



Conference on

Water Acquisition and Management for Oil & Gas Development: Legal and Regulatory Requirements

JW Marriott Houston Galleria
Houston, Texas
April 7-8, 2016

MCLE Credit
will be available –
up to 12.5 hours,
including 1 ethics hour

HIGHLIGHTS

- Legal Systems for Water Rights and Supply
- Surface and Groundwater Quality Protection
- Contracting, Sourcing, Pricing, and Due Diligence for Water Acquisition
- Interfacing with Surface & Groundwater Owners and Agencies
- Water Transportation and Storage Permitting
- Water Use and Flow in Hydraulic Fracturing and Impact Studies
- Chemical Addition and Management of Water During Drilling
- Water Reuse and Disposal
- Spill Response and Enforcement
- High-Priority Issues for State and Federal Regulators
- Litigation Trends
- Ethical Issues During Enforcement Proceedings
- Coverage of Eastern, Rocky Mountain, and Southwestern Regions



Water Acquisition and Management

Water acquisition and management are critical to successful oil and gas development, particularly in unconventional horizontal resource plays. How the oil and gas industry acquires and manages water is coming under increasing scrutiny by regulators and the public. This program will examine legal systems applicable to surface and groundwater resources in oil and gas producing regions in the eastern and

southwestern United States and the Rocky Mountain region. The program will provide practical information on how to acquire water supply for oil and gas development. Regulatory constraints and controversy over the use of water for hydraulic fracturing and other purposes in oil and gas development, as well as how produced and flowback water are managed, will be discussed in detail.

Thursday, April 7, 2016

7:00 am – 8:00 am - **Registration**
JW Marriott Houston Galleria

8:00 am – 8:10 am

Introduction and Opening Remarks

JAY RAY, Director, Institute for Energy Law, Plano, TX
STEVIA M. WALTHER, Executive Director, Rocky Mountain Mineral Law Foundation, Westminster, CO
EARL E. DeBRINE, JR., Program Co-Chair; Partner, Modrall Sperl, Albuquerque, NM
JANET L. MCQUAID, Program Co-Chair; Partner, Norton Rose Fulbright US LLP, Canonsburg, PA

8:10 am – 8:40 am

High-Priority Water Issues on Federal Lands

As Assistant Secretary for Land and Minerals Management, attorney Janice Schneider oversees four Interior Department agencies, including the Bureau of Land Management and the Office of Surface Mining, Reclamation and Enforcement. Her presentation will provide valuable insight into the Department's regulatory priorities concerning water use and jurisdictional issues, including the new BLM hydraulic fracturing and EPA/Army Corps of Engineers Waters of the United States rules.

Moderator: EARL E. DeBRINE, JR., Program Co-Chair; Partner, Modrall Sperl, Albuquerque, NM

JANICE M. SCHNEIDER, Assistant Secretary for Land and Minerals Management, U.S. Department of the Interior, Washington, D.C.

8:40 am – 10:00 am

Analysis of Water Use and Flow and Hydraulic Fracturing Impact for Legal Professionals

Moderator: JANET MCQUAID, Program Co-Chair; Partner, Norton Rose Fulbright US LLP, Canonsburg, PA

Part 1: Use and Flow of Water from Point of Acquisition to Point of Disposal

An introduction to water flow, describing where, why, and how water is sourced, generated, transported, stored, used, and disposed of during and after drilling and hydraulic fracturing, including implications of legal and regulatory frameworks for water management planning.

ROY HARTSTEIN, Vice President—Strategic Solutions, Southwestern Energy Company, Houston, TX

Part 2: Hydraulic Fracturing Impact Studies – Recent Highlights, Summaries, and Analysis

The scope, purpose, and results of studies on the water-

- related environmental and geological impacts of drilling, hydraulic fracturing, and water disposal operations, including implications for litigation and legislative and rulemaking actions.
- KEITH B. HALL, Campanile Charities Associate Professor of Energy Law, Director, Mineral Law Institute, Louisiana State University School of Law, Baton Rouge, LA
- SCOTT ANDERSON, Senior Policy Director, US Climate and Energy Program, Environmental Defense Fund, Austin, TX

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

10:15 am – 11:00 am

Trends and Developments in Water Litigation

Recent trends in oil- and gas-related litigation relating to water supply and quality in the eastern, southwestern, and western United States.

