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# The End is Just the Beginning

Post-Closing Considerations in Oil  
& Gas Transactions



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Patrick Schenkel represents both publicly traded and privately held clients in a variety of upstream and midstream energy matters. His primary areas of practice include title examination and due diligence analysis for the acquisition and divestitures of producing and non-producing assets. He regularly assist clients with drafting, negotiating, and interpreting agreements required for modern oil and gas development. He also advises on mineral and leasehold ownership disputes; relinquishment act matters; curative title procedures; pooling; PSA and allocation wells; and regulatory issues. Patrick has drafted and reviewed hundreds of title opinions, including acquisition, drilling, division order, and supplemental title opinions, covering hundreds of thousands of acres on fee, state, and federal lands.



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# Discussion Topics

**I.** Oil & Gas Transactions

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**II.** Closing

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**III.** Recording & Revenue Deck Updates

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**IV.** Records Retention

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**V.** Final Settlement & Further Assurances



# Oil & Gas Transactions



# Key Legal Characteristics of Oil & Gas Transactions

- Real property interests (leases, mineral estates)
- Title review
- Complex revenue allocations (royalties, overriding royalties, production payments)
- Regulatory oversight (state oil & gas commissions, BLM, HSR)
- Environmental liabilities
- Operational risk allocation under JOAs



# Meeting of the Minds

- Seller owns Assets they are looking to sell (for the right price) and the Buyer is looking to purchase Assets (again, for the right price).
- Marketed Deals vs. Unmarketed Deals
  - Preparation of materials for transaction (data room)
  - Knowledge of key information needed for post-closing
- Agreement on key terms to begin negotiation of full transactional terms (i.e., LOI)



# Common Forms of Oil & Gas Transactions

- Asset Purchase and Sale Agreement (“PSA”)
- Farmout Agreement
- Mineral/Royalty Conveyances
- DrillCo Agreements
- Production Payment



# Purchase and Sale Agreement (“PSA”)

- The PSA defines the essential terms and timeline of the transaction, including purchase price, definitions, adjustments to purchase price, defect notice thresholds, deadlines, warranties, indemnity, and other unique provisions.
- The actual document may be titled a Purchase and Sale Agreement, a Mineral Acquisition Agreement, a Lease Acquisition Agreement, an Asset Purchase Agreement, or another variation.



# Sign and Close vs. Delayed Closing

- **Sign and close** = a transaction structure where the parties **execute the definitive agreement and consummate (close) the transaction at the same time**
  - The parties **sign** the definitive agreement (e.g., PSA), and
  - The transaction **closes immediately (or substantially simultaneously)**—with title transfer, payment, and delivery of assignments occurring at the same time.
- There is **no interim period** between signing and closing.



# Sign and Close vs. Delayed Closing

- **Delayed closing** = Parties **sign** the PSA first, and **close later** (after satisfaction of conditions precedent)
  - This structure is used when:
    - Regulatory approvals (e.g., Hart-Scott-Rodino (“HSR”)) are required
    - Third-party consents must be obtained
    - Title/environmental defect periods must run
    - Financing must be secured
- In those deals, there is **an interim period** with covenants governing operations before closing.

# Sign and Close vs. Delayed Closing

- When Each Structure Is Strategically Preferable
  - Use Sign-and-Close When:
    - Small or mid-size upstream asset deal
    - Clean title package
    - No regulatory delays
    - Competitive auction requiring speed
    - Seller demands execution certainty
  - Use Delayed Closing When:
    - Large corporate or basin-scale transaction
    - HSR required
    - Significant title/environmental exposure
    - Third-party consents are material
    - Buyer needs financing runway



# Closing

# Closing

- **Closing** is the point in time when the parties to an oil and gas transaction consummate the deal—meaning the transaction becomes legally effective and the ownership of the assets (or equity) transfers from seller to buyer in exchange for payment of the purchase price, subject to the terms of the agreement.
- It is the moment when the contractual obligations to buy and sell are executed and funded.

