

THE NEW HORIZONTAL AGREEMENT AND THE
PROSPECT OF AN ENTIRELY NEW FORM

Jeff Weems and Amy Tellegen

Porter Hedges LLP
Houston, Texas

Synopsis

I. Introduction

A. Abstract

B. History

II. New Provisions in the Horizontal Form

A. Article I—Definitions

- [1] AFE
- [2] Deepen
- [3] Displacement
- [4] Drillsite
- [5] Horizontal Rig Move-On Period
- [6] Horizontal Well
- [7] Lateral
- [8] Plug Back
- [9] Sidetrack
- [10] Spudder Rig
- [11] Terminus
- [12] Total Measured Depth
- [13] Vertical Well

B. Article VI—Drilling and Development

- [1] Article VI.A.: Initial Well
- [2] Article VI.B.1.: Subsequent Operations – Proposed Operations
- [3] Article VI.B.4.: Subsequent Operations – Deepening
- [4] Article VI.B.5.: Subsequent Operations – Sidetracking
- [5] Article VI.B.9.: Subsequent Operations – Spudder Rigs
- [6] Article VI.B.10.: Subsequent Operations – Multi-Well Pads
- [7] Article VI.C.1.: Completion of Wells – Completion (Casing Point Election)

C. Article XV—Miscellaneous (Operations Without Execution of All Parties on Exhibit A)

D. Article XVI—Other Provisions

- [1] Conflict of Terms
- [2] Operator’s Duty
- [3] Priority of Operations

III. Topics Being Considered for the New Model Form

- A. The Exculpatory Clause**
- B. Continuing/Successor Liability**
- C. Title/Interests of the Parties**
- D. Disclosure of Information and Confidentiality**
- E. Other Topics**

IV. Conclusion

I. Introduction

A. Abstract*

Over the past decade, developments in the drilling industry—such as the explosion of horizontal drilling—have spurred increased customizations to model form JOAs (Model Form) published by the American Association of Professional Landmen (AAPL). The AAPL recognized that these customizations hindered the certainty and uniformity of JOAs throughout the industry. In response, it crafted the AAPL 610-1989 Model Form Operating Agreement – Horizontal Modifications (Horizontal Form). This paper discusses the new language in the Horizontal Form and the subjects of upcoming revisions.

* This article is derived in large part from an earlier article by Jeff Weems titled, “Changes Within the AAPL 610-1989 Model Form Operating Agreement – Horizontal Modifications and Other Developments Regarding the Model Form Operating Agreement,” 59 *Rocky Mt. Min. L. Inst.* 29-1 (2013). Jeff is a member of the AAPL Task Force that is re-writing the Model Forms.

B. History

Over the last several decades, commentators discussing joint operating agreements (JOA) usually focused their analyses on the intricacies of the provisions and the conflicting and disputed interpretations of these agreements by courts in the United States.¹ These analyses and interpretations often involved language provided in Model Forms published by the AAPL. Because of these varying analyses and interpretations, landmen were prompted to customize the current Model Form to fit the expectations of the parties to a

¹ See, e.g., Andrew B. Derman, “The 1989 AAPL Model Form Operating Agreement – Why Are You Not Using It?,” *Oil and Gas Agreements: Joint Operations* 8-1 (Rocky Mt. Min. L. Fdn. 2008); Ernest E. Smith, “Joint Operating Agreement Jurisprudence,” 33 *Washburn L.J.* 834 (1994); Robert C. Bledsoe, “The Operating Agreement: Matters Not Covered or Inadequately Covered,” 47 *Rocky Mt. Min. L. Inst.* 15-1 (2001); Mark A. Matthews & Christopher S. Kulander, “Additional Provisions to Form Joint Operating Agreements,” *State Bar of Tex. Oil Gas & Min. L. Sec. Rep.* vol. 33, no. 2, at 39 (Dec. 2008); Michel E. Curry, “The Operating Agreement – After the Honeymoon,” 31 *State Bar of Tex. Oil Gas & Min. L. Inst.* (2005).

particular transaction.² In addition, changes and developments in industry practices spurred customization; one of these industry developments has been the explosion of horizontal drilling.

In the last two decades, horizontal drilling has expanded drastically in North America.³ Although more expensive to drill,⁴ the speed of resource production and the inherent efficiency in needing fewer wells to produce the same volumes ensure that horizontal drilling is here to stay.

Recognizing the need for cost-saving measures in these expensive wells, the industry has developed several innovative procedures and

² See Michel E. Curry, “The Perfect Operating Agreement: Considerations in Drafting Changes to the Model Form JOA,” 26 *State Bar of Tex. Oil Gas & Min. L. Inst.* 17-1 (2008).

³ Horizontal drilling has expanded from 48 rigs drilling horizontally during the week of January 8, 1993, to 1,112 during the first week of 2013. Baker Hughes, “North America Rotary Rig Count (US Drilling Type 1991–2012)” (June 2013) (Rig Count), http://media.corporate-ir.net/media_files/IROL/79/79687/na/North_America_Rotary_6.xls.

⁴ See generally Hobart King, “Directional and Horizontal Drilling in Oil and Gas Wells” (2013) (“When combined with hydraulic fracturing a [horizontal] well can cost up to three times as much per foot as drilling a vertical well.”), <http://geology.com/articles/horizontal-drilling/>.

approaches to horizontal drilling. From the use of rigs intended to drill only the vertical portion of the well⁵ to the idea of using a single surface location (and common production equipment) for multiple wells,⁶ the industry continues to address and work on reducing the costs associated with drilling and development with horizontal wells. The introduction of these new practices, however, requires that they be addressed in the document primarily responsible for governing the relationship of the parties participating in these operations: the Model Form. The proliferation of these custom forms defeats a key function of the Model Form, which is to provide certainty and uniformity in the industry.

In response, the AAPL decided to gather custom forms, to analyze the needs in the industry, and to craft a versatile Model Form that included language for horizontal operations. Recently, the AAPL has approved the initial response, the AAPL 610-1989 Model Form Operating Agreement – Horizontal Modifications (Horizontal Form).

⁵ See § II.B.5, *infra* (Spudder Rigs).

⁶ See § II.B.6, *infra* (Multi-Well Pads).

While gathering information and drafting the Horizontal Form, the AAPL recognized that legal and operational issues beyond horizontal drilling have arisen since the implementation of the 1989 Model Form. As a result, the AAPL is now drafting an entirely new Model Form, one that will include both the horizontal modifications and other revisions meant to address particular issues that have arisen in the last 24 years.

