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WELLBORE TRANSACTIONS UPDATE - CONVEYANCES, RESERVATIONS AND RELATED LEASE SEVERANCE ISSUES

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I. INTRODUCTION:

This article focuses on the state of Texas law regarding wellbore rights and various related issues raised by transactions involving such rights (and other similar lease severance issues) and provides some practical tips to help avoid potential pitfalls.

II. WELLBORE INTERESTS GENERALLY

At its core, a wellbore interest is simply a fractionalized carveout from a larger real property estate. To the point, the conveyance of such an interest has been called the "narrowest form of an oil and gas assignment."[1] Despite its "narrow" characteristics, it is fundamentally no different than any other conveyance that transfers less than the entire interest owned by a particular grantor/assignor. However, due to the heightened requirement for greater specificity when describing a wellbore interest, there are a host of issues that should be considered and addressed. The first step is to review the relevant case law on this subject and to determine how best to draft the applicable conveyancing (or reservation) language to account for these decisions.

a) Petro Pro, Ltd. v. Upland Res., Inc.[2]

The *Petro Pro* case examines the specific granting clause used to convey a wellbore interest and what additional rights were granted thereby. In that case, the parties presented three competing interpretations for the following conveyance clause which was included in two separate assignments:

> All of Seller's right, title and interest in and to the oil and gas leases described in Exhibit "A" attached hereto and made a part hereof ("Subject Leases") insofar and only insofar as said leases cover rights in the wellbore of the King "F" No. 2 Well.[3]

At the time of the conveyances, the King "F" No. 2 Well was the only well producing on the leased premises and was also included in a 704-acre unit.

The first competing interpretation was put forth by Petro Pro, Ltd. ("***Petro***"). Petro was the successor in interest to the assignee of the foregoing assignments and it argued that the conveyance language conveyed all of the assignor's right, title and interest in and to the entire 704-acre unit, including the right to "extend one or more horizontal drainholes from the King "F" No. 2 wellbore into other productive areas of the lease." [4]

The second competing interpretation was put forth by Upland Resource, Inc. ("***Upland***"). Upland was the successor in interest to the assignor of the foregoing assignments and it argued that the conveyance language conveyed to the assignee only rights in the wellbore of the King

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[1] *Petro Pro, Ltd. v. Upland Res., Inc.*, 279 S.W.3d 743, 752 (Tex. App.—Amarillo 2007).

[2] *Id.*

[3] *Id* at 746.

[4] *Id* at 749.

"F" No. 2 Well limited to the then producing formation in such well (being the Cleveland formation).[5]

The third competing interpretation was put forth by a group of intervenors who owned royalty interests in the 704-acre unit. The intervenors argued that the conveyance language conveyed to the assignee rights only in the wellbore of the King "F" No. 2 Well (similar to Upland's argument) but that these rights were further limited to an undetermined 40 acres surrounding the well in accordance with the applicable density rules of the Railroad Commission.[6] At the time of this case, many operators in the area (including Upland and Petro) were completing wells in the Brown Dolomite formation.

Taking these three interpretations into consideration, the court first determined the effect of using the phrase "insofar and only insofar" in the conveyance clause. Likening this to the phrase "subject to", the court held that the "insofar" language constituted a limitation on the overall grant.[7]

Having established that the phrase created a limit on the overall grant, the court then applied the limitation to the vertical and horizontal rights that were conveyed under the assignments.[8] Determining the vertical rights first, the court held that the conveyance language granted rights in the entire depth of the existing wellbore (not just as to the Cleveland formation as argued by Upland).[9] The court further held that to accept the vertical limitation as argued by Upland would require the court to read additional limiting language into the assignments "that does not exist."[10]

Second, the court applied the limitation to the horizontal rights granted under the assignments. Rejecting both Petro's and the intervenors' interpretations, the court held that the assignments were limited only to the horizontal area covered by the actual hole of the King "F" No. 2 wellbore.[11] Specifically, the court discussed intervenors' argument that Petro's rights extended to the "minimum amount of surface acreage needed to obtain a plug back permit for recompletion in the Brown Dolomite formation."[12] Intervenors based this argument on the fact that the assignments were expressly made "subject to . . . government regulations."[13] However, the court rejected this argument and held that the foregoing language was not sufficient to limit the overall grant as provided in the conveyance clause.[14]

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[5] *Id*.