Moderator: ANDREW L. PICKENS, Partner, Strawn Pickens LLP, Houston, TX

MICHAEL J. MAZZONE, Partner, Haynes & Boone, LLP, Houston, TX
AMY L. BARRETTE, Partner, Norton Rose Fulbright US LLP, Canonsburg, PA

11:00 am – 12:05 pm

Framework of Surface Water and Groundwater Legal Systems and Permitting (Part 1)

Moderator: MARIA O'BRIEN, Partner, Modrall Sperl, Albuquerque, NM

- Surface water and groundwater legal systems prevailing in the eastern, southwestern, and western United States.
- Prior appropriation, riparian rights, public trust, federal reserved rights, private rights, and correlative rights doctrines.
- Priorities of use, limitations on place and purpose of use, governmental oversight and enforcement, and private-party remedies.
- Permitting and standards for acquiring water rights, changes in place or purpose of use, public participation, and unique issues relating to permitting for oil and gas development.

MARK S. SQUILLACE, Professor of Law, Colorado Law, University of Colorado, Boulder, CO

GABRIEL ECKSTEIN, Professor of Law, Texas A&M University School of Law, Fort Worth, TX

PAMELA S. GOODWIN, Partner, Saul Ewing LLP, Princeton, NJ

(to be continued after luncheon presentation)

12:05 pm – 12:25 pm - **Hosted Buffet Lunch**

12:25 pm – 1:15 pm - **Lunch Presentation:**

Innovative Water Management Solutions for Conserving Fresh Water Resources

CAL COOPER, Director of Emerging Technology, Apache Corporation, Houston, TX

Moderator: EARL E. DeBRINE, JR., Program Co-Chair; Partner, Modrall Spering, Albuquerque, NM

1:15 pm – 1:30 pm - **Break**

1:30 pm – 2:10 pm

Framework of Surface Water and Groundwater Legal Systems and Permitting (Part 2)

Moderator: MARIA O'BRIEN, Partner, Modrall Spering, Albuquerque, NM

MARK S. SQUILLACE, Professor of Law, Colorado Law, University of Colorado, Boulder, CO

GABRIEL ECKSTEIN, Professor of Law, Texas A&M University School of Law, Fort Worth, TX

PAMELA S. GOODWIN, Partner, Saul Ewing LLP, Princeton, NJ

2:10 pm – 2:30 pm - **Hosted Refreshment Break**

2:30 pm – 4:00 pm

Transactional Panel: Acquiring Water Supply for Oil and Gas Operations

Moderator: ZACH C. MILLER, Partner, Davis, Graham & Stubbs LLP, Denver, CO

2:30 pm – 3:00 pm

Water Sourcing and Pricing

- Sources of supply; quantity, quality, and reliability legal considerations; advantages/disadvantages of various legal forms of water rights.
- Legal entities that sell water, and advantages/disadvantages and unique aspects of dealing with each.
- How buyers and sellers get together, and how pricing is determined.

AILEEN M. HOOKS, Partner, Baker Botts L.L.P., Austin, TX

3:00 pm – 3:30 pm

Conducting Due Diligence in Water Rights and Water Supply Transactions

- When due diligence is advisable and when it is not necessary
- What documents should be looked for and reviewed, and what issues should be considered.

KEVIN L. PATRICK, Partner, Patrick-Miller-Noto, Aspen, CO

3:30 pm – 4:00 pm

Contracting for Water Supply

- Types of contracts used for acquiring water.
- Key contract terms and their purpose from the buyer's and seller's perspective.

DANIELLA D. LANDERS, Partner, Katten Muchin Rosenman LLP, Houston, TX

4:00 pm – 5:00 pm - **Hosted Reception for Registrants, Speakers, and Guests**

Friday, April 8, 2016

8:00 am – 8:45 am

State Regulation of Water Use in Oil and Gas Development

Regulatory policies for encouraging water reuse, recycling, and responsible water management in oil and gas development.

Moderator: JANET MCQUAID, Program Co-Chair; Partner, Norton Rose Fulbright US LLP, Canonsburg, PA

DAVID W. COONEY, JR., Director of Enforcement, Office of General Counsel, Railroad Commission of Texas, Austin, Texas

8:45 am – 9:15 am

Well Pad Construction and Water Infrastructure Construction Permitting

Federal, state, and local permits and private agreements required for constructing well pads and water infrastructure.