# What Needs to Occur at Closing

## 1. Transfer of Title

- Delivery of executed Assignments and Bills of Sale
- Conveyance of:
  - Oil and gas leases
  - Wells and wellbores
  - Units and pooled acreage
  - Easements and surface rights
  - Equipment and fixtures
  - Transfer of associated contracts (subject to consent provisions)
- Assignments are usually effective as of the agreed Effective Time, which may be prior to the actual closing date for economic purposes.
- A form Assignment or Mineral/Royalty Deed is normally agreed included as an Exhibit in the PSA to be agreed to as to form prior to execution of the PSA.
  - If a form is not set forth in the PSA, it will need to be negotiated prior to Closing



# What Needs to Occur at Closing (Cont.)

## 2. Payment of Purchase Price

- Buyer wires the purchase price (as adjusted)
- Adjustments typically include:
  - Prorated revenues and expenses
  - Production imbalances
  - Suspense accounts
  - Title defect deductions
  - Environmental defect adjustments
- Funds are often exchanged simultaneously with delivery of conveyance documents.



# What Needs to Occur at Closing (Cont.)

## 3. Delivery of Closing Documents

- Common deliverables include:
  - **From Seller:**
    - Executed assignments
    - Officer's certificate
    - Evidence of authority
    - Resignation of operator (if applicable)
    - Required third-party consents (if conditions to closing)
    - FIRPTA certificate (if applicable)
  - **From Buyer:**
    - Officer's certificate
    - Evidence of authority
    - Assumption agreement
    - Purchase price payment



# What Needs to Occur at Closing (Cont.)

## 4. Transition of Operatorship (if applicable)

- If the seller is operator:
  - Operator resignation delivered
  - Buyer (or its affiliate) appointed as successor operator under the JOA
  - Regulatory forms prepared for state filings



# What Needs to Occur at Closing (Cont.)

## 5. Recording and Regulatory Filings

- Post-closing actions often include:
  - Recording assignments in county real property records
  - Filing change-of-operator forms with state regulatory agencies
  - Updating division orders and revenue decks



# Recording & Transfers



# How Do I Evidence the Transaction?

- Remember that the PSA is confidential and is usually not shared nor filed of record. The conveyance is the title instrument of record evidencing the transaction.
- Oil and gas leases and related interests are real property interests in most producing states. To protect priority and establish record ownership, assignments must be recorded in the appropriate county records.



# What Gets Recorded?

- Typically recorded documents include:
  - Assignment of Oil and Gas Lease
  - Assignment of Wellbore Interests
  - Assignment of Overriding Royalty Interests (if applicable)
  - Assignment of Easements and Surface Rights
  - Mineral Deed
  - Royalty Deed
- Often record short-form assignments to avoid disclosing full contract terms.



# Where to Record?

- Each county where the leased or conveyed lands are located
  - Sometimes in multiple counties if leases span county lines
- State Records
- Federal Records (Bureau of Land Management)



# Federal Recordation

- For federal leases:
  - BLM assignment forms must be filed (Forms can be obtained at: <https://www.blm.gov/services/national-operations-center/electronicforms>)
  - BLM approval is required for non-overriding royalty interest assignments before assignment becomes fully effective of record
  - Separate filing fees apply
- Federal assignments are not effective until approved.
- Federal lease delay



# Federal Recordation (Cont.)

Form 3000-003 (Dec 2025)	UNITED STATES DEPARTMENT OF THE INTERIOR BUREAU OF LAND MANAGEMENT <b>ASSIGNMENT OF RECORD TITLE INTEREST IN A                  LEASE FOR OIL AND GAS OR GEOTHERMAL RESOURCES</b> Mineral Leasing Act of 1920 (30 U.S.C. 181 et seq.) Act for Acquired Lands of 1947 (30 U.S.C. 351-359) Geothermal Steam Act of 1970 (30 U.S.C. 1001-1025) Department of the Interior Appropriations Act, Fiscal Year 1981 (42 U.S.C. 6508)	FORM APPROVED OMB NO. 1004-0034 Expires: Dec. 31, 2028 Lease Serial No. _____ Legacy Lease Serial No. _____ Lease Effective Date (Anniversary Date) _____			
<b>Type or print plainly in ink and sign in ink.</b>					
<b>PART A: ASSIGNMENT</b>					
1. Assignee* _____ Street _____ City, State, Zip Code _____					
*If more than one assignee, check here <input type="checkbox"/> and list the name(s) and address(es) of all additional assignees on page 2 of this form or on a separate attached sheet of paper.					
This record title assignment is for: (Check one) <input type="checkbox"/> Oil and Gas Lease, or <input type="checkbox"/> Geothermal Lease					
Interest conveyed: (Check one or both, as appropriate) <input type="checkbox"/> Record Title, <input type="checkbox"/> Overriding Royalty, payment out of production or other similar interests or payments					
2. This assignment conveys the following interest:					
Land Description <small>Additional space of page 2, if needed. Do not submit documents or agreements other than this form, such documents or agreements shall only be referenced herein.</small>	Percent of Interest			Percent of Overriding Royalty Similar Interests	
	Overd	Conveyed	Retained	Reserved	Previously reserved or conveyed
a	b	c	d	e	f
<b>FOR BLM USE ONLY - DO NOT WRITE BELOW THIS LINE</b> UNITED STATES OF AMERICA					
This assignment is approved solely for administrative purposes. Approval does not warrant that either party to this assignment holds legal or equitable title to this lease.					
<input type="checkbox"/> Assignment approved for above described lands;			<input type="checkbox"/> Assignment approved for attached land description		
New Serial Number _____			<input type="checkbox"/> Assignment approved for land description indicated on reverse of this form		
Assignment approved effective _____					
By _____ Bureau of Land Management (BLM)			_____ (Title)		_____ (Date)