[6] *Id.*

[7] *Id* at 750 ("[insofar and only insofar] neither conveys an interest to the assignee, nor does it reserve or retain an interest in favor of the assignor. It merely limits the extent of the interest granted").

[8] *Id.*

[9] *Id* at 751.

[10] *Id* at 750.

[11] *Id* at 751.

[12] *Id.*

[13] *Id.*

[14] *Id.*

Lastly, having established both the vertical and horizontal limits of the assignments, the court held that Petro was granted the right to develop and/or rework the "King "F" No. 2 well so as to produce from any formation that might possibly be reached by the existing wellbore" but that it does "not have the right to drill horizontally beyond the confines of the existing wellbore."[15] The court further held that the assignments granted Petro all other appurtenant rights to use the leases (including the surface estate) as reasonably necessary to produce the King "F" No. 2 well and "to the extent that the leases embodied other rights not exclusive to the possession and use of the wellbore . . . the assignment[s] created a co-tenancy with the other lessees, with each party sharing those incorporeal appurtenant rights."[16]

b) *Unit Petroleum Co. v. David Pond Well Serv.*[17]

The *Unit Petroleum* case involves a wellbore reservation from an oil and gas lease and the subsequent lease of that wellbore to a separate lessee. In that case, the Tarboxes (owners of certain mineral interests in land located in Lipscomb County, Texas) executed an oil and gas lease in favor of Unit Petroleum's predecessor in interest ("***Unit***"). In that lease, the Tarboxes included the following reservation:

> **RESERVATION OF WELLBORE OF TARBOX UNIT #1**: LESSOR reserves the wellbore of the Tabox (sic) Unit #1 well located on the leased premises, to be produced by LESSOR or his assigns and lessees. This reservation only applies to the wellbore as it currently exists and production only from the Cleveland formation, defined herein as between the depths of 7,930 feet subsurface to 7,990 feet subsurface, in which the wellbore is currently completed.[18]

Following the execution of their lease with Unit, the Tarboxes executed a "Wellbore Oil and Gas Lease" in favor of David Pond Well Service ("***Pond***"). That lease contained the following language:

> Notwithstanding anything herein to the contrary, LESSEE's right of exploring, drilling and operating for and producing oil and/or gas from the Leased Premises shall be confined to the existing borehole of the Tarbox #1 well, located 467 feet from the South line and 457 feet from the West line of Section 539, Block 43, H.&T.C. RR. Co. Survey, Lipscomb County, Texas, and any exploration, drilling, or production operations conducted by LESSEE at any other location upon the Leased Premises shall be considered a trespass for any and all purposes.[19]

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[15] *Id* at 752.

[16] *Id*.

[17] *Unit Petroleum Co. v. David Pond Well Serv.*, 439 S.W.3d 389 (Tex. App.—Amarillo 2014).

[18] *Id* at 393.

[19] *Id* at 394.

In subsequent years, Unit and Pond fell into a dispute as to which party had the right to establish proration units encompassing acreage covered by the Tarbox leases.[20] Unit argued that its lease from the Tarboxes granted it a fee simple determinable in the entire leased premises (less the wellbore of the Tarbox #1 well) and that it was also granted the exclusive right to establish proration units for any part of the leased premises.[21] In contrast, Pond argued that it had the appurtenant right (as the operator of the Tarbox #1 well) to "dictate the size and configuration of a proration unit of sufficient acreage necessary to allow the well's production under appropriate governmental regulations."[22]