This article first discusses the Horizontal Form and the rationale behind the new language. Next the article addresses particular changes contemplated for the next version.

II. Provisions in the New Horizontal Form

Before exploring and illustrating the language and concepts introduced in the Horizontal Form, a couple of standards regarding model forms bear repeating. First, a model form is not meant to encompass every potential issue or relationship in joint operations.⁷ The parties to an agreement must be

⁷ See Michel E. Curry & Carleton L. Ekberg, “Operations Not Covered or Inadequately Covered by the Joint Operating Agreement and Other Problem Areas,” *Oil and*

aware of and account for particular factors that affect the operations and activities in their contract area.

Second, the provisions added to create the Horizontal Form do not reflect all of the changes the committee is considering; rather, these provisions were meant to expeditiously get a Model Form into circulation that addressed many of the common issues involving horizontal development. Having said that, note that the Horizontal Form still can be used for a vertical well. The new and modified definitions, together with all of the new clauses and segments, expressly make their application contingent upon the operations or proposals involving a horizontal well. The old provisions remain intact.

A. Article I—Definitions

Crafting the Horizontal Form required the committee to add and change a series of definitions that address new terms and concepts unique to horizontal operations.⁸

[1] AFE

Gas Agreements: Joint Operations 8-1 (Rocky Mt. Min. L. Fdn. 2008).

⁸ Terms that become defined terms in the Horizontal Form will be capitalized from the outset.

Modern exploration activities are very expensive and involve substantial and intensive preliminary planning. A part of this preliminary work involves the preparation and distribution of an Authority for Expenditure (AFE), which is the cost estimate for a proposed operation. In the 1989 Model Form, AFE's were described as an estimate of costs anticipated for a proposed operation. Despite this language, in recent years many lawsuits have arisen regarding the weight and importance of an AFE.⁹ Recently, the argument that an AFE was more than an estimate – indeed that it is a separate contracted arrangement – again was urged unsuccessfully.¹⁰ In order to have the definition of AFE more explicitly state industry standards, Article I.A. was supplemented to reemphasize that an AFE is just a good faith estimate and is not a contractual commitment.

⁹ *E.g.*, *Abraxas Petroleum Corp. v. Hornburg*, 20 S.W.3d 741 (Tex. App.—El Paso 2000, no pet.) (illustrating that conducting operations outside those stated in the AFE or submitting unfounded AFEs remain some of the only routes through which parties have successfully challenged AFEs).

¹⁰ *Colt Unconventional Res., LLC v. Resolute Energy Corp.*, No. 3:13-CV-1324-K, 2013 WL 3789896, at * 4 (N.D. Tex., July 19, 2013).

[2] Deepen

As discussed below, when a horizontal well reaches the productive interval, the horizontal component of the well exceeds the vertical component of the well—the portion known as the lateral, also discussed below. Thus, the act of deepening in a horizontal well typically will result only in an extension of the lateral of the well that was planned for, or already exists in, the productive interval. This contrasts with the concept of deepening in a vertical well, which requires the deepening operation to extend to a deeper zone than that planned or achieved. The definition of “Deepen” in Article I.D. was supplemented to include this concept.

[3] Displacement

The distance a Lateral traverses is an important metric for a Horizontal Well because it directly impacts the well's costs and exposure to the productive interval. In addition, this distance, the “Displacement,” can affect the amount of acreage the well is allowed to hold. Like many states, Texas has a statutory

definition of this term,¹¹ and such statutory definition is given precedence in the Horizontal Form. Article I.E. is new and reflects the deference, for Texas, to the Railroad Commission's definition.

[4] Drillsite

For purposes of a Horizontal Well, the concept of a Drillsite must expand to include each tract penetrated by the wellbore.¹² For example, in the urban drilling the Barnett Shale, it is not unusual to have a remote surface location that will not participate in the production unit.¹³ The definition of "Drillsite" in the Horizontal Form was expanded, therefore, to include such remote source locations. The expansion in the definition of the term "Drillsite" affected another part of the Horizontal Form. Because the Drillsite concept now covers all of the oil and gas interests

¹¹ 16 Tex. Admin. Code 3.86(a).

¹² Note that not every tract considered to be part of the Drillsite will necessarily have production allocated to it. *Contra* Larsen, *supra* note 16, at 8-8 (citing H. Phillip Whitworth, "Horizontal Drilling in Urban Areas and Particularly the Barnett Shale," 25 *State Bar of Texas Advanced Oil, Gas & Energy L. Inst.* 7-1, 7-6 (2007)).

¹³ *Id.*

through and under which the wellbore, including the Lateral, is drilled, there was no need to expand the scope of Article IV.¹⁴

[5] Horizontal Rig Move-On Period

This definition addresses a concept left largely untouched by earlier commentators. In reviewing the custom forms written by the industry, it was apparent that many, if not most, of the horizontal operations across the United States employed the approach of using a smaller "Spudder Rig" to drill all or most of the vertical portion of a horizontal well.¹⁵ Once the Spudder Rig is finished, a rig capable of drilling the remainder of the well (horizontal rig) moves onto the location and completes the drilling operations. Industry-wide, there is a significant variance in the time anticipated between the departure of the Spudder Rig and the arrival of the horizontal rig. That variance is often the source of contractual and operational squabbles.

As a result, the Horizontal Form contains several

¹⁴ To encompass such remote tracts as being covered under the title examination standards in that Article.

¹⁵ Patrick H. Martin & Bruce M. Kramer, 8 *Williams & Meyers Oil and Gas Law: Manual of Terms* 996 (2012).

new definitions and segments that address important factors dealing with the timing and use of Spudder Rigs and horizontal rigs. Article I.I. defines the “Horizontal Rig Move-On Period” as the number of days after the date of rig release of a Spudder Rig until the date a rig capable of drilling a Horizontal Well to its Total Measured Depth has moved on to location.¹⁶

[6] Horizontal Well

Many states in which horizontal operations are conducted have statutory definitions of what constitutes a Horizontal Well.¹⁷ As noted above, the Horizontal Form defers to the rules of the agency in charge of the Contract Area whenever possible. When no local rules or regulations are available, the committee

¹⁶ Note that a party may want to further clarify this time period when it anticipates that the horizontal rig may take more than one day to move on to or to be constructed on the location.

