



SPECIAL INSTITUTE ON

# Drafting and Negotiating the Modern Oil and Gas Lease

**May 3-4, 2018****with an optional half-day program on May 2****Grand Hyatt, Denver, Colorado**

The oil and gas lease is the most fundamental of all oil and gas agreements—it protects both the lessor's real property interests and ensures the lessee's rights to drill and develop the leased lands. In an era of advancing technology and uncertainty in market conditions, lessors and lessees alike are focusing more time and attention on negotiating the details of oil and gas leases. Landmen, title attorneys, in-house counsel, and other practitioners in the industry need a deep working knowledge of the oil and gas lease.

This Special Institute will provide two days of extensive discussion, analysis, and insights into the components of both the more common and the less frequently used oil and gas lease provisions, including practical tips for drafting provisions to avoid litigation and to further the intent of the parties involved.

Less-seasoned lawyers, landmen, and others wanting a refresher on the basics of the oil and gas lease should come early for the optional half-day Nuts and Bolts of the Oil & Gas Lease session that will be taught by a distinguished oil and gas law professor from the University of Houston.

Experienced attendees will benefit from deeper insights into cutting-edge topics, while resource professionals who are relatively new to the practice will benefit from the experience of our distinguished speakers. We hope you can join us in Denver to continue the tradition of valuable educational and networking opportunities provided by this 15th institute in our Oil & Gas Agreement series.

Course materials and audio recordings are available in various formats if you are unable to attend. See inside for details.



# Drafting and Negotiating the Modern Oil and Gas Lease

OPTIONAL: Wednesday, May 2, 2018

## 2:00 pm - 5:00 pm: Nuts and Bolts of the Oil and Gas Lease

Professor Weaver will provide an introduction and overview of the operation and interrelationship between the key provisions of the traditional oil and gas lease, such as the granting, habendum, drilling, delay rental, and royalty clauses, to set the stage for the in-depth two-day program to follow.

JACQUELINE L. WEAVER, A.A. White Professor Emeritus,  
University of Houston Law Center, Houston, TX

DAY 1: Thursday, May 3, 2018

## 7:00 am - 8:00 am: Registration

## 8:00 am - 8:10 am: Introduction and Opening Remarks

ALEX RITCHIE, Executive Director, Rocky Mountain Mineral Law Foundation, Westminster, CO

MICHAEL J. MALMQUIST, President, Rocky Mountain Mineral Law Foundation; Shareholder, Parsons Behle & Latimer, Salt Lake City, UT

STEVEN P. WILLIAMS, Program and Series Co-Chair, Denver, CO

DAVID B. HATCH, Program Co-Chair; Attorney, Holland & Hart LLP, Salt Lake City, UT

## 8:10 am - 9:00 am: The Modern Oil and Gas Lease and Where It All Begins: Drafting the Grant

An oil and gas lease is a legal hybrid—both a contract and a conveyance. We begin with examining the nature of the oil and gas lease, its classification as a conveyance of real or personal property or both, and the interests conveyed and reserved. How should the interests granted be defined in order to avoid disputes? The speaker will provide drafting tips to avoid many common areas of dispute, including depth limitations, exceptions, and reservations, the meaning of “minerals,” when the grant includes storage and disposal, the legal interpretation of provisions such as “cover-all” or Mother Hubbard clauses, the effects of including or not including a warranty clause, and ambiguous legal descriptions.

MONIKA EHRMAN, University of Oklahoma College of Law, Norman, OK

## 9:00 am - 10:00 am: Dotting Your I's and Crossing Your T's: Ensuring Proper Payment and Execution

One of the most common pitfalls in oil and gas leasing is knowing how and when to pay lessors and how to secure a proper execution of the lease. This presentation will illustrate how to effectively draft and negotiate payment (exclusive of royalties) and avoid common traps. How and when should payments be held in suspense? What should be done about unlocatable lessors? The speakers will alert the audience to execution issues that keep title lawyers awake at night, including affirming authority of the signer, use and misuse of powers of attorney, leasing from heirs and devisees, leasing from corporations, partnerships, and LLCs, requirements for trusts, and dealing with community leases, life estates, and community property and joinder problems.