(Continued on Page 2)

(Form 3000-003)



# Federal Recordation (Cont.)

Form 3000-3a  
(August 2018)

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT  
**TRANSFER OF OPERATING RIGHTS (SUBLEASE) IN A  
LEASE FOR OIL AND GAS OR GEOTHERMAL RESOURCES**  
Mineral Leasing Act of 1920 (30 U.S.C. 181 et seq.)  
Act for Acquired Lands of 1947 (30 U.S.C. 351-359)  
Geothermal Steam Act of 1970 (30 U.S.C. 1001-1025)  
Department of the Interior Appropriations Act, Fiscal Year 1981 (42 U.S.C. 6508)

FORM APPROVED  
OMB NO. 1004-0034  
Expires: July 31, 2027

Lease Serial No. \_\_\_\_\_

Type or print plainly in ink and sign in ink.

**PART A: TRANSFER**

1. Transferee (Sublessee)\* \_\_\_\_\_ 1a. Transferor \_\_\_\_\_  
Street \_\_\_\_\_  
City, State, Zip Code \_\_\_\_\_

\*If more than one transferee, check here  and list the name(s) and address(es) of all additional transferees on page 2 of this form or on a separate attached sheet of paper.

This transfer is for: (Check one)  Oil and Gas Lease, or  Geothermal Lease

Interest conveyed: (Check one or both, as appropriate)  Operating Rights (sublease)  Overriding Royalty, payment out of production or other similar interests or payments

2. This transfer (sublease) conveys the following interest:

Additional space on page 2, if needed. Do not submit documents or agreements other than this form, such documents or agreements shall only be referenced herein.	Percent of Interest			Percent of Overriding Royalty Similar Interests	
	Owned	Conveyed	Retained	Reserved	Previously reserved or conveyed
	b	c	d		
a					

**FOR BLM USE ONLY – DO NOT WRITE BELOW THIS LINE**

UNITED STATES OF AMERICA

This transfer is approved solely for administrative purposes. Approval does not warrant that either party to this transfer holds legal or equitable title to this lease.

Transfer approved effective \_\_\_\_\_

By \_\_\_\_\_ (Date)  
Bureau of Land Management (BLM) (Title)



# When to Record?

- Recording typically occurs:
  - Immediately after closing (same day or within days)
  - Sometimes held in escrow until funding confirmation
- Many PSAs require the buyer to record promptly and provide recording information to seller.



# Why Record?

- Recording establishes:
  - Notice to third parties
  - Priority against subsequent purchasers
  - Continuity of title for future transactions
  - Lender reliance (RBL facilities require recorded title)
- In competitive basins, failure to record can create serious title risk.



# Contract & Revenue Deck Updates

- Recording triggers commercial updates
- Buyer must:
  - Notify purchasers of production
  - Update payee information
  - Provide recorded assignments
  - Transfer division order records
- Until updated, revenues may continue to flow to seller and be trued up later.



# Letters in Lieu

RE: Letter In Lieu of Transfer Order/Division Orders  
See attached Exhibit A

Ladies and Gentlemen:

Please be advised that our records reflect you are currently disbursing proceeds from production attributable to the wells listed on the attached Exhibit A (the "*Properties*") to ABC, LLC ("*Seller*"). Effective March 1, 2025, XYZ, LLC ("*Buyer*") has acquired all of Seller's right, title and interest in the Properties, pursuant to that certain Mineral Deed and/or Assignment and Bill of Sale dated effective March 1, 2025 by and between Buyer and Seller, an unrecorded copy of which is attached hereto as Exhibit B (the "*Instruments of Conveyance*").