¹⁷ See Lamont C. Larsen, “Suggested Changes to the 1989 AAPL Form Operating Agreement to Address Horizontal Development,” Horizontal Oil & Gas Development 8-1, 8-5 to 8-6 (Rocky Mt. Min. L. Fdn. 2012). In Texas, the Railroad Commission defines a Horizontal Well as a Horizontal Drainhole Well in 16 Tex. Admin. Code § 3.86(a).

adopted the most commonly used definition in the industry, namely that a Horizontal Well is a well containing one or more Laterals which are drilled, Completed or Recompleted in a manner in which the horizontal component of the Completion interval (1) extends at least one hundred feet (100’) in the objective formation(s) and (2) exceeds the vertical component of the Completion interval in the objective formation(s).

[7] Lateral

This term has a commonly understood meaning – this is the horizontal part of the wellbore. The concept added to this definition is that everything after the initial “turn” from vertical to horizontal remains a part of the lateral regardless of whether the wellbore subsequently acquires a more vertical orientation.

[8] Plug Back

In a Vertical Well, a typical reason for reducing the depth of the well by plugging back is to abandon a previously producing formation and to attempt to complete the well in a shallower formation. In a Horizontal Well, the Lateral typically is located in one Zone and may comprise over half of the Total Measured Depth

of the well. This “plugging back” a Horizontal Well might seem to merely relate to shortening a lateral. The consensus of industry practitioners, however, recommended against including operating involving shortening a lateral within the concept of plugging back. The primary justification for this is the desire in the industry to give the operator as much discretion as possible. Therefore, the definition of plug back for a horizontal well retains the “shallower zone” concept already in place with vertical wells. In other words, to plug back a Horizontal Well means to test or complete the well at a stratigraphically shallower Zone.

[9] Sidetrack

In the context of a vertical well, Sidetrack means to change the path of the wellbore from the vertical or its intended deviation so as to result in a new bottom hole location. Because deviations from the vertical are anticipated in a Horizontal Well, the definition of Sidetrack in the Horizontal Form is expanded to encompass either a deviation that will change the radial direction of the Lateral within the initial Zone or will change the direction of the Lateral to extend into a different

Zone, or both. Further, in the Horizontal Form, the definition of Sidetrack retains the exception for deviation operations undertaken to straighten the hole or drill around junk in the hole or to overcome other mechanical difficulties.¹⁸

[10] Spudder Rig

As discussed in the Horizontal Form, a Spudder Rig is only employed to drill all or a part of the vertical portion of the Horizontal Well. As a point of clarification, Spudder Rigs do not include rigs used only to set conductor pipe.

[11] Terminus

With vertical wells, the bottom hole location can have particular importance in case of title issues or other situations that affect the interests of the parties, especially in light of Articles III and IV. That particular aspect is not as critical with a Horizontal Well. Thus, the Horizontal Form adopts the state regulatory definition for terminus or, in its absence, the

¹⁸ See Dorsey T. Roach, “Current Issues Involving Operating Agreements,” *60th Inst. on Oil and Gas L.* § 5.03[6] (Ctr. for Am. & Int’l L. 2009).

common industry definition that the terminus is the farthest point drilled in the Lateral.¹⁹

[12] Total Measured Depth

The Total Measured Depth of a Horizontal Well is the entire distance travelled by the wellbore. It includes the vertical component, the “curve” where the Lateral is begun, and the entire Lateral. If a common vertical portion is used for multiple Laterals, each Lateral, measured together with the vertical component of the well, shall constitute the Total Measured Depth of that individual well. As a point of clarification, the Horizontal Form notes that whenever the terms “depth” and “total depth” appear, they shall mean “Total Measured Depth.”

[13] Vertical Well

Because the Horizontal Form can be used for any type of well, the term Vertical Well required a definition. The definition is simple: anything that is not a Horizontal Well is a Vertical Well.

As a final note to the Definitions section, the Horizontal Form includes a

¹⁹ See 16 Tex. Admin. Code § 3.86(a)(6).

Scrivener’s Instruction admonishing practitioners to carefully check both the leases and the state statutes and regulations involved. For example, just because the parties to a Horizontal Form may agree on a procedure involving both a Spudder Rig and a horizontal rig and a particular Horizontal Rig Move-On Period, the respective leases may contain continuous operations clauses or other strict requirements for maintaining the lease. These provisions likely would not be altered or extended by a Horizontal Rig Move-On Period or other Horizontal Form provision. Similarly, state statutes could require particular reporting or other activity in order to keep a permit alive, regardless of what some of the parties might agree to do in a Horizontal Form.

B. Article VI—Drilling and Development

Although operations on Horizontal Wells differ greatly from those on Vertical Wells, many of the provisions of Article VI are applicable to both without modification. The exceptions, of course, are important.

[1] Article VI.A.: Initial Well

The call for the initial well in Article VI.A. does not vary greatly when put into the context of a Horizontal Well. Most importantly, the Horizontal Form requires the parties to identify the surface hole location and the terminus of the Lateral.

**[2] Article VI.B.1.:
Subsequent Operations
— Proposed Operations**

In regard to the subsequent operations section of the Horizontal Form, industry participants and commentators noted that significant disagreements arose from situations where subsequent horizontal operations were proposed with insufficient detail to allow the parties to decide whether such operations were worthwhile. In light of the extreme expense involved in drilling and completing Horizontal Wells in many areas,²⁰ the need for detail in proposals for subsequent operations is magnified. This need was addressed by adding substantial requirements for a valid proposal to the first paragraph of Article VI.B.1. (Proposed Operations). First, a valid proposal relating to

²⁰ An Eagle Ford Shale well can cost \$7 million to \$10 million to bring into production. Jennifer Hiller, “Drillers drawn to rocks around Eagle Ford, too,” *San Antonio Express-News*, Nov. 3, 2012.

subsequent horizontal operations must contain an AFE. Moreover, a valid proposal for a Horizontal Well must state the proposed operation is a Horizontal Well operation, then must identify the Total Measured Depth, the surface hole location, the terminus (termini), and the Displacement. In addition, a valid proposal must identify the rigs planned for use (like Spudder Rigs) and must discuss the scheduling of the rigs (such as a Horizontal Rig Move-On Period). Finally, a valid proposal must identify the proposed staging and sizing of stimulation operations (such as hydraulic fracturing plans).

In regard to this segment, it was noted that the Initial Well under a JOA, especially a Horizontal Well, will almost always have at least the level of detail specified in the language noted above. The emphasis on the requirement for detail was placed in the subsequent proposal section, therefore, to ensure that proposals for additional operations were adequate to allow all parties to evaluate such a proposal with as much information as possible—especially in light of the cost of Horizontal Wells.

