



Institute for  
ENERGY LAW

# The Energy Law Advisor

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## Industry News

***Chieftain Royalty Company v. XTO Energy, Inc., 2013 WL 3388629 (10th Cir. July 9, 2013) (Unpublished), applying Oklahoma oil and gas law.***

By Laura J. Long

After observing the Federal District Courts in Oklahoma reach differing conclusions over a period of years as to the suitability of oil and gas royalty lawsuits for certification under Fed. R. Civ. P. 23, the Tenth Circuit Court of Appeals granted discretionary accelerated review of the class certification order entered in this case. The case summary describes certain of the considerations emphasized by the court in vacating the certification order and remanding the case for further proceedings. Next month's *Energy Law Advisor* will include a summary of the same court's opinion on the same date in *Wallace B. Roderick Revocable Living Trust v. XTO Energy, Inc.*, involving an appeal of a class certification order of the Federal District Courts in Kansas. [Read more...](#)

## ***Energy Reform in Mexico***

By Dallas Parker, Jose Valera and Gabriel Salinas

President Enrique Pena Nieto of the Partido Revolucionario Institucional (PRI), the current ruling party, and the Partido Accion Nacional (PAN), the main opposition party, have each submitted to the Mexican Congress constitutional reform proposals that could transform the country's energy sector. Passage of either the president's or the PAN's reform proposal would constitute the most significant overhaul of the Mexican energy sector since 1938. Both proposals seek to open the Mexican petroleum industry to private

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## Submissions

### Industry News

Email [Brit Brown](#) and [Lilly Hogarth](#).

### Member Announcements

Email [Lilly Hogarth](#). Please submit photo with announcement if possible.

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participation and investment, including Mexico's upstream, midstream and downstream sectors, as well as its power generation sectors. The proposals are likely to be considered by the Mexican Congress in September. Although both reform proposals are likely to face some opposition, particularly from the Partido de la Revolucion Democratica (PRD) - which has submitted its own, much less substantial reform proposal - the PRI and the PAN are expected to have the required consensus to pass constitutional amendments. Whatever the outcome, the two leading proposals leave many important details to secondary legislation. [Read more...](#)

### **Hydraulic Fracturing as a Subsurface Trespass**

By Barclay Nicholson and Brian Albrecht

A recent ruling from the Northern District of West Virginia holds that the rule of capture does not preclude a cause of action of trespass when hydraulic fracturing activities cross lease lines. This ruling is contrary to Texas law and may give operators in the Marcellus Shale pause. [Read more...](#)

### **Reservation Rate Crediting For Interstate Natural Gas Pipelines**

By Arthur Miksis

FERC has traditionally dealt with natural gas interstate pipeline service interruptions in two ways: (1) full reservation charge crediting to shippers for non-*force majeure* outages (regulatory compliance/maintenance related) on the pipeline; and (2) partial reservation charge crediting to shippers for *force majeure* outages (acts of God/earthquakes, etc.) on the pipeline.

The Pipeline Safety, Regulatory Certainty and Job Creation Act of 2011 has created section 60139(c) which treats non-*force majeure* outages due to a specific regulation as if they were *force majeure* outages. This starkly contrasts with years of precedent issued from FERC on this subject. [Read more...](#)

## IEL News

### Institute News

The Institute for Energy Law announces the winner of the **Energy Litigation Award**, to be presented on November 7th in Houston at the [12th Annual Energy Litigation Conference](#).



Clyde W. Lea, ConocoPhillips' Deputy General Counsel, Litigation and Arbitration, has been named as the 2013 recipient of the IEL's prestigious Lifetime Achievement in Energy Litigation Award.

Lea began his career with Phillips Petroleum Company in 1974 as a senior attorney on the legal staff in Bartlesville, Okla. He transferred to London as senior counsel in 1985 and remained there for four years. He

served as special project counsel responsible for all claims and legal issues arising out of the 1989 fire and explosion at the Houston Chemical Complex which killed 23 workers. Returning to Bartlesville in 1995, he served as Associate General Counsel for Claims, Disputes and Litigation. In 1999 he was named associate general counsel for Finance, Human Resources and Governance, a position he held until the ConocoPhillips merger occurred August 2002. Since the merger, he has been Deputy General Counsel responsible for litigation and both domestic and international arbitration, including expropriation claims against Venezuela and Ecuador. Over his career he has been responsible for a wide variety of litigation, including claims arising from catastrophic accidents and international oil spills, claims arising from alleged environmental contamination and toxic exposure, as well as major contractual disputes with Enron and others.

Commenting on his selection for the award, Lea remarked, "I am honored to receive this award from the IEL and deeply appreciate the support of those who thought me worthy of nomination. I am especially honored in view of the achievements of the prior recipients. After a long career of dealing with always contentious and costly disputes, I find this award both satisfying and humbling."

Lea was born in 1948, in Mississippi. He graduated from Millsaps College in Jackson, Miss., in 1970 with a Bachelor of Arts degree in political science. In 1974, he received his Juris Doctor from New York University School of Law.

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### **Register now for the [4th IEL-SEERIL International Oil and Gas Conference!](#)**

Presented by the Institute for Energy Law of The Center for American and International Law and the Oil and Gas Law Committee and United Kingdom Energy Lawyers' Group (UKELG) of the International Bar Association's Section on Energy, Environment, Natural Resources and Infrastructure Law (SEERIL), the conference is also supported by the [Institute for Transnational Arbitration](#).

First held in 2008, this conference has become a biennial event attracting attorneys from the United States, Northwest Europe and Africa, to discuss current legal topics from around the world of concern to oil and gas lawyers.