This letter (this "*Letter-in-Lieu*") is executed by Seller and Buyer as an agreement in lieu of separate Transfer Orders or Division Orders for each of the Properties. Seller and Buyer hereby authorize and instruct you to pay Buyer all amounts which are in suspense or which become payable to Seller for the account of Sellers for oil, gas, and other hydrocarbons from the Properties effective with the September 2025 production month. Payments can be directed to the applicable address on the attached Exhibit C. If you require a copy of the recorded conveyance, please place the interest in suspense, let us know, and it will be forwarded to you as soon as it becomes available.

In consideration of your acceptance of this Letter-in-Lieu of Transfer Order /Division Orders, Buyer hereby ratifies, confirms, adopts and agrees to be bound by all division orders and transfer orders heretofore executed by Seller insofar as the same relate to the Properties on the attached Exhibit A and/or the properties described and conveyed pursuant to the attached Instruments of Conveyance, in each case, for production during and subsequent to September 2025. Buyer hereby agrees to indemnify, save, and hold you harmless against any and all claims that you may sustain by reason of making payments of proceeds of production as requested and authorized hereby.

If you have any further questions or requirements, you are requested to immediately contact the following person:



# Records Retention

# Contractual Retention Provisions in PSAs

- Post-Closing Access to Records
  - Seller typically:
    - Transfers asset-related records to buyer at closing
    - Retains copies for tax and litigation purposes
  - Buyer often:
    - Grants seller reasonable access to records post-closing for audit or indemnity purposes

# Retention Covenants

- Some PSAs require:
  - Buyer to preserve transferred records for a defined period
  - No destruction without prior notice
  - Opportunity for seller to copy before destruction

# Final Settlement & Further Assurances

# Final Settlement Statement

- A **Final Settlement Statement** is the post-closing accounting reconciliation that determines the final adjusted purchase price between buyer and seller in an oil and gas asset transaction.
- It reflects the final calculation of all purchase price adjustments as of the agreed **Effective Time**, after incorporating updated financial and operational data that was not available at closing.



# Where it Fits in the Deal Timeline

- Typical upstream structure:
  1. **Effective Time** (economic date)
  2. **Closing Date** (funds and assignments exchanged)
  3. **Preliminary Settlement Statement** delivered at closing
  4. **Final Settlement Statement** delivered post-closing (often 60–180 days later)
- The Final Settlement Statement trues up estimates used at closing.



# What does a Final Settlement Statement Typically Include?

## 1. Revenue Adjustments

- Production revenues attributable pre and post Effective Time
- Settlement of misdirected revenues

## 2. Expense Adjustments

- Lease operating expenses (LOE), capital expenditures, workover costs, overhead charges (if applicable under JOA), production taxes, etc.

## 3. Title Defect & Environmental Adjustments (if unresolved at closing)

## 4. Imbalances

## 5. Suspense Funds

## 6. Proration True-up

- Adjustments to account for revenues and expenses allocated between Effective Time and Closing Date



# Further Assurances

- A **further assurances clause** is a contractual provision requiring the parties—typically the seller, and sometimes both parties—to execute additional documents and take additional actions after closing that are reasonably necessary to fully effectuate the transaction and carry out the intent of the agreement.
- In oil and gas deals, further assurances provisions are especially important because asset transfers often involve:
  - Multi-county real property filings
  - Regulatory approvals
  - Third-party consents
  - Revenue deck updates
  - Federal and state filings



# Typical Scope of Further Assurances

- A standard further assurances provision may require a party to:
  - Execute corrective assignments
  - File additional regulatory forms
  - Provide missing consents or ratifications
  - Deliver affidavits of non-production or continuous operations
  - Execute division order transfer documents
  - Assist with BLM approval processes
  - Provide title curative documentation



# Common Post-Closing Scenarios Where Further Assurances are Invoked

1. County clerk rejects assignment for formatting defect
2. Omitted lease discovered after closing
3. Operator change form requires additional signature
4. BLM requires clarification on acreage breakdown
5. Division order analyst requests additional documentation
6. Corrective wellbore assignment needed

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