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# 2023 ENERGY CONFERENCE



**OCTOBER 25<sup>th</sup>**  
8:30 AM - 4:30 PM



**DALLAS COUNTRY CLUB**  
4155 Mockingbird Ln  
Dallas, TX 75205

**\*7 HOURS OF CPE &  
1 HOUR OF CLE**  
pending approval



# Justin Roberts



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**UNT**<sup>®</sup>  
UNIVERSITY  
OF NORTH TEXAS™



# Housekeeping Items

- If you need CPE, please make sure to sign via Conference.io QR Code. You can find on your tables and at registration table. If you need CLE Credit, please see the registration table.
  - Survey & Certificates will be sent to email after the conference concludes from LCVista.
  - Please fill out survey, your feedback is appreciated.
  - Sign-in located at registration table. Please make sure to sign out!
- Materials will be sent out after the event.
- Join us for Networking hour immediately following the conference.
- Other questions? Email [Marketing@whitleypenn.com](mailto:Marketing@whitleypenn.com)

# Thank you to our sponsors and speakers!





# WHITLEYPENNCPE.CNF.IO

- ▶ Navigate to <https://whitleypenncpe.cnf.io/> and tap the session titled "2023 Whitley Penn Energy Conference – Dallas"
- ▶ OR just point your phone's camera at the QR code to join directly or utilize QR Code on Table.
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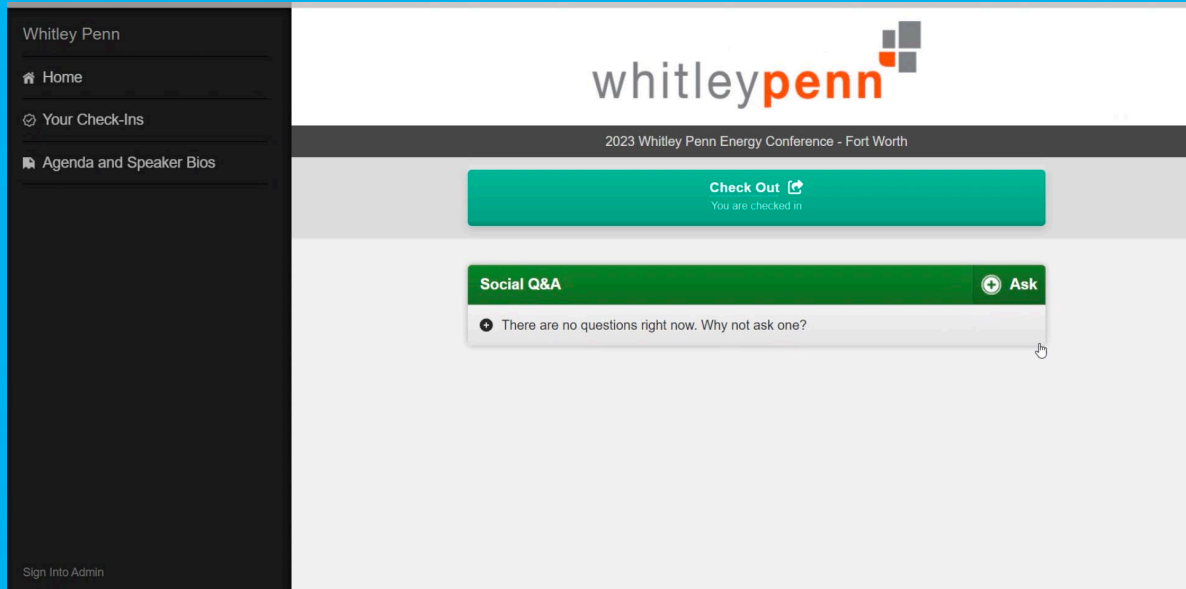