A final comment on this segment is important. If a proposal is too general, the

Consenting Parties run the risk of having a party they believed was non-consent benefit from hindsight and assert a right to participate, after the fact, in the (successful) operation.²¹ This is especially critical in a Horizontal Well operation, where the financial risks are significant. Requiring more expansive detail as set forth in the new language is intended to help insulate Consenting Parties from the unwelcome appearance of a free-riding party.

**[3] Article VI.B.4:
Subsequent Operations —
Deepening**

In the case of a Vertical Well, proposals for Deepening operations have particular import. As noted earlier, the standard JOA definition of “Deepen” requires that such an operation target a Zone deeper than that included in the original proposal. This variance is so significant that the Model Forms have given a party that originally non-consented to a well or proposal the right to elect to join in Deepening operations on that

²¹ Milam Randolph Pharo, Constance L. Rogers & Howard Boigon, “Liabilities of the Parties to a Model Form Joint Operating Agreement: Who Is Responsible for What?,” *Oil and Gas Agreements: Joint Operations* 5-1, 5-17 (Rocky Mt. Min. L. Fdn. 2008).

same well, subject to contractually specified obligations of reimbursement and payment.²²

As discussed above, in a Horizontal Well the terms “Deepen” and “Deepening” take on a new meaning. In a Horizontal Well, the Deepening operation continues to focus on the same Zone, calling for an increase in the length of an existing Lateral within the originally targeted Zone. Because Deepening in a Horizontal Well does not invoke the prospect of drilling into a different, deeper Zone, Deepening operations in a Horizontal Well are more akin to a recompletion operation in a Vertical Well. As a result, the same new election concessions offered to Non-Consenting Parties in a Vertical Well are not needed here.

Another reality connected to Horizontal Wells applies here. In a Horizontal Well proposal, the cost for all of the operations, drilling and completion, are contained in the proposal and AFE. Because Deepening typically does not represent a significant departure from the initial costs and objectives of a Horizontal Well, original Consenting Parties are not given

²² See 1989 Model Form § VI.B.4.

the opportunity to non-consent to Deepening operations under this section.

To reflect these realities, the Horizontal Form specifies that Article VI.B.4, which calls for a new election if deepening operations are proposed, does not apply to Horizontal Wells.

Practitioners may want to consider whether particularly long and/or expensive Deepening of an existing Lateral might trigger the right to an election under Article VI.B.4.²³ If so, such language should be included in Article XVI.

**[4] Article VI.B.5.:
Subsequent Operations—
Sidetracking**

In a manner similar to Deepening, Sidetracking operations are considered to be exceptional enough in connection with a Vertical Well to merit an opportunity for all parties to the JOA to elect whether to participate in such operations, subject again to the obligation to reimburse and make payments.²⁴

In a Horizontal Well, Sidetracking operations are treated like Deepening operations. Because the parties envision veering the

wellbore from the vertical to the horizontal in a Horizontal Well, the standard for Sidetracking, and an election to participate in such an operation found in a Vertical Well JOA, does not apply. The Horizontal Form states that VI.B.5, which allows a new election if sidetracking operations are proposed does not apply to Horizontal Wells.

Again, as a cautionary note, practitioners may want to address whether to allow for new participation elections if a Sidetracking proposal contemplates drilling or completion operations in a deeper Zone. Such language should be added to Article XVI.

**[5] Article VI.B.9:
Subsequent Operations—Spudder Rigs**

As noted above, the expansive use of Spudder Rigs in drilling Horizontal Wells required treatment of situations in which such rigs are used. In the industry, the use of Spudder Rigs reflects one of the best processes developed to help contain the huge costs associated with drilling and completing a Horizontal Well. Their widespread use, however, brought to light common situations where disagreements arose

²³ Larsen, *supra* note 17, at 8-18.

²⁴ *Id.* at 8-18 to 8-19.

as to timing and the allocation of costs associated with their use.

One such common area of disagreement is the manner and method of handling deviations in the Horizontal Rig Move-On Period. As most in the industry are aware, the best laid plans often go awry. Although there may be plentiful rigs available when a JOA is executed, conditions can change rapidly.²⁵ Operators face weather issues and other barriers to the pre-planned, orderly development of prospects.²⁶ To address this aspect of horizontal operations, new Article VI.B.9 was created. This Article, labeled “Spudder Rigs” addresses common situations relating to the use of Spudder Rigs and the Horizontal Rig Move-On Period.

One situation that can arise is when an Operator cannot move a horizontal rig onto the

location within the time frame specified by the parties in a proposal; in other words, a situation where the parties have specified both (1) the use of a Spudder Rig and have set a Horizontal Rig Move-On Period in a proposal and (2) the Operator anticipates that it cannot meet the timing element. In such a situation, the Operator will be allowed to request of the parties one or more extensions (for a specified number of days) of the Horizontal Rig Move-On Period. The request for the extension must be approved by a set percentage of interest of the Consenting Parties. This provision fits with the overarching concept applicable to Model Forms, and the Horizontal Form in particular, that the Operator should have as much flexibility and leeway as is practicable.

The second situation involves an approved Horizontal Well proposal that does not provide for the use of a Spudder Rig. Although many proposals contain a Spudder Rig provision, not all of them do. If the proposal does not specify the use of a Spudder Rig and the Operator subsequently wants to employ one, the Operator should, after notice, seek the approval of the other Consenting Parties. The

²⁵ See generally Steve Berkman & Tory Stokes, “U.S. Rig Fleet Contracts Further, as Activity Continues to Climb,” *World Oil* (2012), <http://www.worldoil.com/November-2012-US-rig-fleet-contracts-further-as-activity-continues-to-climb.html>.

²⁶ See, e.g., Tim Bradner, “Shell’s First Drilling in Arctic Now Pushed into August,” *Alaska Journal of Commerce*, July 13, 2012 (although Shell’s offshore Alaska operations are not covered by an AAPL onshore Model Form, Shell’s struggles with Mother Nature underscore the difficulties in getting a big rig on location).

notice is required to contain a Horizontal Rig Move-On Period. Once the request to involve a Spudder Rig is approved, requests for extensions are handled under subsection (a) noted above.

