholds:
  - Purchase Price
  - Individual Defect Threshold/Deductible
  - Aggregate Defect Deductible
  - Defect Cap
  - Property



## *PSA: Key Terms and Provisions*

- Title Defect Definition:
  - Example: Any lien, charge, contract, agreement, obligation, encumbrance, or matter affecting the Assets that would not give Buyer Defensible Title.

## *PSA: Key Terms and Provisions*

- Example Defensible Title Definition:
  - NRI not less than NRI on asset list
  - WI not greater than WI on asset list without proportionate increase in NRI
  - Net acres not less than NMA on asset list
  - No encumbrances
  - Subject to Permitted Encumbrances

## *PSA: Key Terms and Provisions*

- Example Permitted Encumbrances:
  - Governmental regulation of assets
  - Spacing rules, allowables
  - Rights of Way/Easements
  - Permitted consents, Pref. Rights
  - Royalties, ORRIs
  - Title irregularities unless another person has a superior claim of title
  - Liens that are not delinquent
  - Subordinated mortgages by lessor
  - Unrecorded documents not executed by seller
  - Threatened litigation

The background of the slide is a dark blue field with a network of glowing blue lines and nodes, creating a digital or data network aesthetic.

# *Conducting Due Diligence*

## *Scope of Examination*

- Amount to be Reviewed:
  - Percentage of Allocated Value
  - Percentage of Properties/Leases
  - Review Properties with AV below Defect deductible?
  - Lender Requirements
  - Core Acreage

## *Scope of Examination*

- What is being Reviewed:
  - Full title
  - Full record room search
  - Relying on online indices?
  - Relying on prior title opinions?
  - Relying on ownership reports?

## *Scope of Examination*

- Adjusting the Scope of Examination:
  - Adding Properties with Common Title
  - Title Opinion Coverage (lack thereof)
  - Complicated Mineral Title
  - Swapping Properties:
    - ✓ Low Hanging Fruit
    - ✓ Greater Allocated Value can be reviewed in shorter period of time

## *Conducting Due Diligence – Process*

- Review PSA exhibits and schedules
- Review maps and plats
- Review Virtual Data Room (“VDR”) or physical land files
- Assign Files to Brokers/Attorneys



## *Conducting Due Diligence – Process*

- Review Land Files
- Review Lease Files
- Review Well Files
  - Texas Railroad Commission (“RRC”);
  - New Mexico Oil Conservation Division (“OCD”);
  - Oklahoma Corporate Commission (“OCC”)

# *Conducting Due Diligence – Confirming Title*

- Material Contracts:
  - JOAs
  - AMIs
  - Farmouts
  - Restrictions on Transfer/Assignment
  - Marketing/Midstream Contracts
  - Preferential Rights

## *Conducting Due Diligence – Confirming Title*

- Other Diligence Considerations:
  - Lien & Litigation Search
  - Property Descriptions
  - Payments of Royalties, Rentals, Shut-Ins

## *Conducting Due Diligence – Confirming Title*

- NRI → Not less than NRI on PSA Exhibit
- WI → Not greater than WI on PSA Exhibit without a proportionate increase in NRI
- Net Acres → Not less than on PSA Exhibit
- Depths/Formations → Title to all depths with AV on PSA Exhibit
- Defensible Title → No Defects

## *Conducting Due Diligence – Title Defects*

- Defect Notices – Prescribed by PSA
- Common Mid-Continent Defects
- Contents of Defect Notice

## *Conducting Due Diligence – Title Defects*

- **Sample Net Acre Defect:**

- Defect Description: Seller is asserting 200 acres for the Subject Lease; however, only 160 acres have been assigned to a unit, and the primary term has expired, resulting in a defect of 40 net acres due to Pugh Clause/CDC
- Defect Value: \$2,000,000
- Supporting Calculation:
  - AV x (Net Acre Decrease/Asserted Net Acres)
  - \$10,000,000 x (40 acres/200 acres) = \$2,000,000
- Supporting documentation: Lease (highlight Pugh clause, CDC), RRC/OCD/OCC filings and plats, title opinion

## *Conducting Due Diligence – Title Defects*

- **Sample NRI Defect:**

- Defect Description: Seller is asserting an 80% NRI for the Subject Lease; however, Seller assigned an ORRI of 5%, resulting in an NRI of 75%
- Defect Value: \$625,000
- Supporting Calculation:
  - $AV \times (\text{Decrease in NRI} / \text{Asserted NRI}) = \text{Defect Value}$
  - $\$10,000,000 \times (.05 / .80) = \$625,000$
- Supporting documentation: Title Opinion, Lease, Assignment of ORRI

## Conducting Due Diligence – Title Defects

- **Sample WI Defect:**

- Defect Description: Seller has asserted a WI of 90% and an 8/8ths NRI of 75% in the Subject Lease; however, record title reflects that Seller has a 100% WI and 75% 8/8ths NRI
- Defect Value: \$100,000
- Supporting Calculation:
  - Estimate of projected increase in costs and expenses attributed to increase in WI
  - Estimated Lease Costs: \$1,000,000 x 10% WI Increase = \$100,000
- Supporting documentation: Title Opinion, Lease, DOI, Royalty Payment information, lease maintenance expenses



# *Conducting Due Diligence – Title Defects*

- Defect Strategy:
  - Assert all good faith Defects
  - Close to Defect Cap → Select strongest defects
  - Can Seller pull individual properties?

## *Conducting Due Diligence – Title Defects*

- Seller Response to Defect Notice:
  - Accepts Defect and Defect Value
  - Accepts Defect, not Defect Value
  - Will Cure Defect
  - Disputes Defect
    - Not properly asserted under terms of PSA
    - Does not meet definition of Defect

## *Conducting Due Diligence – Title Defects*

- Negotiating Defect Values – Factors:
  - Bargaining power
  - Strength of Defects
  - “Contractual Title”
  - Potential for cure
  - Future relationship between Buyer/Seller
  - Arbitration



*Questions?*

## **Disclaimer**

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