# WHITLEYPENNCPE.CNF.IO

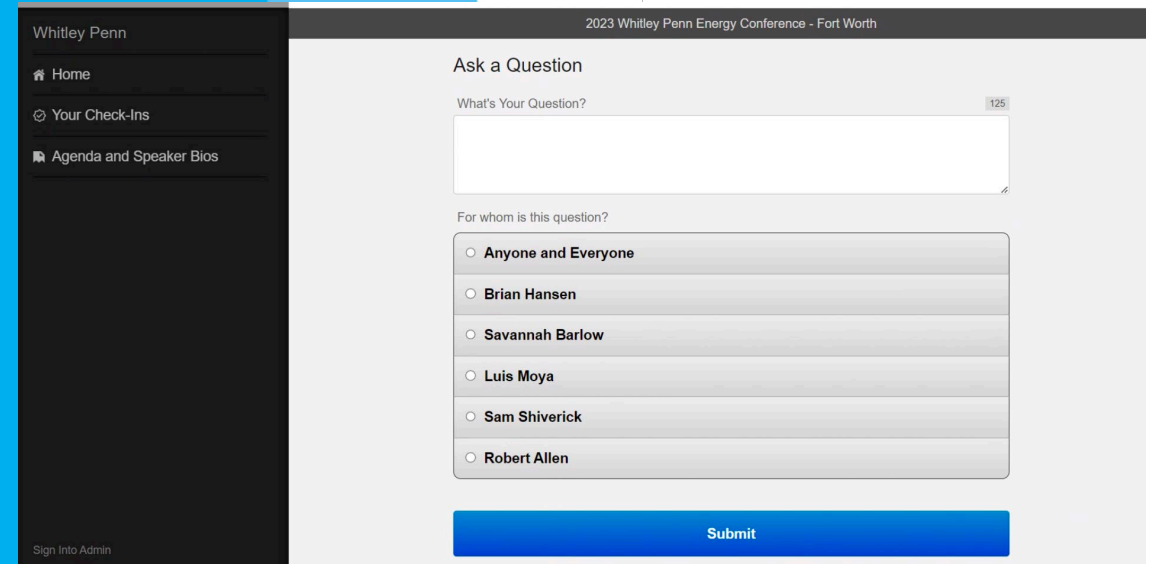
## Q&A feature

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- ▶ Select any of the listed speakers during their speaking time.



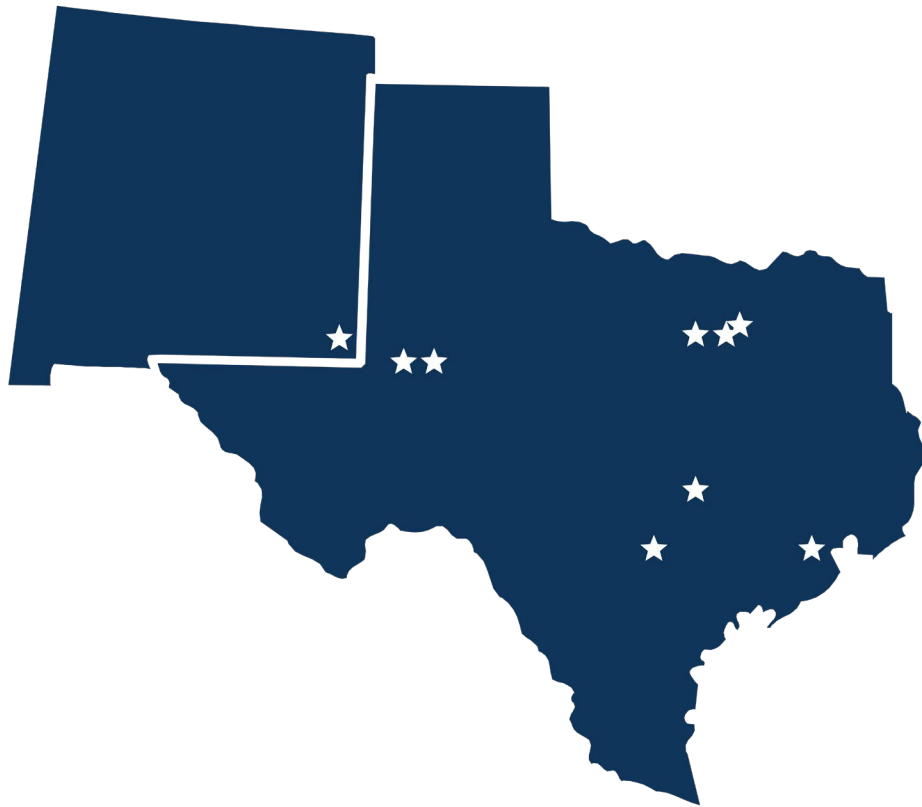
- ▶ Use the Q&A feature to ask our speakers questions!