Meet this year's Co-Chairs: **Paul Stockley** of Bond Dickinson and **Alex Msimang** of Vinson & Elkins

**Paul Stockley** is a partner at Bond Dickinson for the Oil and Gas Team. He has worked in the oil and gas industry for over 15 years and has in-house as well as



industry for over 15 years and has in-house as well as private practice experience. Prior to joining Bond Pearce Paul was senior legal counsel for six years with Hess Corporation. Paul's range of experience covers the full E&P cycle and includes licensing, concessions, production sharing contracts, joint ventures (including joint bidding agreements and joint operating agreements), development contracts, transportation, processing, marketing and sales as well as share/asset acquisitions and disposals. He has extensive experience both within the UKCS and internationally and has worked on projects in many overseas jurisdictions including Algeria, Azerbaijan, Brazil, Gabon, Ghana, Indonesia, Kazakhstan, Malaysia, Mauretania and Thailand.



**Alex Msimang** is a member of V&E's worldwide Energy Transactions and Projects Group.

Alex has extensive experience of a broad range of energy-related projects and transactions, acting for buyers, sellers, developers, lenders, governments, regulators, and publicly, privately, and state-owned companies. Alex has extensive experience in energy

M&A, in oil and gas transactions, in African energy projects, and in the UK and European power sector. He serves as Managing Partner of the London office.

### ***Members in the News***

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Erica Levine Powers (Adjunct Professor in the Department of Geography and Planning at the University at Albany (SUNY)) announces the publication of her book "Beyond the Fracking Wars - A Guide for Lawyers, Public Officials, Planners and Citizens". The Preface for the book is by Bruce Kramer, Professor Emeritus Texas Tech Law School and Of Counsel at McGinnis Lochridge & Kilgore.

Please [click here](#) to read the Preface.

Erica is looking for reviewer for her book; if interested, please contact her at: [erica.powers@gmail.com](mailto:erica.powers@gmail.com)

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Tim West, Past Chair of the Executive Committee of the Institute for Energy Law, is active in professional educational activities and presently teaches an oil and gas law course at Rutgers University School of Law - Camden, as an Adjunct Professor. Rutgers Law School recently joined the Institute for Energy Law as a Law School Member and was named to the Association of International Petroleum Negotiators' Education Advisory Board. Tim serves as the Rutgers Law School faculty representative to the IEL and AIPN. As a Board member, Tim supports the BEACON's outreach program to Houston's homeless, including providing pro bono legal assistance. The BEACON's legal pro bono program receives grants from the Texas Equal Access to Justice Foundation and the Corporate Counsel and Litigation Sections of the State Bar

of Texas. Although splitting their time between Texas and New Jersey, Tim and his wife Elene reside in Houston.

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The IEL gratefully recognizes **Jones Day**, a new **Sustaining Member** with the following representatives elected to the IEL Advisory Board:

- **Josh Fuchs**
- **David Grecco**
- **Cassandra Mott**
- **Omar Samji**
- **Scott Schwind**
- **David Stringer**
- **Nicole Perry** (Young Energy Professional)
- **Laurens Wilkes** (Young Energy Professional)

And a new **Sponsoring Member**:

- **Davis Graham & Stubbs** with the following representatives elected to the IEL Advisory Board: **Laura Battle Gill**

Please help us welcome IEL's newest Associate Member and representative on the Advisory Board:

- **Brad D'Amico** (Cantey Hanger LLP, Dallas TX)

The IEL also recognizes our newest Young Energy Professional Members:

- **Brandon Barchus** (Faulk Barchus, PLLC, Houston TX)
- **Matthew M. Birkhofer** (Sutherland, Asbill & Brennan, Houston TX)
- **Eric Gemp** (Navigant, Houston TX)
- **Katy Shurin** (Jacobs Engineering Group, Houston TX)
- **Tommer Yoked** (Sidley Austin LLP, Houston TX)

### *Calendar of Events*

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#### Oil & Gas Law Short Course

Westminster,  
CO  
Oct 21 - 25,  
2013

#### Breakfast CLE: Dodd-Frank Sections 1502 and 1504

Houston, TX  
Oct 23, 2013

#### 12th Annual Energy Litigation Conference

Houston, TX  
Nov 7, 2013

#### 2nd Midstream Oil & Gas Law Conference

Houston, TX  
Nov 22, 2013

#### 4th IEL-SEERIL Oil & Gas Law Conference

London, UK  
Dec 4 - 6, 2013

#### Renewable Energy Law Conference

San Diego, CA  
Jan 23, 2014

**65th Annual  
Oil & Gas Law  
Conference**

Houston, TX  
Feb 19 - 20,  
2014

**International  
Energy  
Arbitration: an  
ITA-IEL Joint  
Winter Forum**

Houston, TX  
Feb 20 - 21,  
2014

**3rd IEL-ANADE  
Conference**

Mexico City,  
Mexico  
Mar 27 - 28,  
2014

**Mergers &  
Acquisitions /  
Acquisitions &  
Disposals  
Conference**

Houston, TX  
May 15 - 16,  
2014

**International Oil  
& Gas,  
Contracts &  
Negotiations -  
Part I**

Houston, TX  
Sep 22 - 26,  
2014

**7th YEP  
General  
Counsel Forum**

Houston, TX  
Oct 23, 2014



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AND INTERNATIONAL LAW**

Institute for Energy Law  
of The Center for American and International Law  
5201 Democracy Drive | Plano, Texas USA 75024-3561  
+1.972.244.3400 | +1.972.244.3401 (fax)

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