



GRAY REED
GRAY REED & MCGRAW, P.C.

AAPL FORM 610 Horizontal Modifications

Paul G. Yale

For the Houston Association of Professional Landmen

Saturday Workshop

May 3, 2014

AAPL FORM 610

Horizontal Modifications

- ❑ Special thanks to Frederick MacDonald, Esq. of MacDonald & Miller Mineral Legal Services of Salt Lake City, Utah and the AAPL Utah Land Institute (February 21, 2014) for allowing me to modify an excellent Power Point presentation on this subject, hopefully for the better
- ❑ Thanks also to Christopher Halaszynski, Educational Director of the AAPL for furnishing and giving permission to Frederick MacDonald's Power Point



AAPL FORM 610

Horizontal Modifications

- ❑ Other sources include: Jeff Weems of Porter Hedges, LLP Houston, Texas article at 59 Rocky Mountain Mineral Law Institute 29-1 (2013) “Changes Within the AAPL 610-1989 Model Form Operating Agreement: Horizontal Modifications and Other Developments and his presentation under the same name to the Houston Bar Oil, Gas, and Mineral Law Section on September 24, 2013, Houston;
- ❑ and Thomas A. Daily, “Horizontal Modifications to the AAPL 610 JOA-A Focus Upon the 610-1092 Form, “ presented at the 2014 Ernie Smith Oil, Gas and Mineral Law Institute, University of Texas School of Law, March 28, 2014 , Houston.



AAPL FORM 610

Horizontal Modifications

- ❑ And special thanks to Dorsey Roach, President and General Manager of UnitPro Land Consultants, LLC of Oklahoma City, for his comments, perspective, and his paper, “Updating the AAPL Model Form JOA: New Horizontal Drilling Provisions and More, “ Presented to Tulsa Association of Professional Landmen, Spring Seminar, April 10, 2014.
- ❑ **DISCLAIMER: THE VIEWS AND OPINIONS EXPRESSED IN THIS PRESENTATION ARE NOT TO BE CONSTRUED AS FORMAL LEGAL ADVICE; FOR FORMAL LEGAL ADVICE YOU SHOULD CONSULT YOUR IN HOUSE OR EXTERNAL COUNSEL.**

PROCESS

- ❑ Committee formed with first meeting in November 2011
- ❑ Nine members from different national regions; lawyers and landmen
- ❑ Polled and obtained copies of horizontal forms from numerous sources and regions
- ❑ Most common template in use was 1989 Form with modifications as suggested by Lamont Larsen's paper to DAPL; therefore started with 1989 Form
- ❑ Extensive peer review before submittal to AAPL Directors



KEY ISSUES

- ❑ Mainly driven by timing and economics of horizontal wells
- ❑ No separate completion election
- ❑ Definitions unique to horizontal operations
- ❑ Spudder rig delays
- ❑ Address parties refusing to sign JOA or after discovered interest owners
- ❑ Form intended for use for horizontal alone or in conjunction with vertical



DEFINITION - AFE

- ❑ Added in 1989 Form but utilized only three times (Definition of “Deepen” and Articles VI.C (Completions) and D (Other Operations); not in VI. B)
- ❑ Added that it is not a contractual commitment, but an estimate made in good faith (gives flexibility to Operator)
- ❑ Initially made significant changes/additions for HZ wells but decided to add those to Article VI.B provisions governing proposals instead



DEFINITION - DEEPEN

- ❑ As to HZ wells, results in extension of the Lateral in the productive interval
- ❑ Contrast with vertical well which results in extension to a deeper zone
- ❑ Operation whereby the Lateral is drilled to a Displacement greater than (1) Displacement contained in approved proposal or (2) Displacement to which the Lateral was drilled pursuant to a previous proposal



NEW DEFINITION – DISPLACEMENT

- ❑ Generally the length of the Lateral
- ❑ Most states have defined by regulation
- ❑ State regulatory definition is adopted but, if such regulatory definition does not exist, length of the Lateral is to be used