# About the Firm

Whitley Penn is the 37th largest firm in the nation based on 2023 rankings in Accounting Today, 39th in the nation based on 2023 rankings in INSIDE Public Accounting's "Top 100 Firms", and one of the fastest growing firms in the nation. We have an extensive team of experienced audit, tax, consulting, and valuation professionals that we are able to draw upon as needed.





800+  
Professionals

#37  
by Accounting  
Today

9  
Offices

# Our Services

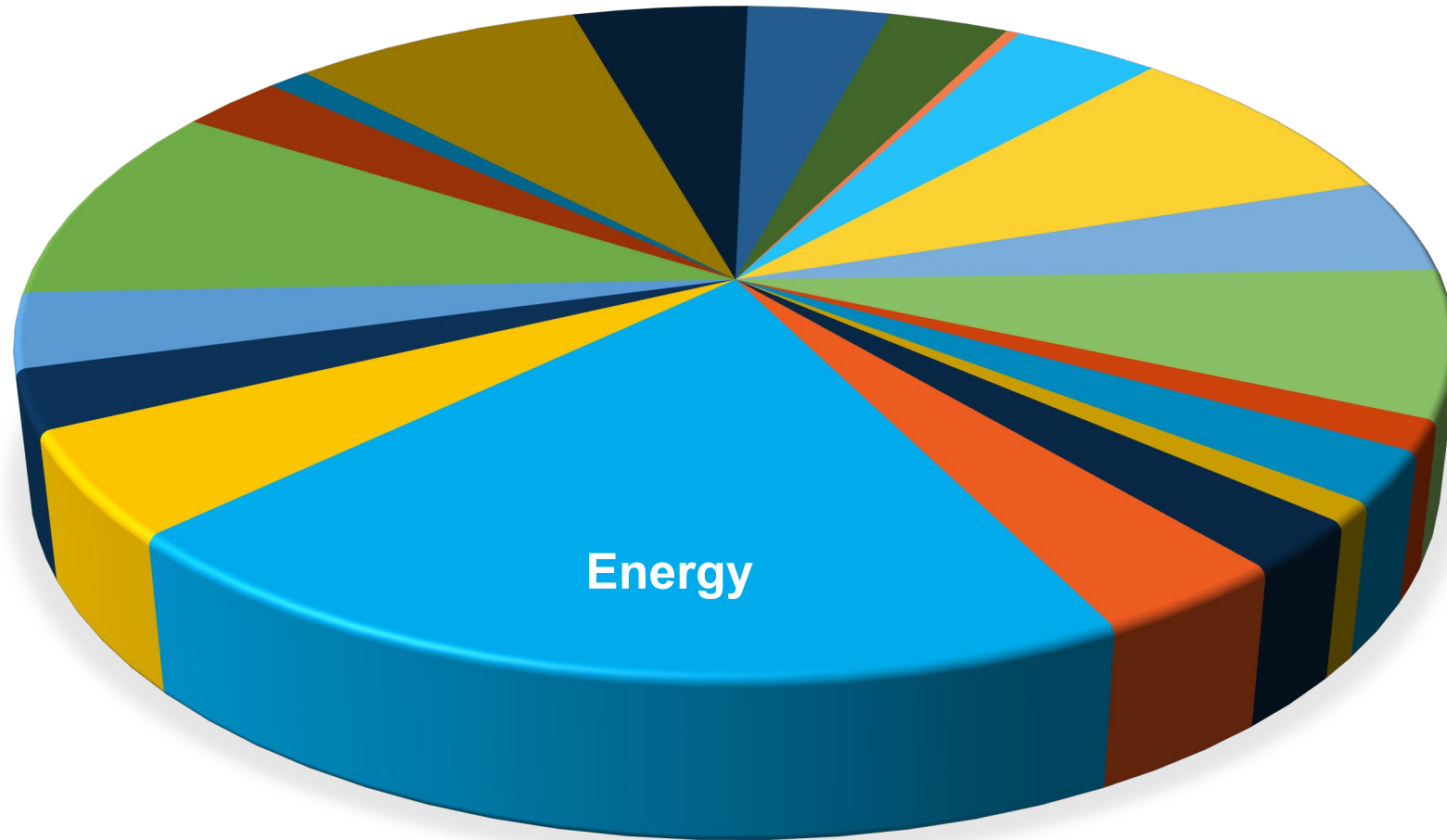
- Audit
- Consulting
- Forensic, Litigation & Valuation
- Client Accounting & Advisory Services
- Risk Advisory Services
- Tax
  - International
  - SALT
- Transaction Advisory Services
- Wealth Management (WPWealth)