Moderator: ROBERT L. THERIOT, Shareholder, Liskow & Lewis, Houston, TX

SHARON MATTOX, Sharon M. Mattox PLLC, Houston, TX

9:15 am – 10:30 am

Management of Water During and After Drilling—Legal and Regulatory Considerations

Moderator: EARL E. DeBRINE, JR., Partner, Modrall Spering, Albuquerque, NM

9:15 am – 9:35 am

Pre-Drilling Focus

Managing risk through groundwater testing prior to oil and gas drilling.

MOLLY CAGLE, Partner, Baker Botts L.L.P., Austin, TX

9:35 am – 9:55 am

Surface Focus

Regulatory controls, permitting requirements, enforcement, and new developments on management of water after an operator's use, including effluent limitation guidelines and the arid west exemption, landfarming, pretreatment of produced water and flowback for indirect discharge, and commercial recycling, as well as disposal of hydrostatic test water.

SARA S. BURGIN, Partner, Bracewell LLP, Austin, TX

9:55 am – 10:15 am

Subsurface Focus

Regulatory controls, permitting requirements, enforcement, and new developments on subsurface disposal pursuant to the Safe Drinking Water Act Underground Injection Control permitting program and Resources Conservation and Recovery Act Subtitle I injection controls.

MARY ELLEN TERNES, Shareholder, Crowe & Dunlevy, Oklahoma City, OK

- 10:15 am – 10:30 am
- **Economic Considerations in Water Management Strategies**
- DR. M. RAY PERRYMAN, The Perryman Group, Waco, Texas

10:30 am – 10:45 am - **Hosted Refreshment Break**

10:45 am – Noon

Case Study of Legal and Economic Issues Arising from Use of Water During and After Drilling.

Panel discussion of regulatory requirements for oil and gas well drilling, hydraulic fracturing chemical disclosure, trade secret protection, landowner and public participation, pre-drill groundwater testing, and groundwater restoration laws and cleanup standards, regulatory controls on the management of flowback and produced water, onsite storage, re-use and recycling, and disposal options including landfarming, UIC injection, treatment, and disposal at approved facilities.

- SARA S. BURGIN, Partner, Bracewell LLP, Austin, TX
- MOLLY CAGLE, Partner, Baker Botts L.L.P., Austin, TX
- MARY ELLEN TERNES, Shareholder, Crowe & Dunlevy, Oklahoma City, OK
- DR. M. RAY PERRYMAN, The Perryman Group, Waco, Texas

Noon – 1:30 pm - **Lunch – On Your Own**

1:30 pm – 3:00 pm

Escape of Water During Operations—Enforcement and Ethical Considerations

Moderator: CHRISTOPHER S. KULANDER, Director, Oil & Gas Law Institute, South Texas College of Law, Houston, TX

- 1:30 pm – 2:00 pm
- **Spill Response and Enforcement**

Spill reporting and cleanup requirements, government inspections and enforcement of water quality protection laws, and private-party participation in enforcement, based on a hypothetical release of hydraulic fracturing flowback water and enforcement action.

- BARBARA D. LITTLE, Of Counsel, Jackson Kelly PLLC, Charleston, WV

- 2:00 pm – 3:00 pm
- **Ethical Issues in Enforcement Proceedings**
- Professional responsibility issues associated with the same hypothetical release and enforcement action. Reference will be made to the Model Rules, where applicable.
- MARY VIVIANO, General Counsel, Vantage Energy, Englewood, CO
- HEIDI K. RUCKRIEGLE, Associate, Welborn Sullivan Meck & Tooley, P.C., Denver, CO

3:00 pm – 3:30 pm

Facts and Myths on Hydraulic Fracturing and Water Injection

A concluding discussion of the facts and myths about the consequences of hydraulic fracturing and water injection, the varying statutory and regulatory responses to date, and the differing opinions about future legislation and rulemaking.