NEW DEFINITIONS - DRILLSITE

- ❑ Horizontal wells require the “drillsite” concept to include each tract penetrated by the wellbore
- ❑ (1) the surface hole location; and (2) the Oil and Gas Leases or Oil and Gas Interests within the Drilling Unit on or under which the wellbore, including the Lateral, is located



NEW DEFINITION – HZ RIG MOVE-ON PERIOD

- ❑ Many companies incurring operator delays between commencement of operations by spudder rig and drilling to completion
- ❑ New Article VI B. 9 added to address issue but required new defined terms including this one
- ❑ Number of days after the date of rig release of a Spudder Rig until the date of a rig capable of drilling of Horizontal Well to its Total Measured Depth has moved on to location



DEFINITION - LATERAL

- ❑ When wellbore crosses the threshold from vertical to horizontal
- ❑ That portion of a wellbore that deviates from approximate vertical orientation to approximate horizontal orientation and all wellbore beyond such deviation to Total Measured Depth



DEFINITION – PLUG BACK

- ❑ In HZ wells, Lateral is typically located in one Zone; plugging back is not shortening the Lateral
- ❑ Otherwise, same as a Vertical Well where plug back is abandoning a producing zone and recompleting in a shallower zone
- ❑ Operation to test or Complete the well at a stratigraphically shallower Zone in which the operation has been or is being Completed and which is not in an existing Lateral



DEFINITION - SIDETRACK

- ❑ Expanded to encompass both a deviation that will change the radial direction of the Lateral within the Initial Zone or change in the direction of the Lateral to extend into a different Zone
- ❑ Directional control and deviation of a well outside of the existing Lateral(s) so as to change the Zone or the direction of a Lateral from the approved proposal unless done to straighten a hole or drill around junk in a hole or to overcome other mechanical difficulties



NEW DEFINITION – SPUDDER RIG

- ❑ See prior slide on HZ Move-On Period for reasons for new definition
- ❑ Drilling rig utilized only for drilling all or part of the vertical component of a Horizontal Well; a rig used only for setting conductor pipe shall not be considered a Spudder Rig



NEW DEFINITION - TERMINUS

- ❑ Most States have defined by regulation
- ❑ State regulatory definition is adopted, but if no such regulatory definition exists, defined as the furthest point drilled in the Lateral



NEW DEFINITION – TOTAL MEASURED DEPTH

- ❑ In a HZ well, TMD is entire distance, including the vertical component, the “curve” where the Lateral begins, and the entire Lateral
- ❑ Distance from the surface of the ground to the Terminus, as measured along and including the vertical component of the well and Lateral(s); terms “depth” and “total depth” as used in this Agreement shall be deemed to read Total Measured Depth insofar as it relates to a Horizontal Well



DEFINITION - CAVEAT

- ❑ Must check lease terms and applicable state laws and regulations for potential conflicts
- ❑ Example – HZ Rig Move-On Period may conflict with operations clauses or other timing requirements of a lease
- ❑ Example – State regs may require reporting or other activity to keep a permit alive regardless of what HZ JOA provisions provide



ARTICLE IV.A – INITIAL WELL

- ❑ Identification of location includes surface and Terminus of Lateral(s)
- ❑ Presumption that parties will obtain all information necessary to sign JOA and will participate in drilling of initial well



ARTICLE VI.B.1 – SUBSEQUENT OPERATIONS

- ❑ HZ Wells are expensive and there is no completion election
- ❑ As a result, non-operators need sufficient detailed information about the operations to make an informed election
- ❑ Proposal for HZ well must Include: (1) a statement that the proposal is for a HZ well; (2) drilling and Completion plans specifying (a) Total Measured Depth (b) surface hole location(s); (c) Terminus/Termini (d) Displacement(s) (e) utilization and scheduling of rig(s) (Spudder, drilling and Completion); and (f) stimulation operation, staging and sizing and (3) estimate drilling and Completion Costs as set forth in AFE