# Our Industries

- Agriculture
- Construction
- Employee Benefit Plans
- **Energy**
- Estate & Gift Planning
- Family Office & High-Net-Worth Individuals
- Financial Institutions
- Healthcare
- Manufacturing, Distribution & Logistics
- Nonprofit
- Private Equity & Investment Funds
- Professional Services
- Public Sector
- Real Estate & Construction
- Restaurant, Entertainment, Retail & Hospitality
- Technology
- Transportation
- Veterinary Medicine

# WP Industry Breakdown



# Who we work with in the Energy Industry

- Upstream
- Midstream
- Oilfield Services
- Renewables

# *Up Next:* **Assurance & Advisory Update**

Justin Robert, Audit Partner

Logan Hornback, Audit Sr. Manager

Whitley Penn

# *Up Next:* Panel Discussion: Insights into Energy Finance

Amanda Beabout, Audit Partner at Whitley Penn & Moderator

Christina Kitchens, Founder & Managing Partner at 3P Energy

Leslie Simmons, Controller at DG Petrol Oil & Gas

Leslie Moriyama, Chief Financial Office at Dorchester Minerals



# Break

# *Up Next:* Energy Transactions Update along with Relevant Legal Issues

Jason Schumacher, Partner  
O'Melveny & Myers LLP

# Lunch Break

# *Keynote Speaker:* **North Texas Business and Regional Economy Update**

Angela Farley, CEO & President  
Dallas Regional Chamber

# Break



# *Up Next:* **Mineral Management & Asset Update**

Jason Fitzgerald, Manager  
Whitley Penn

# *Up Next:* Navigating the Insurance Market

David Artzerounian, Sr. Vice President  
USI

# Break

*Up Next:*  
**Tax Update feat. State  
and Local Tax Update**

Joe Lavis, Tax Partner

Brandon Newtown, SALT Sr. Manager

Whitley Penn

*Up Next:*  
**On Demand: The Importance  
of a Modern Technology Suite  
in Oil & Gas**

Ryan Monahan, Director  
Quorum Software



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**Thank you for attending,  
see you all next year!**

**Join us for  
Networking Hour !**



# Accounting Update

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**October 25, 2023**

**Justin Roberts, Whitley Penn Audit Partner**

**Logan Hornback, Whitley Penn Audit Senior  
Manager**



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THE GLOBAL ADVISORY  
AND ACCOUNTING NETWORK

# Logan Hornback

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AND ACCOUNTING NETWORK

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# Summary

- Year End Considerations
- ASU 2016-13 – Measurement of Credit Losses
- ASU 2020-04 – Reference Rate Reform
- ASU 2020-06 – Debt with Conversion and Other Options and Derivatives and Hedging
- ASU 2022-01 – Derivatives and Hedging
- ASU 2023-05 – Joint Venture Formations
- ASU 2023-05 – Disclosure Improvements
- SEC Rules

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# ASU 2016-13 Measurement of Credit Losses on Financial Instruments

- Main objective - there has been concern that current GAAP was delaying the recognition of **expected** credit losses, since previous standards focus on **incurred** losses
- Effective:
  - Effective for public companies with years beginning after December 15, 2019
  - Effective for nonpublic companies with years beginning after December 15, 2022
  - Early adoption is permitted
- ASU 2020-02 and ASU 2020-03 – narrow focus improvements

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# ASU 2016-13 Measurement of Credit Losses on Financial Instruments

- Who is affected by this update?
  - Applicable to all financial instruments that are not accounted for at fair value through net income
  - Loans, debt securities, mortgages, credit cards, trade AR
  - Impact is **NOT** just limited to financial institutions



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# ASU 2016-13 Measurement of Credit Losses on Financial Instruments