The court reviewed both the reservation by the Tarboxes in the Unit lease and also the conveyance language in the Pond lease and concluded that the Tarboxes had conveyed a full fee simple determinable in the subject land to Unit, less certain rights in the Tarbox # 1 well.[23] Therefore, the court held that Unit was granted the "executive right to make decisions concerning the mineral estate" of the subject lands.[24] The court further held that the reservation by the Tarboxes in the Unit lease contained "no language reserving . . . any right to use acreage outside the wellbore [of the Tarbox #1 well]".[25] Therefore, because the reservation was so limited, the Tarboxes could not have conveyed the right claimed by Pond to establish the size of the proration unit for the Tarbox # 1 well and that the "executive right to establish a proration unit encompassing all or any part of the Unit leasehold estate passed exclusively to Unit."[26]

However, the court further held that the Tarboxes did explicitly reserve the right to produce the Tarbox No. 1 well. Because this right to produce was included in the Tarboxes reservation (and later leased to Pond), Unit was subject to an implied duty to "designate sufficient acreage to permit the Railroad Commission to issue an allowable for the Tarbox No. 1 well."[27]

c) *Cabot Oil & Gas Corp. v. Newfield Exploration Mid-Continent, Inc.*[28]

The *Cabot* case involves a "160-acre" proration unit for the wellbore of a well reserved from an assignment of oil and gas interests. In that case, Cabot Oil & Gas Corp. ("***Cabot***") executed an assignment (pursuant to the terms of a participation agreement) with the following conveyance language:

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[20] *Id* at 395.

[21] *Id* at 396.

[22] *Id*.

[23] *Id* at 397.

[24] *Id.*

[25] *Id.*

[26] *Id* at 399.

[27] *Id* at 400.

[28] *Cabot Oil & Gas Corp. v. Newfield Exploration Mid-Continent, Inc., 2017 Tex. App. LEXIS 12155* (Tex. App.—Amarillo 2017).

> all of its right, title and interest in and to the Oil, Gas and Mineral Leases described on Exhibit "A" attached hereto, hereinafter referred to as said Leases, less and except the EEX McCoy #27 -1 wellbore located 791' FSL and 21 07' FWL of Sec. 27 Camp School Lands, Wheeler County, Texas and the 160 acre proration unit surrounding said well from the surface down to 15,500'.[29]

At the time of the conveyance, there was no established proration unit for the EEX McCoy #27-1.[30]

In subsequent years, Newfield Exploration Mid-Continent, Inc. ("***Newfield***"), as successor-in-interest to the original assignee of the above referenced assignment, argued that the description in the reservation of a "160 acre proration unit" was not sufficient to satisfy the statute of frauds and therefore Cabot did not own any rights outside of the wellbore of the EEX McCoy #27-1 well. [31] In contrast, Cabot argued that the reference to the "160 acre proration unit" was sufficient to identify the quarter section where the EEX McCoy #27-1 well was located.[32]

The court reviewed both the assignment and portions of the participation agreement and agreed with Newfield that the description as provided in the reservation was insufficient to satisfy the statute of frauds. The court held that "[m]erely identifying the property as some specific quantum of acreage 'surrounding' a well does not meet the demands of the statute of frauds . . . [u]ntil designated, it likened to an amoeba with potentially shifting yet unknown boundaries, and, as such, the attempted reservation of the 160 acre proration unit surrounding the McCoy #27-1 was void."[33]

d) *Piranha Partners v. Neuhoff*, 596 S.W.3d 740.[34]

The *Piranha Partners* case involves the conveyance of an overriding royalty interest and whether such interest was limited only to a specifically listed well. In that case, Neuhoff Oil owned two-thirds of the working interest under a certain oil and gas lease from the Puryear family (the "***Puryear Lease***").[35] Neuhoff Oil subsequently assigned its two-third interest in the Puryear Lease to another operator but reserved a 3.75% overriding royalty interest (the "***ORRI***").[36] After several years of little to no development on the Puryear Lease, Neuhoff Oil sold its overriding royalty interest (along with numerous other unrelated oil and gas properties) at auction. Neuhoff Oil subsequently dissolved and assigned all of its remaining interests to

[29] *Id* at 2.