The third situation affecting Spudder Rigs and the Horizontal Rig Move-On Period occurs when the move-on period (or an extension of the period) is exceeded and no further extension is granted. In that case, the Operator must act. First, the Operator must hold a vote among the Consenting Parties regarding abandonment of the operation. If an insufficient percentage of the Consenting Parties agree to abandon the operation, the Operator must re-propose the well under Article VI.B. to all parties, consenting and non-consenting. At that point, all costs for the well are divided in a manner similar to that under earlier portions of Article VI.B. In other words, new Article VI.B.9(c) provides that, upon the expiration of the Horizontal Rig Move-On Period, the Operator shall: (i) reimburse all remaining advanced funds to each party who advanced such Funds, (ii) if a well's operations are resumed, all costs, whenever incurred, shall be borne by the new Consenting Parties (who will

proportionately reimburse each party who consented to the original proposal but did not consent to the re-proposal such party's share of costs incurred prior to the re-proposal; and (iii) if the well is abandoned, all costs to that point are borne by the original Consenting Parties.

Some industry practitioners have noted that, especially on the Gulf Coast, there might be substantial reserves identified behind the pipe in the portion of the well drilled by the Spudder Rig. In that case, the re-proposal provisions of Article VI.B.9(c) quoted above might be too generous to a party that had previously non-consented the Horizontal Well. Practitioners anticipating this scenario should address such matters in Article XVI.

The use of Spudder Rigs has affected at least one other calculation performed in connection with operations agreements: on what date do drilling operations commence? Following the overwhelming practice in the industry, the Horizontal Form states that the formal "commencement of drilling operations"

of the proposed well occurs on the date the Spudder Rig commences drilling operations.

**[6] Article VI.B.10:
Subsequent Operations—Multi-Well Pads**

Another economy of scale that has arisen with the proliferation of horizontal drilling is the use of multi-well drilling pads. Born from the need to minimize surface disruption when drilling in sensitive areas,²⁷ multi-well pads became commonplace across the industry when the economic virtue of using one surface location for drilling and producing from multiple wells was explored.²⁸ The use of multi-well pads can complicate expense allocation issues under a Horizontal Form, so language was added to note that pad costs from multi-well pad should be allocated, and/or reallocated as necessary, to the Consenting Parties of each of the wells thereon.

²⁷ See, e.g., Denbury Resources, *2011 Corporate Responsibility Report* 43 (2013), http://www.denbury.com/files/doc_downloads/DenburyCRR_Final_050313.pdf.

²⁸ For Continental Resources in the Bakken shale play, cost savings when four wells are drilled from a single pad can exceed \$2.5 million per pad. Eloise Odgen, “ECO-Pad saves costs, land,” *Minot Daily News*, Mar. 23, 2011.

As an important side note, please remember that the COPAS procedures may limit the operator’s ability to reallocate pad costs if too much time has elapsed.

**[7] Article VI.C.1:
Completion of Wells: Completion (Casing Point Election)**

Article VI.C.1 is the casing point election. The 1989 Model Form, along with its predecessors, gave the parties to a proposed well an option: they could elect to require all well proposals to include the costs to drill, test, complete, and equip the wells (Option No. 1), or they could separate the costs of drilling and testing from the costs of completing and equipping a well (Option No. 2).

In a Vertical Well operation, having such an election makes sense. By the time the Vertical Well is drilled and tested, the Consenting Parties typically will have a good idea whether the well merits their further financial and technical investment.²⁹ Allowing the parties to make this subsequent election also keeps them from losing access to vast sums of

²⁹ See Roach, *supra* note 18, § 5.03.

money they otherwise would have prepaid as completion costs in the original AFE.

The situation changes with a Horizontal Well.³⁰ In a Horizontal Well, significant information, and even production, is often obtained while the Lateral is being drilled. This aspect of drilling Horizontal Wells does not fit with the concept of a casing point election. As a result, Article VI.C.1 was customized in the Horizontal Form to mandate that no casing point election is allowed for a Horizontal Well. In other words, for Horizontal Wells, Option 2 is not available.

C. Article XV—Miscellaneous (Operations Without Execution of All Parties on Exhibit A)

The 1989 Model Form included a Miscellaneous section as Article XV. The most significant portion of this Article was Section A, which dealt with Execution. In a nutshell, this section addressed the common problem of spudding a well before the JOA was fully executed.³¹ It provided that the 1989 Model

³⁰ Larsen, *supra* note 17, at 8-20 (citing Curry, *supra* note 2, at 7).

³¹ Andrew B. Derman, *The New and Improved 1989 Joint Operating Agreement: A*

Form bound anyone who had signed it, but also allowed the Operator to terminate the JOA if less than all parties on Exhibit “A” had signed the agreement.³² Under the 1989 Model Form, if the Operator commenced operations without all parties executing the agreement, it agreed to indemnify the other parties for any costs associated with the unsigned interest and was allowed to receive the proceeds attributable to the unsigned interest.

When dealing with Horizontal Wells, the issues of unsigned interests are magnified. In some urban areas, hundreds of individual tracts may comprise a Drilling Unit.³³ In addition, there is a real possibility that unknown or unidentifiable parties who hold an interest in the Contract Area will emerge after the onset of operations. As a result of the increased likelihood that operations may commence, or may need to be commenced, without execution by all parties who hold an interest in the

Working Manual (Natural Res. L. Sec., Am. Bar Assoc. Monograph 15-119, 1991).

³² *Id.*

³³ *See, e.g.*, P-12 Certificate of Pooling Authority for Chesapeake Operating, Inc. for the Chelsea 1H Unit Well, Tarrant County, Texas, filed Mar. 3, 2011, Texas Railroad Commission Records (containing over 1,150 tracts).

Contract Area, whether known or unknown, the Horizontal Form provides an option for the parties when dealing with unsigned Exhibit “A” parties.

The first option is the same as the current version: the Operator indemnifies all Non-Operators for the share of costs attributable to the unsigned parties and will receive any revenues attributed to such interest. The second option is similar to the option in Article VI.B. when less than all parties elect to participate. In other words, after notice of the amount of unexecuted interest, all parties may elect to participate for no additional interest, for only their proportionate share of any additional interest available, or for their proportionate share of additional available interest plus their share of interest declined by other executing parties.

Because these decisions may need to be made quickly, the Horizontal Form states that this election must be made within 48 hours; if no election is made, the presumption is that the party failing to elect wanted no more interest.

D. Article XVI—Other Provisions

Although the “Other Provisions” section of the 1989 Model Form is typically reserved for entries by the parties to the agreement, the Horizontal Form includes three particular provisions that had agreement-wide scope that were placed in Article XVI.