- Main provisions of the update:
  - Requires a financial asset (or asset group) measured at amortized cost basis to be presented at the net amount expected to be collected. (**Current GAAP based on probable incurred losses**)
  - Requires available-for-sale securities to determine if all or part of unrealized loss is a credit loss.
  - Credit losses relating to available-for-sale (AFS) debt securities should be recorded through an allowance for credit losses.
  - Additional disclosures

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# ASU 2016-13 Measurement of Credit Losses on Financial Instruments

- Transition
  - Mostly will be required to use the modified retrospective approach with an adjustment to opening retained earnings
  - There are some other exceptions
    - Held to maturity (HTM) securities will be required to use the current expected credit loss (CECL) model prospectively
    - AFS impairment should be done prospectively and previous write-downs will remain with future expected losses as an allowance

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# ASU 2020-04 Reference Rate Reform

- This ASU provides temporary optional guidance to ease the potential burden in accounting for reference rate reform.
- The new guidance provides optional expedients and exceptions for applying generally accepted accounting principles to contract modifications and hedging relationships, subject to meeting certain criteria, that reference LIBOR or another reference rate expected to be discontinued.
  - Receivables, Debt, Leases, Derivatives, Other
- The ASU is intended to help stakeholders during the global market-wide reference rate transition period. Extended through December 31, 2024 in late 2022.

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# ASU 2020-06 – Debt with Conversion and Other Options and Derivatives and Hedging

- This ASU simplifies accounting for convertible instruments by removing major separation models required under current U.S. GAAP.
- Previously this was some of the more complex guidance and bounce between several ASC.

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# ASU 2020-06 – Debt with Conversion and Other Options and Derivatives and Hedging

- Simplifications
  - Eliminates the models that require separation of a cash conversion or beneficial conversion feature from the host contract.
  - More convertible debt instruments will be reported as a single liability instrument
  - More convertible preferred stock as a single equity instrument
- Unless derivative bifurcation features or convertible debt was issued at a substantial premium

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# ASU 2020-06 – Debt with Conversion and Other Options and Derivatives and Hedging

- Simplifications
  - Derivative scope exceptions changes
    - Removed three settlement conditions required to avoid derivative accounting and meet the scope exception: Ability to deliver registered shares, collateral and counterparty rights
    - Penalty payments in an instrument do not preclude equity classification
    - Confirmed instruments not indexed to the issuer's stock must be remeasured at fair value each reporting period
  - EPS Related Items
    - Treasury stock method no longer allowed for convertible instruments
    - Presumption that instrument will be settled in shares

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# ASU 2020-06 – Debt with Conversion and Other Options and Derivatives and Hedging

- Effective dates:
  - PBEs – fiscal years beginning after December 15, 2021 (including interim dates within those periods)
  - Non-PBEs – fiscal years beginning after December 15, 2023
  - Early adoption is permitted

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## ASU 2022-01 – Derivatives and Hedging

- Intended to better align hedge accounting with an organization's risk management strategies.
- Expands the current single-layer method to allow multiple hedged layers of a single closed portfolio under the method. To reflect that expansion, the last-of-layer method is renamed the portfolio layer method



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## ASU 2022-01 – Derivatives and Hedging

- Effective for public entities for fiscal years beginning after December 15, 2022, including interim periods within those fiscal years. Early adoption is permitted.
- Effective for private entities for fiscal years beginning after December 15, 2023, including interim periods within those fiscal years. Early adoption is permitted
- Apply prospectively to modifications or exchanges occurring on or after the effective date of the amendments.

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## ASU 2023-05 – Joint Venture Formations

- A newly formed joint venture would initially measure its assets and liabilities at fair value upon formation.
- Effective for all joint ventures formed on or after January 1, 2025. Early adoption is permitted

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# ASU 2023-06 – Disclosure Improvements

- Intent is to codify certain SEC disclosure requirements into GAAP
- Although narrow in nature there are some key disclosures that may become required for private companies
  - EPS
  - SMOG
  - Overall 14 Topics effected
- Effective for public entities the date the SEC removes the disclosure requirement from Reg S-X or Reg S-K.
- Effective for private entities two years after the SEC removes the disclosure requirement from Reg S-X or Reg S-K
- SEC has until June 30, 2027 to remove, if not the disclosure topic in the ASU does not become effective

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## Future

FASB plans to issued one new rule and three proposals early 2023 to become final by end of the year