[30] *Id*.

[31] *Id*.

[32] *Id* at 2-3.

[33] *Id* at 13.

[34] *Piranha Partners v. Neuhoff*, 596 S.W.3d 740 (Tex. 2020).

[35] *Id* at 742.

[36] *Id*.

various members of the Neuhoff family (collectively, the "***Neuhoffs***").[37] Piranha Partners was the successful bidder at the auction and, at the time of the assignment from Neuhoff Oil to Piranha Partners, the Puryear B #1-28 well was the only well producing from the Puryear Lease.[38]

The assignment from Neuhoff Oil to Piranha Partners contained the following conveyance language:

> [Neuhoff Oil] does hereby assign, sell and convey unto [Piranha] . . . without warranty or covenant of title, express or implied, subject to the limitations, conditions, reservations and exceptions hereinafter set forth . . . all of [Neuhoff Oil's] right, title and interest in and to the properties described in Exhibit "A" (the "Properties").[39]

Thereafter, the assignment contained the following additional language:

> All oil and gas leases, mineral fee properties or other interests, INSOFAR AND ONLY INSOFAR AS set out in Exhibit A . . . whether said interest consists of leasehold interest, overriding royalty interest, or both . . . which [interest] shall include any working interest, leasehold rights, overriding royalty interests and reversionary rights held by [Neuhoff Oil] as of the Effective Time.[40]

The assignment contained a two-page Exhibit A with the following entry pertaining to the Puryear Lease:

> Lands and Associated Well(s):
> ***Puryear*** #1-28
> Wheeler County, Texas
> NW/4, Section 28, Block A-3, HG&N Ry Co. Survey
>
> Oil and Gas Lease(s)/Farmout Agreement(s):
> Oil & Gas Lease(s)
> Lessor: [the Puryears]
> Lessee: Marie Lister
> Recorded: Volume 297, Page 818.[41]

[37] *Id* at 743.

[38] *Id*.

[39] *Id* at 744.

[40] *Id* at 744 and 753.

[41] *Id* at 745.

In subsequent years, additional wells were drilled on the Puryear Lease and the operator of those wells paid the ORRI for production therefrom to the Neuhoffs while also paying the ORRI for production from the Puryear B #1-28 well to Piranha Partners.[42] However, based on a subsequently drafted title opinion, the operator began crediting the ORRI for the entire Puryear Lease to Piranha Partners and the Neuhoff's brought suit.[43]

Piranha Partners argued that the assignment from Neuhoff Oil covered all of the lands covered by the Puryear Lease and that the reference to the Puryear B #1-28 and the NW/4 of Section 28 were only included for identification purposes since the Puryear B #1-28 was the only well producing at the time of the assignment.[44] At trial, the Neuhoffs initially argued that Piranha Partner's interest in the ORRI was limited only to the Puryear B #1-28 well.[45] However, on appeal the appellate court held (and the Neuhoffs subsequently agreed) that the conveyance language in the assignment covered both the Puryear B #1-28 well and the entirety of the NW/4 of Section 28.[46] Thus, the Texas Supreme Court had to determine if the assignment conveyed the ORRI for the entire leased premises of the Puryear Lease (as argued by Piranha Partners) or if the ORRI was limited to the NW/4 of Section 28 (as held by the appellate court and argued by the Neuhoffs).

In its analysis, the Texas Supreme Court devoted considerable time to discussing various rules of construction and interpretation.[47] Part of this analysis was a discussion of the surrounding circumstances of the assignment from Neuhoff Oil to Piranha Partners, including a review of the initial auction documentation and offering materials.[48] Ultimately, the court found that none of the foregoing analysis was determinative as to the extent of the interests the parties intended to assign in the assignment.[49]

The court then turned to the language in the assignment itself. In looking at the language in Exhibit A, the court stated that "[s]tanding alone, Exhibit A is at least ambiguous, if not completely unenforceable . . . [b]ut our 'holistic and harmonizing approach' to construing deeds and similar documents requires us to consider all of the Assignment's provisions . . ." .[50] Taking the foregoing approach, the court looked at various provisions of the assignment in an attempt to harmonize the conveyance language with the entry provided on Exhibit A.