ANGELA L. FRANKLIN, Holland & Hart LLP, Salt Lake City, UT

DAVID B. HATCH, Holland & Hart LLP, Salt Lake City, UT

10:00 am - 10:15 am: Hosted Refreshment Break

## 10:15 am - 11:15 am: A Modern View of the Habendum Clause

What “production” is required to extend the lease term under the habendum clause? Despite decades of litigation, the “paying quantities” requirement remains largely undefined. Professor Pierce will discuss the “speculation” justification for the paying quantities requirement, examine paying quantities analyses used by courts, and offer new thought on the paying quantities equation, beginning with ways to account for the most volatile variable impacting the equation: oil and gas prices. He offers guidance on how to: define the appropriate accounting period; define expenses to create appropriate incentives to act as a prudent operator; use the revenue variable of the equation to address market volatility; and objectify what a prudent operator considers when deciding to retain or release a marginal producing lease.

DAVID E. PIERCE, Washburn University School of Law, Topeka, KS

## 11:15 am - 12:05 pm: Continuing the Lease: Substitutes for Production and the Meaning of Continuous Operations

The habendum clause generally requires actual production to extend the lease beyond its primary term or to maintain the lease during its secondary term. Absent actual production, however, other savings clauses, when properly drafted, may substitute “constructive production” for actual production to ensure that the lease remains in full force and effect. This session will examine savings clauses including the so-called dry hole clause, drilling operations clause, continuous drilling operations clause, cessation of production clause, shut-in royalty clause, and the force majeure clause. Particular focus will be given to the meaning of “cessation,” “operations,” “continuous operations,” and their variants under recent case law. This session will also discuss the current status of the law regarding savings clauses and address proper drafting techniques.

ALLEN D. CUMMINGS, Law Offices of Allen D. Cummings, Austin, TX

12:05 pm - 1:35 pm: Lunch – On Your Own

## 1:35 pm - 2:35 pm: How to Properly Draft and Use the Pooling Clause

In most jurisdictions, a pooling clause is needed to allow the lessee to form the large and often irregular-shaped units required for horizontal development. This session will examine the extent to which pooling will hold a lease, and under what circumstances pooling has been held to be impermissible. We will address modern pooling issues, such as the interplay between specific lease provisions vs compulsory pooling by commissions, expanded spacing units and allocation wells, horizontal well amendments to old lease forms, and the duty of the lessee to pool in good faith. Drafting tips on how that duty may be modified or limited (and effects of subsequent changes to the pooled unit) will be provided.

JOHN W. MORRISON, JR., Crowley Fleck PLLP, Bismarck, ND

WADE C. MANN, Crowley Fleck PLLP, Bismarck, ND

## 2:35 pm - 3:25 pm: Royalty Part I: The Nebulous Royalty Obligation

Perhaps the most litigated clause in the oil and gas lease, this paper will discuss recent trends in litigation over the royalty clause and practical tips for avoiding litigation in various jurisdictions through drafting. Topics to be covered include the differing meaning of valuation terms such as “proceeds,” “net proceeds,” and “market value at the well” for interpreting the royalty obligation and the limits of the implied covenant to market.

MATTHEW J. SALZMAN, Stinson Leonard Street, Kansas City, MO

AARON K. FRIESS, Stinson Leonard Street, Bismarck, ND

3:25 pm - 3:40 pm: Hosted Refreshment Break

3:40 pm - 4:30 pm: **Royalty Part II: Relationship Between Transportation, Marketing, and the Royalty Clause**

Oil and gas are often transported hundreds of miles before being sold to third parties, in an effort to reach more diverse and better markets. How royalty is owed on these transactions is not always addressed in the royalty clause, and litigation challenging the deductibility of transportation costs is on the rise. For example, must a lessee prove that transportation costs it incurred to deliver hydrocarbons to distant markets “enhanced” the value for payment of royalty? We will examine the extent to which the law is evolving and provide drafting tips to avoid the commonly litigated issues.

JOHN F. SHEPHERD, Holland & Hart, Denver, CO

TINA R. VAN BOCKERN, Holland & Hart, Denver, CO

4:30 pm - 5:20 pm: **Defining the Lessee’s Covenants to Drill and Develop a Lease**

In a down market, drilling schedules and market priorities may prevent a lessee from drilling new wells or exploring new areas. This presentation will examine drafting considerations to deal with the lessee’s express and implied covenants, and discuss how those obligations are affected by statutory and case law. The presentation will address the law in relevant states, remedies for breach, and the implied covenant to prevent drainage and its application to the unconventional oil well in tight formations.

KEITH B. HALL, Louisiana State University Paul M. Hebert Law Center, Baton Rouge, LA

5:20 pm - 6:20 pm: Hosted Reception for Registrants, Speakers & Guests

**DAY 2: Friday, May 4, 2018**

8:30 am - 9:20 am: **Dividing, Surrendering, and Assigning the Lease: How Pugh Clauses and Other Provisions Can Alter the Interest Covered by a Lease**

Similar to other real property, the interests in leases can be divided or assigned in a number of ways. This paper will provide drafting tips for horizontal and vertical Pugh clauses, focusing on the commonly litigated issues, such as the definition of zones and how the provision works with horizontal drilling units. It will also discuss the lessee’s ability to surrender or assign a lease, the effects of entireties clauses or being subject to an area of mutual interest agreement, and certain royalty apportionment issues.