- Proposals
  - Crypto Assets deemed to be intangibles
  - Disclosures on income taxes paid in US and in foreign countries
  - Profits Interest Awards
  - Disclose disaggregation data of certain income statement expenses for Public Entities
- Plan to address some other complicated parts of accounting guidance

# SEC Rules

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## Adopted Cybersecurity Rules

- Disclose a cyber security breach within 4 days after determining the breach is serious enough to be material to investors
  - Removed the part about immaterial individual incidents accumulated together had become material
- Companies will also have to annually describe their efforts to identify and manage threats in cyberspace including how the board oversees and governs cyber risk, not required to describe expertise
- Go into effect 30 days after published on Federal Register
- Service providers will have additional expectations and pressure now to perform

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## Climate Disclosures – Proposed Rule

- Required footnote disclosures
  - Climate-related financial impacts
  - Climate-related expenditure metrics
  - Must use a bright line of 1% impact to that financial statement line item
- Required to provide quantitative and qualitative disclosures in a separately captioned “Climate-Related Disclosure” section immediately preceding MD&A

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# Climate Disclosures – Proposed Rule

- Disclose in this new section
  - Scope 1, Scope 2 and Scope 3 greenhouse gas (“GHG”) emissions
  - Climate related risks and opportunities
  - Climate risk management processes
  - Climate targets and goals
  - Governance and oversight of climate-related risks
- Scope 1 and 2 GHG emission disclosures subject to an independent attestation requirements
- Not a defined climate-related reporting framework or standards
  - Global Reporting Initiative, GHG Protocol Standards, Task Force on Climate-related Financial Disclosures and Sustainability Accounting Standards Board



## Climate Disclosures – Proposed Rule

- Required Comparative disclosures for all years presented
- EGC, IPO, SPAC targets would be required to comply
- Privates may be requested for this data from public companies for their filings
- Current proposed effective dates
  - Large Accelerated Filer – FY 2023 and add Scope 3 disclosures in 2024
    - GHG limited assurance in 2024 with Reasonable assurance 2026
  - Accelerated Filer – FY 2024 and add Scope 3 disclosures in 2025
    - GHG limited assurance in 2025 with Reasonable assurance 2027
  - SRC – FY 2024 and add Scope 3 disclosures in 2025
    - Not Required to have Scope 1 and 2 GHG emissions attestation

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## Climate Disclosures – Proposed Rule

- Comments made in 2023 this may be scaled back due to concern of litigation
  - Reduce or eliminate Scope 3 disclosure requirements
- CALIFORNIA!!!
  - Starting in 2026
  - >\$500 million in revenue – Scope 1 and 2
  - ?\$1 Billion in revenue – Scope, 1, 2 and 3