First, the court points out that the language in the conveyance clause states that the interest conveyed "*shall include any* . . . overriding royalty . . . held by [Neuhoff Oil] as of the Effective Time."[51] The court interpreted this to include the entirety of any overriding royalty

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[42] *Id* at 743.

[43] *Id*.

[44] *Id* at 745.

[45] *Id*.

[46] *Id* at 746.

[47] *See generally id* at 746-53.

[48] *Id* at 749-52.

[49] *Id* at 752.

[50] *Id.* At 752-53.

[51] *Id* at 753.

(including the ORRI) owned by Neuhoff Oil to the extent that such interest was identified on Exhibit A.[52] Second, the court found that additional language in the conveyance clause covering "[a]ll presently existing contracts . . . to the extent they affect the Leases" indicated that Neuhoff Oil intended to convey its entire interest in the Puryear Lease and not just the lands and the well listed on Exhibit A.[53]

Lastly, the court emphasized that the assignment provided additional language requiring that payment of the ORRI was to be made "out of and only out of the oil and gas produced, saved and marketed pursuant to the terms and provisions of the *oil and gas leases* described on Exhibit A."[54] Because the reference in the foregoing sentence was to the "oil and gas leases" as a whole and not to any specific lands or wells, the court held that this further indicated that the conveyance covered the entire ORRI. Thus, taken in its totality, the court held that the assignment conveyed to Piranha Partners the entire ORRI covering the Puryear Lease and that the reference to the NW/4 of Section 28 and the Puryear B #1-28 well were merely used for identification purposes and did not function to limit the grant of the ORRI.[55]

III. *Conveyancing Language*

As demonstrated by the foregoing case discussions, the language used to either convey or reserve a wellbore interest is paramount to what type of interest is being assigned or reserved and what appurtenant rights are included. At the outset, it is important to distinguish between the conveyance of a real property interest and the assignment of a contractual interest. Regarding wellbore interests, certain sellers will try to reserve all interest in the leases attributable to the conveyed well. For example, a Seller may try to include the following reservation:

> Seller reserves and retains one hundred percent (100%) of the leasehold estate upon which the Subject Well is located and Buyer acknowledges and agrees that nothing in this Wellbore Assignment will be construed or interpreted to include or convey any of Seller's leasehold ownership related to the Subject Well, whatsoever, such being expressly reserved to Seller.

This type of conveyance likely assigns only a contractual interest in the production from the applicable well and thus would not be afforded all of the legal protections that accompany a real property interest. Therefore, a buyer should typically insist that the wellbore interest include associated leasehold title. Using the following sample language (or something similar) will ensure that a real property interest is conveyed:

> Assignor hereby SELLS, ASSIGNS, TRANSFERS, GRANTS, BARGAINS, and CONVEYS unto Assignee all of Assignor's right, title and interest in and to: (i) the wellbore of the oil and gas

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[52] *Id.*

[53] *Id* at 754.

[54] *Id*.

[55] *Id* at 754. Two justices wrote a decent in this case stating that they found the assignment to be ambiguous and would have remanded the case back to the trial court.