SAM NIEBRUGGE, Davis Graham & Stubbs LLP, Denver, CO

STACIE CARTER, Davis Graham & Stubbs LLP, Denver, CO

9:20 am - 10:10 am: **Non-Traditional Lease Terms and How and When to Use Lease Ratifications**

Landmen are often required to deal with timing issues when negotiating oil and gas leases. This presentation will cover how to properly draft top lease provisions, including how to provide proper notice of the secondary lessee’s rights and how to avoid violating the rule against perpetuities, as well as how to effectively lease from parties with a temporary interest (e.g., life estates and term interests). It will also discuss how to properly draft lease options and what is required to properly exercise them. Finally, this presentation will cover other timing issues, from the purpose and effect of lease ratifications to how to account for the number of days in a lease term.

DEANA ALLEN, Beatty & Wozniak, P.C., Denver, CO

10:10 am - 10:25 am: Hosted Refreshment Break

10:25 am - 11:15 am: **Customizing the Lease from the Lessee’s Perspective**

It is becoming increasingly common for landowners to provide their own lease form, requiring the operator to carefully review and determine whether the provisions are appropriate for its proposed operations. Do all of the lease provisions still work in sync? Which provisions need to be added to ensure the operator can effectively develop? This talk will provide a framework for analyzing a lease from the lessee’s perspective, offer suggested amendments and necessary additions, and point out any hidden traps along the way.

TERRY I. CROSS, McClure & Cross LLP, Dallas, TX

11:15 am - 12:05 pm: **Negotiating the Lease from the Landowner’s Perspective**

What should the landowner consider when negotiating the lease or alternative agreement? This session will provide resources for the landowner to investigate the lessee and overcome standard lease forms, including provisions that limit the minerals and depths leased, negate warranties of title and post production cost deductions, deal fairly with affiliate sales, limit pooling and unitization, limit assignments and force majeure events, limit the use and mandate remediation of the surface, indemnify and insure against environmental and other risks, and provide specific remedies for default.

JOHN B. MCFARLAND, Graves, Dougherty, Hearon & Moody, P.C., Austin, TX

12:05 pm - 1:45 pm: Lunch – On Your Own

1:45 pm - 2:45 pm: **The Ethics of Lease Negotiation**

Do land professionals and attorneys have a duty of good faith and fair dealing in negotiating oil and gas leases? What must be offered prior to commencing a compulsory pooling action? Is it ethical to sell produced hydrocarbons in non-arms-length transactions? These questions and many others will be considered to guide oil and gas practitioners on how to ethically negotiate a lease and prevent any disputes down the road, with references to the ABA Model Rules and other applicable codes.

JOHN DZIENKOWSKI, University of Texas School of Law, Austin, TX

2:45 pm - 4:00 pm: **State Leases: A Panel Discussion**

This panel will provide a state-by-state comparative analysis of lease forms and unique state leasing practices in several of the Rockies states, Texas, and Alaska. Some of the topics include: implied covenants, rentals and effects of non-payment, allowed royalty deductions, unleased state tracts, and the authority to amend or extend a state lease.

Moderator: URIAH J. PRICE, Crowley Fleck PLLP, Bozeman, MT

Alaska: RAMONA L. MONROE, Stoel Rives LLP, Anchorage, AK

Texas: ELIZABETH “BECKY” MILLER, Scott Douglass & McConnico LLP, Austin, TX

Rockies: STEPHANIE BARBER-RENTERIA, Lear & Lear PLLC, Salt Lake City, UT

4:00 pm: **Course Adjournment**

# Can't attend? You can still order the course materials.

## ORDER FORM



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Westminster, CO 80031 USA  
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*Course materials and audio for Drafting and Negotiating Oil & Gas Leases will be available within 4 weeks after the program*

Title/Description	Qty.	Unit Price		Total
		Non-Member	RMMLF Member	
<b>Drafting and Negotiating the Modern Oil and Gas Lease</b>				
Looseleaf Manual ( <b>OGA15M</b> )		\$265	\$225	\$
Digital Manual ( <b>OGA15D</b> ) <i>(no handling charge)</i>		\$265	\$225	\$
Audio CDs ( <b>OGA15-ACD</b> )		\$395	\$330	\$
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# Drafting and Negotiating the Modern Oil and Gas Lease