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## Future - SEC

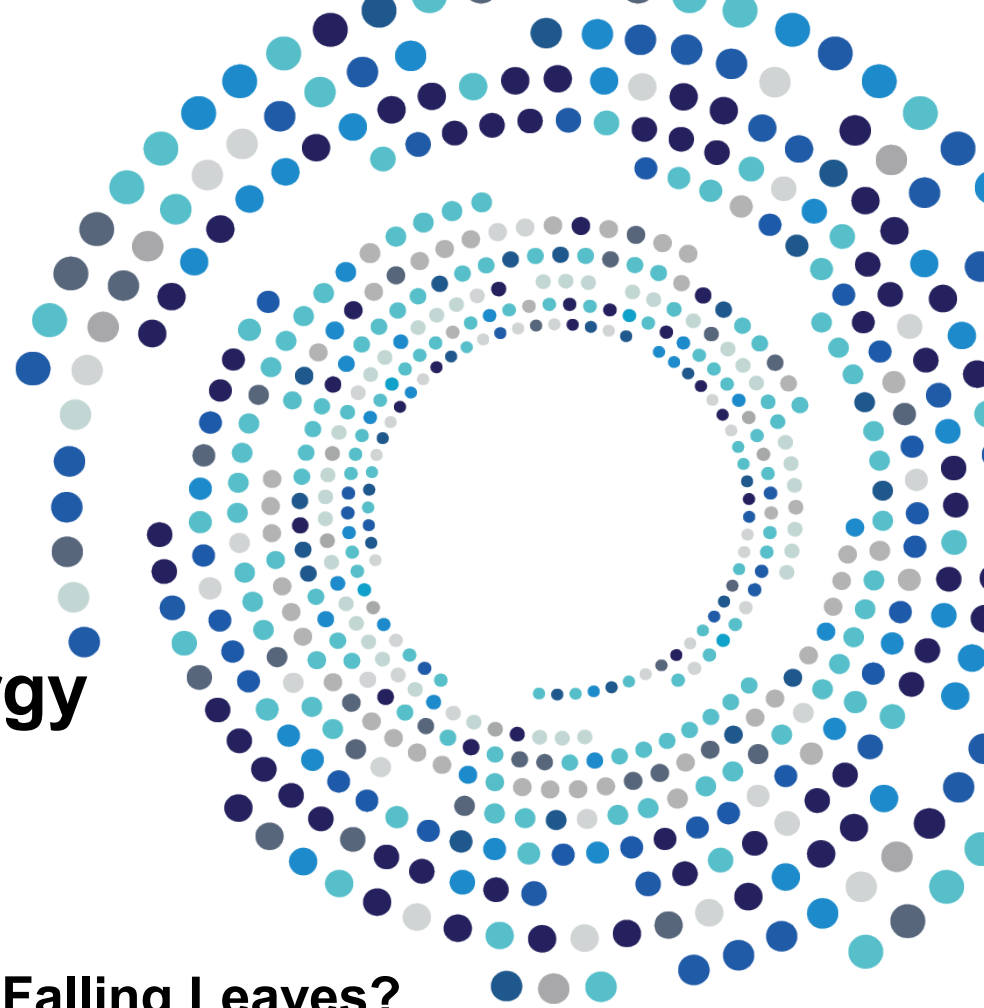
SEC is still planning to finalize rules in 2023

- Climate disclosures
- Several around fund advisors and brokers
- Several around forms and timing of filings

# Questions



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# The Landscape of Energy Transactions

**Will There Be Bigger Blooms Or Falling Leaves?**

Jason A. Schumacher

*October 25, 2024*

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## Select Firm Recognition

**Forbes**

“One of the oldest and most respected firms in the country, if not the world”

*The*  
**LEGAL  
500**

**40** Practices Ranked

**10** Hall of Fame Lawyer Rankings

**9** Leading Lawyer Rankings

**11** Next Generation Lawyer Rankings

**Chambers  
AND PARTNERS**

**37** Practices Ranked

**60** Lawyers Ranked

# Global Reach



Austin • Century City • Dallas • Houston • Los Angeles • Newport Beach • New York • San Francisco • Silicon Valley • Washington, DC  
Beijing • Brussels • Hong Kong • London • Seoul • Shanghai • Singapore • Tokyo

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## Agenda for the Day

- **Look Back at Major Recent Transactions and Lessons Learned**
- **Thoughts about 2023-2024 Deal Environment**
- **Novel Deal Devices Being Used**



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# Recently Announced Transactions

Announced Date	Target Name	Acquirer Name	Equity Value (\$m)	Transaction Status
10/23/2024	Hess Petroleum	Chevron	\$53,000.00 Stock	Pending
10/11/2023	Pioneer Natural Resources	Exxon	\$60,000.00 Stock	Pending
08/21/2023	Earthstone Energy, Inc.	Permian Resources Corporation	\$4,500.00 Stock	Pending
07/13/2023	Denbury Resources	Exxon	\$4,900.00 Stock	Pending
06/20/2023	Hibernia Energy III, LLC Tap Rock Resources, LLC	Civitas Resources	\$4,700.00 Cash and Stock	Pending

## Recently Announced Transactions

Announced Date	Target Name	Acquirer Name	Equity Value (\$m)	Transaction Status
05/14/2023	Magellan Midstream Partners, L.P.	ONEOK, Inc.	\$18,800.00 Cash and Stock	Closed
05/11/2023	Forge Energy II Delaware LLC	Vital Energy Inc.	\$540.00 Cash	Closed
05/03/2023	Callon (Eagle Ford) LLC	Ridgemar Energy Operating, LLC	\$700.00 Cash	Closed
05/02/2023	Percussion Petroleum II LLC	Callon Petroleum Company	\$537.50 Cash	Closed