[1] Conflict of Terms

The first provision included in this section of the Horizontal Form addresses situations where terms in Article XVI conflict with other terms in the agreement. As one pair of commentators have noted, disputes on this very subject “are as old as contract law itself.”³⁴ Although some canons of contract construction support the position that custom terms are dominant, such as the one noting that customized terms always trump boilerplate terms, courts in some states are always willing to try to harmonize language even if the terms appear to conflict.³⁵ New Article XVI.A. states that in the case of conflict of terms, Article XVI terms are superior.

³⁴ Matthews & Kulander, *supra* note 1, at 40.

³⁵ *Id.*

[2] Operator's Duty

The next provision relates to the need to equip the Operator, especially one in charge of expensive Horizontal Well operations, with as much contractual flexibility as possible. Although there have been great advances in the technology surrounding Horizontal Well development, the AAPL recognized the need to allow the Operator to behave as a reasonably prudent Operator and adjust activities if the conditions warrant. At the same time, because this Form is written for horizontal operations, the Operator is required to ("shall") drill the well to the objective Zone and drill the Lateral at least to a Displacement where a reasonably prudent operator would stop.

[3] Priority of Operations

Many commentators have stressed the need to include a priority of operations in Article XVI in connection with conflicting proposals relating to a Horizontal Well.³⁶ Because these priorities vary from those outlined in Article VI.B.6, Article XVI.C. requires the following

³⁶ Larsen, *supra* note 17, at 8-21 to 8-22 (citing Matthews & Kulander, *supra* note 1, at 47).

sequence of operations in the case of subsequent elections.

- First: testing, coring or logging;
- Second: Complete drilling operations of all proposed Laterals;
- Third: extend or Deepen a Lateral;
- Fourth: kick out and drill an additional Lateral in the same Zone;
- Fifth: Plug Back the well to a Zone above the Zone in which a Lateral was drilled; if there is more than one proposal to Plug Back, the proposal to Plug Back to the next deepest prospective Zone shall have priority over a proposal to Plug Back to a shallower prospective Zone;
- Sixth: Sidetrack; and
- Seventh: plug and abandon as provided in Article VI.E.

Of course, the Article XVI.C. allows the Operator to vary the order if situation warrants in the operator's discretion as a reasonably prudent operator.

The last addition to the Horizontal Form comes as a Scrivener's Instruction at the end of Article XVI. This instruction is a reminder to the

parties of the potential dangers and ramifications resulting from an Operator's decision to abandon a portion of a Lateral in a well. Although this decision is expressly authorized under Article XVI.B above, title and ownership could easily be affected in light of language in the leases or because of state rules and regulations.³⁷

III. Topics Being Considered For the New Model Form

As noted earlier, the Horizontal Form was put together expeditiously in order to help practitioners looking for drafting guidance. The AAPL is now considering additional revisions for a new model form. It is contemplated that this new Model Form will be similar to the Horizontal Form in that it can apply to either horizontal or vertical well activities.

The topics surveyed below have been the center of many excellent articles and analyses over the last 20 years.³⁸ Additional topics will also be considered.

³⁷ Horizontal Form, art. XVI, Scrivener's Instruction.

³⁸ See *supra* notes 1, 2, 7, 17, 18, 21, 31, *infra* notes 42, 66, 67 and 74. Please refer to these articles for the in-depth analyses these issues merit.

A. The Exculpatory Clause

Article V.A. of each Model Form since 1956 has contained a clause that acts to limit the Operator's exposure to claims by other parties to the JOA. In the 1956 Model Form this clause read:

[Operator] shall conduct all such operations in a good and workmanlike manner, but it shall have no liability as Operator to the other parties for losses sustained, or liabilities incurred, except such as may result from gross negligence or from breach of the provisions of this agreement.³⁹

In the 1977 and 1982 Model Forms it read:

Operator shall conduct all such operations in a good and workmanlike manner, but it shall have no liability as Operator to the other parties for losses sustained or liabilities incurred, except such as may result from gross negligence or willful misconduct.⁴⁰

In its current version, the clause reads:

Operator shall conduct its activities under this agreement as a reasonable prudent operator, in a good and workmanlike manner,

³⁹ 1956 Model Form.

⁴⁰ 1977 and 1982 Model Forms, at art. V.A.

with due diligence and dispatch, in accordance with good oilfield practice, and in compliance with applicable law and regulation, but in no event shall it have any liability as Operator to the other parties for losses sustained or liabilities incurred except such as may result from gross negligence or willful misconduct.⁴¹

The prevailing wisdom offers that the “exculpatory” clause reflects the industry’s acknowledgment that the Operator must receive some protection for shouldering the responsibility of directing and controlling the activities of the parties’ operations in the Contract Area.⁴² Some commentators also note that the Operator performs its duties without real compensation, reasoning that it is only fair to protect it from liability for decisions made in the course of its performance.⁴³

⁴¹ 1989 Model Form; Horizontal Form, at art. V.A.

⁴² See Scott Lansdown, “Reeder v. Wood County Energy LLC and the Application by Texas Courts of the ‘Exculpatory Clause’ in Operating Agreements Used in Oil and Gas Operations,” 8 *Tex. J. of Oil, Gas, & Energy L.* 202, 205–07 (2012–2013).

⁴³ *Id.* Lansdown further asserts that non-operators retain a right of recourse because if an Operator fails to correct a mistake of which it has received notice, then the breach now amounts to willful misconduct. *Id.* at 220. The

[1] **Reeder v. Wood County Energy, LLC**⁴⁴

Wendell Reeder, the operator, petitioned the Texas Supreme Court for review of an appellate court’s decision that, among other things, the exculpatory clause in the 1989 Model Form did not apply to the claims of the non-operators (collectively Wood County) against Reeder for breach of contract. The court reversed and rendered judgment on this issue, holding that the exculpatory clause in Article V.A of the 1989 Model Form applied to any actions undertaken by Reeder as operator.⁴⁵

Reeder initially sued certain parties (later aligned with Wood County) for declaratory judgment and various tort claims, asserting his right to particular wellbores.⁴⁶ In the end, Wood County aligned with these initial defendants and cross-claimed, asserting that Reeder had breached his duty as operator because he failed to maintain production in

author questions whether the imposition of such a condition precedent to liability can be inferred from the language in Article V.A.

⁴⁴ 395 S.W.3d 789 (Tex. 2012), *op. supplemented on reh’g*, 2013 WL 1277026 (Tex. Mar. 29, 2013).

⁴⁵ 395 S.W. 3d at 795.