- Moderator: DAVID M. CASTRO, SR., Chief Litigation Counsel, Hess Corporation, Houston, TX
- KEITH B. HALL, Campanile Charities Associate Professor of Energy Law, Director, Mineral Law Institute, Louisiana State University School of Law, Baton Rouge, LA
- SCOTT ANDERSON, Senior Policy Director, US Climate and Energy Program, Environmental Defense Fund, Austin, TX
- CAL COOPER, Director of Emerging Technology, Apache Corporation, Houston, TX
- ROY HARTSTEIN, Vice President—Strategic Solutions, Southwestern Energy Company, Houston, TX

3:30 pm - **Course Adjournment**

COVER PHOTOS:

“Geothermal drilling rig” by Richard Bartz (Own work) distributed under a CC-ASA 2.5 Generic license. <https://commons.wikimedia.org>
 “Red Deer River” by Enzenberger (Own work) distributed under a CC-ASA 3.0 Unported license. <https://commons.wikimedia.org>
 [Untitled image of a red water truck]. Retrieved November 16, 2015 from <http://www.frackingjobs.co>
 [Untitled aerial photo of a drilling site]. Retrieved November 16, 2015 from <http://iirjci.blogspot.ca>

PROGRAM COMMITTEE

EARL E. DeBRINE, JR., Program Co-Chair; Partner, Modrall Sperling, Albuquerque, NM

JANET L. MCQUAID, Program Co-Chair; Partner, Norton Rose Fulbright US LLP, Canonsburg, PA

DAVID M. CASTRO, SR., Chief Litigation Counsel, Hess Corporation, Houston, TX

CHRISTOPHER S. KULANDER, Director, Oil & Gas Law Institute, South Texas College of Law, Houston, TX

JOHN S. LOWE, George W. Hutchison Professor of Energy Law, SMU Dedman School of Law, Dallas, TX

ZACH C. MILLER, Partner, Davis, Graham & Stubbs LLP, Denver, CO

MARIA O’BRIEN, Partner, Modrall Sperling, Albuquerque, NM

ANDREW L. PICKENS, Partner, Strawn Pickens LLP, Houston, TX
 ROBERT L. THERIOT, Shareholder, Liskow & Lewis, Houston, TX

Register online at
<http://tinyurl.com/wam2reg>

Water Acquisition and Management



Register online at
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OR

Mail, fax, or email registration form and payment to:

THE CENTER FOR AMERICAN AND INTERNATIONAL LAW
 5201 Democracy Drive
 Plano, Texas, 75024-3561
 TEL: 972-244-3421
 FAX: 972.244.3401
 EMAIL: vadams@cailaw.org

Questions/Registrations:
vadams@cailaw.org

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Water Acquisition and Management

For Oil & Gas Development: Legal and Regulatory Requirements

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FAX: 972.244.3401

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GENERAL INFORMATION

Room Reservations: The JW Marriott Houston Galleria, 5150 Westheimer Rd., Houston, TX 77056 has blocked rooms for this conference until March 16 at \$159 per night. Concierge rooms are available at \$194 per night. Ask for special rates for “Water Acquisition” registrants. For reservations, contact the JW Marriott at:

- Online <http://tinyurl.com/rockym111>
- Toll Free 888-236-2427
- Direct 713-961-1500

A limited number of government rate rooms are also available - email info@rmmf.org for details. Trouble making room reservations? Contact info@rmmf.org.

Car Rental: Hertz is offering special discounts by referencing Meeting CV#03NJ0011. Make reservations at <http://tinyurl.com/hertzwa> or call 800-654-2240 (U.S.); 800-263-0600 (Canada); or 405-749-4434 (Int'l).

Registration Fees: Include electronic 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 3:00 pm on Wednesday, March 23, 2016. No refunds will be given thereafter, although substitution of attendees may be made. Cancellations or requests for substitutions must be made in writing or email to Lisa Gaspar at lgaspar@cailaw.org. Registrants not entitled to a refund will receive a link to the course

materials. For questions on refunds, complaints, and/or program cancellations, please contact Vickie Adams at vadams@cailaw.org or 972-244-3421.

CLE Credit: These conferences are typically accredited by all mandatory CLE states, the AAPL, NADOA and NALTA, and other professional organizations. Attorneys from certain states may be required to pay an additional fee. This course consists of approximately 12.5 hours of continuing education, including 1 hour of ethics. You must let us know at least 30 days in advance of the conference the states or organizations for which you will need credit (see registration form). The sponsors are State Bar of California MCLE-approved providers.

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