ARTICLE VI.B.4 & 5 – DEEPENING AND SIDETRACKING

- ❑ VI.B.4 does not apply to any Deepening operations within an existing Lateral of a HZ well
- ❑ VI.B.5 does not apply to any Sidetracking operations in an existing Lateral of a HZ well; typically just changing direction



NEW ARTICLE VI.B.9 – SPUDDER RIG

- ❑ New provision intended to provide maximum flexibility in utilizing a spudder rig and to determine that time for which the parties can be held accountable for participation if such delays occur
- ❑ If within an approved HZ well proposal specifying Spudder Rig use, Operator may extend for period not to exceed X days upon notice and affirmative vote of not less than Y% of Consenting Parties



NEW ARTICLE VI.B.0 – SPUDDER RIG (CONT.)

- ❑ If approved HZ well proposal does not specify Spudder Rig use, Operator may utilize a Spudder Rig upon notice (which must include a HZ Move-On Period) and affirmative vote of not less than X% of Consenting Parties
- ❑ Extensions of HZ Move-On Period may then be requested in the same manner outlined in previous slide



NEW ARTICLE VI.B.9 – SPUDDER RIG (CONT.)

- ❑ Consequences of failure to meet HZ Move-On Period – unless X% in interest of the Consenting Parties agree to abandon the operation, Operator must re-propose the operation and previous Non-Consenting Party shall be entitled to new election



NEW ARTICLE VI.B.9 – SPUDDER RIG (CONT.)

- ❑ Costs incurred, both before and after the re-proposal are borne;
- ❑ (1) Unused funds previously advanced reimbursed to party advancing such funds
- ❑ (2) If operations are subsequently resumed, all costs borne by Consenting Parties to re-proposal; same parties to proportionately reimburse costs of incurred prior to re-proposal to parties who consented to original proposal but non-consented re-proposal
- ❑ (3) if operations not resumed, all costs incurred prior to re-proposal and of abandonment borne by original Consenting Parties



NEW ARTICLE VI.B.9 – SPUDDER RIG (CONT.)

- ❑ For purposes of Article VI.B and subject to Article VI.B.9 provisions, the date of the Spudder Rig commences actually drilling operations is considered the commencement of drilling operations of the proposed well



NEW ARTICLE VI.B.10 – MULTI-WELL PADS/LOCATIONS

- ❑ Many HZ wells are drilled from same pad/location for economic and environmental reasons
- ❑ Costs of such pad/location are allocated and/or reallocated as necessary to the Consenting Parties of each of the wells thereon



ARTICLE VI.C - COMPLETIONS

- ❑ No completion election for HZ wells; only Option 1 expressly applies
- ❑ Article VI.C – Option 2 expressly only applies, if selected, to Vertical Wells



ARTICLE XV.A – OPERATIONS WITHOUT EXECUTIVE OF ALL EXHIBIT “A” PARTIES

- ❑ Existing option exists – Operator bears costs and is allocated revenue solely
- ❑ Add new option – same election as made in VI. B with respect to non-consenting party interest allocation but with 48 hour election period
- ❑ Executing parties have option to pick up their proportionate share of non-executing parties' share; or both plus proportionate share of those parties declining their share of non-executing parties' share



ARTICLE XVI - MISCELLANEOUS

- ❑ Article XVI provisions govern in event of conflict
- ❑ Operator's Duty – Unless drilling operations are terminated pursuant to Article VI.F, Operator shall drill a HZ Well to the Objective Zone(s) and drill the Lateral in the Zone(s) at least to a Displacement to which a reasonably prudent operator would deem further drilling is neither justified nor required
- ❑ Priority of Operations Clause



WHAT DIDN'T GET INCLUDED

- ❑ For every change, 10 others considered and rejected
- ❑ Example – completion election when vertical component drilled and before curve based on logs
- ❑ Many suggested changes were regional in nature; not appropriate for a national form
- ❑ Other were general changes not specific to HZ wells
- ❑ Better left to negotiations between the parties



QUESTIONS?



AND LAST

Paul G. Yale
Shareholder
Gray, Reed & McGraw, PC
Houston
pyale@grayreed.com
713-986-7189