## PROGRAM COMMITTEE

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Salt Lake City, UT

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Mail, fax, or email registration  
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### Rocky Mountain Mineral Law Foundation

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## REGISTRATION

REGISTER ONLINE  
at [www.rmmlf.org](http://www.rmmlf.org)

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Attendee Email \_\_\_\_\_  
(required for confirmations, advance registration list, and program updates)

**Please check all that apply:**  Attorney  Landman  Management  
 Consultant  Student  Other (please specify): \_\_\_\_\_

**CLE credit** requested for the following states: \_\_\_\_\_

**Other credit** requested from: \_\_\_\_\_

### 2. Registration Category – Please pay in U.S. Dollars

	Registrations Received	
	thru 4/11/18	after 4/11/18
<b>Optional Wednesday Afternoon Program</b> Nuts and Bolts of the Oil & Gas Lease (not available separately)	<input type="checkbox"/> \$75	<input type="checkbox"/> \$100
Non-Member	<input type="checkbox"/> \$845	<input type="checkbox"/> \$945
RMMLF Member	<input type="checkbox"/> \$725	<input type="checkbox"/> \$825
AAPL Member	<input type="checkbox"/> \$725	<input type="checkbox"/> \$825
RMMLF Member Law School/Senior Member	<input type="checkbox"/> \$345	<input type="checkbox"/> \$445
RMMLF New Professional Member	<input type="checkbox"/> \$345	<input type="checkbox"/> \$445
Government Agency (Submit PO # if required)	<input type="checkbox"/> \$575	<input type="checkbox"/> \$675
Non-Profit Organization (IRS tax-exempt status)	<input type="checkbox"/> \$575	<input type="checkbox"/> \$675
Student (Full-time, proof of status required)	<input type="checkbox"/> \$35	<input type="checkbox"/> \$75

### 3. Materials Format

Select your course materials format:  **DOWNLOAD ONLY (\$0)** (Electronic materials only)  **HARD COPY (\$75)** (Receive manual at conference)

**TOTAL: \$** \_\_\_\_\_

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SPECIAL INSTITUTE ON

# Drafting and Negotiating the Modern Oil and Gas Lease

May 3–4, 2018 Grand Hyatt, Denver, CO  
with an optional half-day program on May 2

## General Information

**Room Reservations:** The Grand Hyatt Denver, 1750 Welton St., Denver, CO 80202, has blocked rooms for this Special Institute until April 10 at the rate of \$209 per night. A limited number of government rate rooms are also available. Ask for special rates for Rocky Mountain Mineral Law Foundation registrants.

For reservations, contact the Hyatt at:

- Online <http://tinyurl.com/rockym131>
- Toll Free 888-421-1442

Trouble making room reservations? Contact us at [info@rmmlf.org](mailto:info@rmmlf.org)

**Car Rental:** Hertz is offering special discounts by referencing Meeting CV#03NJ0013 and Rocky Mountain Mineral Law Foundation. Make reservations at <http://tinyurl.com/hertz2018> or call 800-654-2240 (U.S.); 800-263-0600 (Canada); or 405-749-4434 (International).

**Registration Fees:** Include course materials, refreshments, and hosted functions as listed in this brochure. These fees do not include hotel costs or transportation. Registrations will be accepted only when accompanied by a check, money order, government purchase order or training form, credit card information, or wiring information. No registrations can be processed without payment.

**Registration Cancellations:** Refunds, less a \$50 administrative fee, will be given for cancellations received by 3:00pm on Friday, April 13, 2018. No refunds will be given thereafter, although substitution of attendees may be made by contacting the Foundation. Cancellations must be made in writing or email to [info@rmmlf.org](mailto:info@rmmlf.org). Registrants not entitled to a refund will receive a link to the written materials.

**CLE Credit:** The two-day course consists of approximately 12.5 hours of continuing education, including 1 hour of ethics. The optional half-day consists of an additional 2.75 hours of continuing education. You must let us know, at least 45 days in advance of the conference, the states or organizations for which you will need credit (see registration form). Credit hours for states will vary and are subject to each state's approval and credit rounding rules. Foundation conferences are typically accredited by all mandatory CLE states and Canadian provinces, the AAPL, and various professional organizations. Attorneys from certain states may be required to pay an additional fee. The Foundation is a State Bar of California MCLE-approved provider.

**Recording:** Audio and video recording, streaming, or other types of live or stored dissemination are not permitted without express authorization from the Foundation.

**Special Needs:** If you have special needs addressed by the ADA, please notify us at least two weeks before the program.