⁴⁶ *Id.* at 791–92.

paying quantities as required under the JOA.⁴⁷ The case was tried with a jury instruction invoking the exculpatory clause, and the jury found that Reeder was grossly negligent or engaged in willful misconduct. The court of appeals affirmed but, as noted above, held the exculpatory clause did not apply.⁴⁸

In reaching its decision that the exculpatory clause in Article V.A. of the 1989 Model Form applied,⁴⁹ the Texas Supreme Court conducted a survey of past Model Forms promulgated by the AAPL. The court focused on the fact that the 1989 Model Form exculpatory clause was based on an Operator's "activities," whereby the earlier forms, some of which had been held to limit the exculpatory clause, referenced "operations."⁵⁰ In brief, the court reasoned that the wider scope of the term "activities" versus the term "operations" must have meant that all actions under the parties' JOA, which was based on the 1989 Model Form,

were meant to be covered by the exculpatory clause.⁵¹ This decision has been supported recently by a commentator who surmises that the progression in language over the years has been made with the intent to provide the Operator with as much protection as possible.⁵²

The distinct change in language in the exculpatory clause led the *Reeder* court to pronounce that this "significant transformation" offered an expansion of the protection to Operators.⁵³ This view, however, is not universal. In articles published before the *Reeder* decision, commentators noted that although the concept of protecting the Operator in regard to operations is important, there was no similar need to shield an Operator from liability for breaches of its responsibilities to perform administrative matters, especially in light of the Operator's exclusive control of the finance and accounting functions.⁵⁴ Regardless, the consensus is that Article V.A. of the 1989 Model

⁴⁷ *Id.* at 792.

⁴⁸ *Id.* at 790–91.

⁴⁹ Note also that the court then determined that the evidence adduced at trial was legally insufficient to prove gross negligence. *Id.* at 791.

⁵⁰ *Id.* at 794.

⁵¹ *Id.* at 795.

⁵² Lansdown, *supra* note 42, at 218-20.

⁵³ *Reeder*, 395 S.W.3d at 795.

⁵⁴ Pharo, Rogers & Boigon, *supra* note 21, at 5-7.

Form, and thus the Horizontal Form, worked to expand the protections of Operators.

The question that will be considered is whether industry standards and practices support the contractual requirement that the Operator be absolved of blame for any breach of a JOA, including administrative and ministerial functions, unless the Operator acted with gross negligence or willful misconduct.

B. Continuing/Successor Liability

Another topic in the forefront is successor liability. In 2006, the Texas Supreme Court decided the case of *Seagull Energy E & P, Inc. v. Eland Energy, Inc.*⁵⁵ Briefly, the court in *Eland* held that a successor-in-interest to a working interest covered by an offshore JOA,⁵⁶ who later conveyed that interest to another, nevertheless remained liable to the Operator for expenses incurred even after it had conveyed its interest.⁵⁷

The 1989 Model Form and the Horizontal Form contain additional language in

⁵⁵ 207 S.W.3d 342 (Tex. 2006).

⁵⁶ The provisions of the JOA at issue did not vary meaningfully from the 1977 and 1982 Model Forms discussed herein.

⁵⁷ 207 S.W.3d at 346–47.

Article VIII.D. that impliedly protects a transferor from liabilities arising after it disposes of its interest.⁵⁸ This language states, *inter alia*, that a party is not relieved of obligations already incurred even after transfer of the interest. The language does not expressly state, however, that the transferor is relieved of liabilities for expenses incurred after the conveyance.⁵⁹ Further, responsibility for plugging and abandonment also might remain with a transferor in the absence of language specifically providing for the elimination of that responsibility.⁶⁰

The general consensus in the industry appears to be that a transferor should be relieved of responsibility for subsequent expenses because it has relinquished its ownership of the working interest—the interest in land—that forms the core of the JOA’s scope.⁶¹ Resolution of this issue will be paramount.

⁵⁸ Horizontal Form, art. VIII.D; *see also* Curry & Ekberg, *supra* note 7, at 8-10 to 8-17.

⁵⁹ Horizontal Form, at art. VIII.D.

⁶⁰ Curry, *supra* note 2, at 17-4 to 17-5.

⁶¹ *See* Curry & Ekberg, *supra* note 7, at 8-13; *accord* Matthews & Kulander, *supra* note 1, at 44–45.

C. Title/Interests of the Parties

Another concept that has bedeviled practitioners and drafters alike is the treatment of the loss of title to properties contributed to the JOA and the effect on subsequent interests. On a similar note, the concept of exposure to different burdens under Article III.B. is exacerbated in the context of Horizontal Wells because of the real possibility of changes in the length or shape of the lateral during operations. Both of these concepts require attention.

Article IV.B. of the 1989 Model Form discusses the impact of a failure or loss of title. There is an important distinction between the failure of title *ab initio* and the loss of title through some subsequent action or occurrence.⁶² In short, if a party contributes an interest to a JOA in property for which it never had good title, that loss is treated harshly and the party loses the interest in Exhibit “A” represented by the property in which title failed.⁶³ The loss of title through subsequent occurrences, however, such as the failure to develop the lease, should not result in a penalty for the party that

contributed the interest.⁶⁴ Although Article IV.B.3. (Other Losses) of the 1989 Model Form attempts to place a wider swath of “failures” into the innocent loss category, decisions such as that in *EOG Resources, Inc. v. Killam Oil Co.*⁶⁵ caution that additional language may be necessary to protect a party that contributes a tract that suffers a subsequent title failure.

In regard to Article III.B, Horizontal Wells pose a particular risk that magnifies a soft spot in the 1989 Model Form. When operations begin, every party has contributed its interest and knows its right to payment (or production) and responsibility for royalty burdens and costs. If there is a change of the spacing unit, however, those responsibilities can change. In particular, under Article III.B., the parties to the agreement have agreed to share only a set percentage of all burdens on production from the Contract Area. If the production unit shrinks, however, the royalty burdens potentially can overwhelm one or two of the parties to the agreement. In other words, after downsizing each party retains its

⁶² Curry, *supra* note 2, at 17-2.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ 239 S.W.3d 293 (Tex. App.—San Antonio 2007, pet. denied).

right to the production and expenses of the downsized unit, but the royalty burdens might shift substantially to the party that contributed the tract that underlies the re-spaced unit.⁶⁶ Like the title issue discussed above, the committee will address this point.