> well described on Exhibit "A" (the "**Wellbore**"), attached hereto; (ii) the associated oil, gas and other associated hydrocarbons produced from the Wellbore; and (iii) the oil, gas and mineral leases described on Exhibit "A," INSOFAR AND ONLY INSOFAR as they cover the Wellbore or are necessary to entitle Assignee to the production of hydrocarbons from the Wellbore and to participate in operations with respect thereto and to any pooling and unitization rights associated therewith.[56]

Understandably, a seller will want to ensure that it does not convey rights beyond what the parties have agreed. However, using this sample language makes it clear that any conveyed leasehold interest is limited solely to the wellbores of the applicable wells and does not include rights to produce from other portions of the leases. In addition, making specific reference to pooling and unitization rights should also alleviate the issue as presented in the *Pond* case. To the extent that the buyer is going to become the operator of the conveyed well, additional language could be inserted that expressly gives the buyer the right to establish proration units with the Railroad Commission or to even establish or amend pooled units. In the case of the latter, this point will need to be negotiated with the seller as the right to amended or establish a pooled unit would typically stay with the seller that is retaining the remainder of the leasehold that the wellbore is being carved from.

Conveyances/Reservations of Specific Depths

Another common theme is to identify specific depths that the buyer will acquire, or that the seller will reserve. Typically, such depths have a defined term in the purchase agreement, which should identify those depths with a reference to the type log from a specific oil and gas well, for example:

> "_____ Formation" means the stratigraphic equivalent of the [formation name] as shown between the depths of [top and bottom footage marks] in that certain [type of log] log dated [___] for the [insert well operator and well name], API# [_____].[57]

When used in a wellbore conveyance, the insertion of a "Target Formation" limitation will usually be used as follows, "Assignor hereby SELLS, ASSIGNS, TRANSFERS, GRANTS, BARGAINS, and CONVEYS unto Assignee all of Assignor's right, title and interest in and to i) the wellbore of the oil and gas well described on Exhibit "A" ***INSOFAR AND ONLY INSOFAR as to the Target Formation*** (the "**Wellbore**")" (emphasis added).

Even where the buyer is acquiring all depths, such a definition is still sometimes used in the purchase agreement for purposes of limiting the seller's exposure to title defects to a specific

[56] Conversely, if a seller is retaining a specific well(s), then the reservation should specifically reserve the right to consent to the formation of or amendment to any pools or units which may cover such well(s).

[57] A reservation of depths in and to oil and gas leases are commonly included in the list of "Excluded Assets" agreed by the parties. To the extent that there are otherwise no defined "Excluded Assets," the above language (or something similar) will ensure that a seller retains its rights in the applicable oil and gas leases outside of the Target Formation.

target formation. Thus, for purposes of asserting title defects, a buyer will be limited to asserting only those defects affecting that formation. If the parties contemplate using two or more target formations, the parties should allocate the applicable lease/well (or unit or development section) value among such formations. Doing so will ensure that there is a clear agreement between the parties as to how to value a title defect that may affect one target formation in a given lease/well but not the other(s).

IV. POTENTIAL IMPACT ON THE TERMS OF AN UNDERLYING OIL AND GAS LEASE

Segregating an oil and gas lease by wellbore (or otherwise) could trigger various obligations that the parties may not have intended or considered. For example, contemporary oil and gas leases typically contain some form of continuous drilling obligation. When a buyer acquires only a portion of the tracts covered by such a lease (or in certain wells), the seller may or may not be conducting operations on its retained portion of the lease necessary to comply with an existing continuous drilling obligation. Though this typically would not cause an issue for the buyer of a wellbore interest, the buyer of such interest needs to be aware of potential defaults by its seller as to the terms of the underlying oil and gas lease(s) as to avoid potential lease termination or other penalties in the future.

A related issue is ensuring that a segregated lease in its secondary term continues to produce in paying quantities. As an example, a seller assigns an oil and gas lease but reserves its interest in all then-existing wells. After closing, unless the buyer can immediately drill its own wells, it will have to rely on the production from the seller's retained wells to maintain the lease. In contrast, if a Seller sells all of the existing wells on a lease, it will have to rely on its buyer to continue to produce those wells in paying quantities. Should the parties be faced with these (or similar) issues, there are a few different options to consider.