D. Disclosure of Information and Confidentiality

Today's horizontal drilling, completion, and production activities involve a complex array of procedures, formulas, and secrets.⁶⁷ Some of the everyday information generated while drilling and completing wells, especially Horizontal Wells, is considered so important that some state regulatory agencies grant Operators the right to keep such information confidential for a set period of time.⁶⁸

⁶⁶ See Dorsey T. Roach, "Select Issues Involving Operating Agreements," 55 *Landman* 17–20 (Sept./Oct. 2009), <http://www.hba.org/folder-sections/pdfs/oilgasoct09>.

⁶⁷ See generally John D. Furlow & John R. Hays, "Disclosure with Protection of Trade Secrets Comes to the Hydraulic Fracturing Revolution," 7 *Tex. J. Oil, Gas, & Energy L.* 289, 306 (2012).

⁶⁸ Larsen, *supra* note 17, at 8-11.

[1] Come Big or Stay Home, LLC v. EOG Resources, Inc.⁶⁹

Come Big or Stay Home, LLC (CBSH) appealed a summary judgment granted in favor of EOG Resources, Inc. (EOG), the operator, dismissing CBSH's claims that EOG breached a series of participation agreements by refusing to provide CBSH with well information unless CBSH agreed not to share this information with third parties without EOG's consent.⁷⁰ The North Dakota Supreme Court upheld the summary judgment for EOG under the facts of the case, but in doing so pointed out an aspect of the Model Form that needs attention.⁷¹

CBSH participated in the first well EOG invited it to join and signed EOG's proposed 1982 Model Form (modified) JOA for that well. This 1982 Model Form contained a standard Article VI.D regarding access to contract area and information, and included a manuscript addition in Article XV that included a strict non-disclosure provision.⁷² On the next 18 wells, however, CBSH signed the participation

⁶⁹ 2012 ND 91, 816 N.W.2d 80 (2012).

⁷⁰ *Id.* at 81–82.

⁷¹ *See id.* at 84–88.

⁷² *See id.* at 82.

agreement but refused to sign either a JOA or a separate confidentiality provision. In light of this refusal, EOG would not provide CBSH any information on the 18 subsequent wells.⁷³

CBSH argued that industry custom dictated that non-operators receive well information. The North Dakota Supreme Court expressed sympathy for this position, citing an analysis of various model form agreements and noting the tension between the requirement to provide information and the lack of protection for confidential information.⁷⁴ CBSH further argued that EOG's insistence on a strict confidentiality provision was improper and illogical when viewed through the eyes of a small interest owner that must often rely on outside consultants to interpret data.⁷⁵ The court did not specifically discuss this argument.

In reaching its decision in favor of EOG, the court focused on the facts of the case, keying its ruling on the fact that CBSH knew of EOG's

requirements when it signed the first JOA with the strict confidentiality provision.⁷⁶ In other words, the court decided that EOG had expressed its intentions for all contractual relationships with participating parties when it provided the first JOA and that CBSH had acknowledged those requirements by signing it. As a result, the expressed intentions of the parties overruled any presumed industry standard of unfettered dissemination and use of information.⁷⁷ It is important to note, however, one of the court's comments: "This would be a closer case if CBSH had not had prior knowledge of EOG's intention to withhold well information unless non-operators agreed to the nondisclosure provision."⁷⁸

As discussed below, the need for language addressing confidentiality concerns will be paramount in the AAPL's coming work.

Against this backdrop of secrecy, the 1989 Model Form contains provisions many consider to be liberal.⁷⁹ Under Article V.5. in the 1989 Model Form, all non-operating parties,

⁷³ *Id.* at 82–83.

⁷⁴ *See id.* at 84–85 (citing Lamont C. Larsen, "Horizontal Drafting: Why Your Form JOA May Not Be Adequate for Your Company's Horizontal Drilling Program," 48 *Rocky Mt. Min. L. Fdn. J.* 51 (2011)).

⁷⁵ *Id.* at 84.

⁷⁶ *Id.* at 85.

⁷⁷ *Id.* at 85–87.

⁷⁸ *Id.* at 85.

⁷⁹ *See id.*

both consenting and non-consenting, are given the right to receive a wide range of information considered to be sensitive, especially on Horizontal Wells. There is little dispute that Consenting Parties have the right to access this information, but industry expectations appear to not favor granting Non-Consenting Parties that right of access, at least for some period of time.⁸⁰ Although some Operators address this situation by “adjusting” when they provide access to this information, a more sensible approach is to address this issue within the scope of Article V.⁸¹

The second aspect of disclosure of this sensitive information is its confidentiality. For many reasons, Operators are loath to release information without receiving an assurance that it will be kept confidential.⁸² As noted by some commentators, the 1989 Model Form does not provide for the confidentiality of this

information absent a custom clause in Article XVI.⁸³

On the opposite side of those who seek to restrict disclosure and impose confidentiality restrictions, non-operators need to have reasonably prompt access to, and the ability to fully use, the information generated in operations, especially those for a Horizontal Well. This notion of fairness is magnified in various situations, such as when the non-operator was forcibly pooled into the unit or when the Operator owns only a small interest in the Contract Area. Timely access to the well information, and the ability to use it in ways that might strain some confidentiality agreements, is an important asset for some non-operators.⁸⁴ The committee intends to grapple with all of these issues.

E. Other Topics

In addition to the matters discussed above, there are dozens of other matters which

⁸⁰ This position is supported by many committee members.

⁸¹ See Larsen, *supra* note 17, at 8-12 to 8-13, for suggested language.

⁸² See discussion in § III.D., *supra*.

⁸³ Much like the EOG custom Article XV.P in *Come Big or Stay Home*, 816 N.W.2d at 82.

⁸⁴ For example, well information on a unit covered by a Horizontal Form could provide the justification for an offset acquisition program.

need to be addressed in connection with the new Model Form. Some of these other topics include: (1) authorizing the Operator to pay rentals and order title work (along with the authority to issue joint interest billings for the costs); (2) authorizing notice and response by email, (3) expending the cost of definition of “proposals” for vertical wells; (4) addressing the cost of facilities, whether through language in the Model Form or by referencing an attachment for Facilities Use Agreements; and (5) clarifying that successors to Operators are allowed to vote on the new Operator.

IV. Conclusion

The Horizontal Form represents a strong endeavor by the AAPL to modify its 1989 Model Form. Its impact on Texas operations should be immediate and beneficial through its consolidation of the various industry forms. Ideally, the Horizontal Form and the next version will resolve some of the outstanding issues created by judicial decisions that, although legally sound, do not always fit with industry practices.