First, if the parties decide that they are in need of a long term solution, they should consider executing a form of lease cooperation agreement. Typically, these types of agreements remain in force for the life of the applicable lease and cover a litany of lease maintenance and operational issues. In the context of the examples described here, the agreement should provide that, after closing, the seller will continue operations necessary to comply with any applicable continuous development obligations (in the first example) or to produce hydrocarbons in paying quantities (in the second example). Typically, the seller's obligations will terminate on the earlier occurrence of (1) a specific period of time after closing (commonly from six to 24 months) or (2) when the buyer has begun operations on the lease necessary to comply with any continuous development obligation or to produce hydrocarbons in paying quantities (as applicable).

Alternatively, instead of a firm obligation to continue operations, the parties could agree that they only have an obligation to provide such operations until proper notice is given to the other party. For example, the agreement could obligate the seller to provide notice to the buyer (typically from 60 to 120 days in advance) that the seller intends to cease conducting the operations as described. This option gives the seller more flexibility while still providing some protection to the buyer to give it time to take the necessary steps to maintain the lease on its own. In addition to providing notice, where the seller has retained the only producing well(s) on a

lease, the buyer should also seek to have the option to take over and acquire such retained well(s) from the seller should it decide to cease operations.[58]

Second, if the parties decide that only a temporary solution is needed, they could either incorporate the necessary operations into a transition services agreement or include them directly into the terms of the applicable purchase and sale agreement as a post-closing covenant. If the former option is used, the parties will have more flexibility to include a variety of different operations that may be necessary depending on the situation. If the parties do not plan on otherwise using a TSA post-closing, then including a post-closing covenant in the purchase and sale agreement would likely be the best option.

V. OTHER POTENTIAL ISSUES

Concurrent Use of the Surface

When a lease is severed, use of the surface estate can create numerous operational and logistical problems. Some common issues include: (1) joint use and maintenance of roads; (2) joint use of facilities or well pads; (3) conflicts between different operators over concurrent operations and the availability of drillsites; and (4) joint use of gathering and disposal systems.

As with lease maintenance concerns, these issues can all be addressed in a lease maintenance and cooperation agreement, pursuant to which the parties agree at or before closing as to how these (or similar) issues will be handled in the future.

Subsurface Interference

When a buyer purchases only wellbore interests, it must also be cognizant of the potential interference that could be caused by other operations on the same leasehold. For example, a buyer purchases the rights to one well on a lease that has several other wells drilled on the same acreage. To the extent possible, such buyer should try to negotiate certain operating restrictions with its seller to prevent such seller from conducting operations on its retained wells (or drilling new wells) that could unduly interfere with the current production from the buyer's well. An example would be a restriction such that the seller agrees not to drill any new wells (or conduct any deepening or sidetracking operations for existing wells) within a certain perimeter around the buyer's well.

As a second example, a buyer may only purchase a certain portion of a seller's wellbore rights. In this scenario, the seller and buyer shall remain working interest partners in that specific well. The buyer should try to negotiate restrictions on the seller to prevent such seller from conducting operations that do not benefit buyer. Such operations could be the seller temporarily shutting in the subject well while it conducts operations on a separate retained well in which buyer owns no interest. Alternatively, the seller could shut-in the subject well in order to sidetrack into a new producing zone that buyer owns no interest in. It is likely that (short of negligence on the seller's part) there would be little a buyer could do to prevent these types of

[58] If the parties have entered into a traditional farmout agreement, the farmor should insist that it retain a similar right whereby it would have the ability to take over operations in the event the farmee fails to conduct operations necessary to perpetuate an applicable lease.

operations without language in the agreement between the parties preventing or restricting such activities.

Maintenance of Uniform Interest Provisions

To the extent that any of the segregated leases are subject to an AAPL model form operating agreement, the assignment of specific wellbores would likely violate the terms of the maintenance of uniform interest provision commonly found in such agreement. From a buyer's perspective, the ideal solution would be to make the seller obtain an appropriate waiver from the applicable co-working interest owners prior to closing. Alternatively, the buyer could close without such waiver but should require that the seller provide an indemnity to the buyer in the event a third party makes a claim for damages due to a breach of the provision.