## Recently Announced Transactions

Announced Date	Target Name	Acquirer Name	Equity Value (\$m)	Transaction Status
05/02/2023	Mesquite Energy (Eagle Ford assets)	Sanchez Energy Corporation	\$600.00 Cash	Closed
04/03/2023	Ovintiv Inc (Bakken Basins assets)	Grayson Mill Bakken, LLC	\$825.00 Cash and Stock	Closed
04/03/2023	Piedra Resources, LLC; Black Swan Oil & Gas LLC; and PetroLegacy Energy Operating LLC	Ovintiv Inc	\$4,301.21 Cash and Stock	Closed
03/27/2023	Lotus Midstream, LLC	Energy Transfer LP	\$1,464.70 Cash and Stock	Closed

# Recently Announced Transactions

Announced Date	Target Name	Acquirer Name	Equity Value (\$m)	Transaction Status
03/24/2023	Delaware Basin Resources LLC	Vitol's VTX Energy Partners	~\$1,500.00 – \$2,000.00 Speculated	Closed
02/28/2023	Ranger Oil Corp	Baytex Energy Corp.	\$2,536.17 Cash and Stock	Closed
02/28/2023	Cibolo Energy Partners LLC	Riley Exploration Permian, Inc.	\$330.00 Cash	Closed
02/27/2023	Aera Energy LLC	Canada Pension Plan Investment Board	\$1,891.40 Cash	Closed

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## Recently Announced Transactions

Announced Date	Target Name	Acquirer Name	Equity Value (\$m)	Transaction Status
02/21/2023	Chesapeake Energy Corporation	INEOS Group Limited	\$1,400.00 Cash - \$225MM Delayed Installments	Closed
02/21/2023	Tres Palacios Gas Storage, LLC	Enbridge Inc.	\$335.00 Cash	Closed
02/20/2023	Diamondback Energy, Inc.	Undisclosed Acquiror	\$439.00 Cash	Closed
02/15/2023	Whistler Pipeline LLC	I Squared Capital and ISQ Global Infrastructure Fund III, L.P.	\$2,000.00 Cash	Closed

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## Recently Announced Transactions

Announced Date	Target Name	Acquirer Name	Equity Value (\$m)	Transaction Status
01/24/2023	Advance Energy Partners, LLC	Matador Resources Company	\$1,690.00 Cash and Earnout Payment	Closed
01/18/2023	Chesapeake	WildFire Energy I, LLC	\$1,400.00 Cash	Closed
01/06/2023	DCP Midstream, LP	Phillips 66	\$3,800.00 Cash	Closed
01/02/2023	Grand Prix NGL Pipeline	Targa Resources Corp	\$1,050.00 Cash	Closed

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## Observations

- The Supermajors FLEX
- Midstream picks up the pace
- Multi buyers for PDP
- The draw of diversified energy companies to upstream – Ineos and Vitol



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## Thoughts about 2023-2024 Deal Environment

- ESG profiles are bigger pieces of determining if a target can be acquired
  - Effect: Companies who are not investing in their ESG profiles will become harder and harder to acquire
- Acquisitions, dividends, debt reduction and drilling dollars are coming from free cash flow
  - Effect: Established company are needing to establish hordes of cash to do deals but are under constant pressure to reduce debt or increase dividends. Result: Less money to acquire new properties

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## Thoughts about 2023-2024 Deal Environment

- Movement of commodity price in the middle of a deal is getting harder for deals to have stability and maintenance of agreed upon price
  - Effect: Sellers having to be flexible for buyers to hit underwriting promises on rate of return at closing
- Capital is getting hard to come by
  - Effect: Hard for the medium sized companies to grow to acquire smaller companies

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## Agenda for the Day

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## Novel Deal Devices Being Used

- Fund Formations
- Upstream – Midstream JVs
- 45Q Tax Credits

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## Novel Deal Devices Being Used

- **Fund Formations**
- Upstream – Midstream JVs
- 45Q Tax Credits

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## Fund Formations

- Form special purpose vehicle (the “Fund”) to owns oil and gas leases/wells that need to be acquired and/or developed
- The Fund is formed as follows:
  - Oil and gas companies raising their own capital OR
  - Hiring an investment bank to run a process to find multiple investors
- Usually, none of the investors own a majority of the Fund
- The oil and gas company that forms the Fund controls the Fund with some decisions requiring decisions of investors

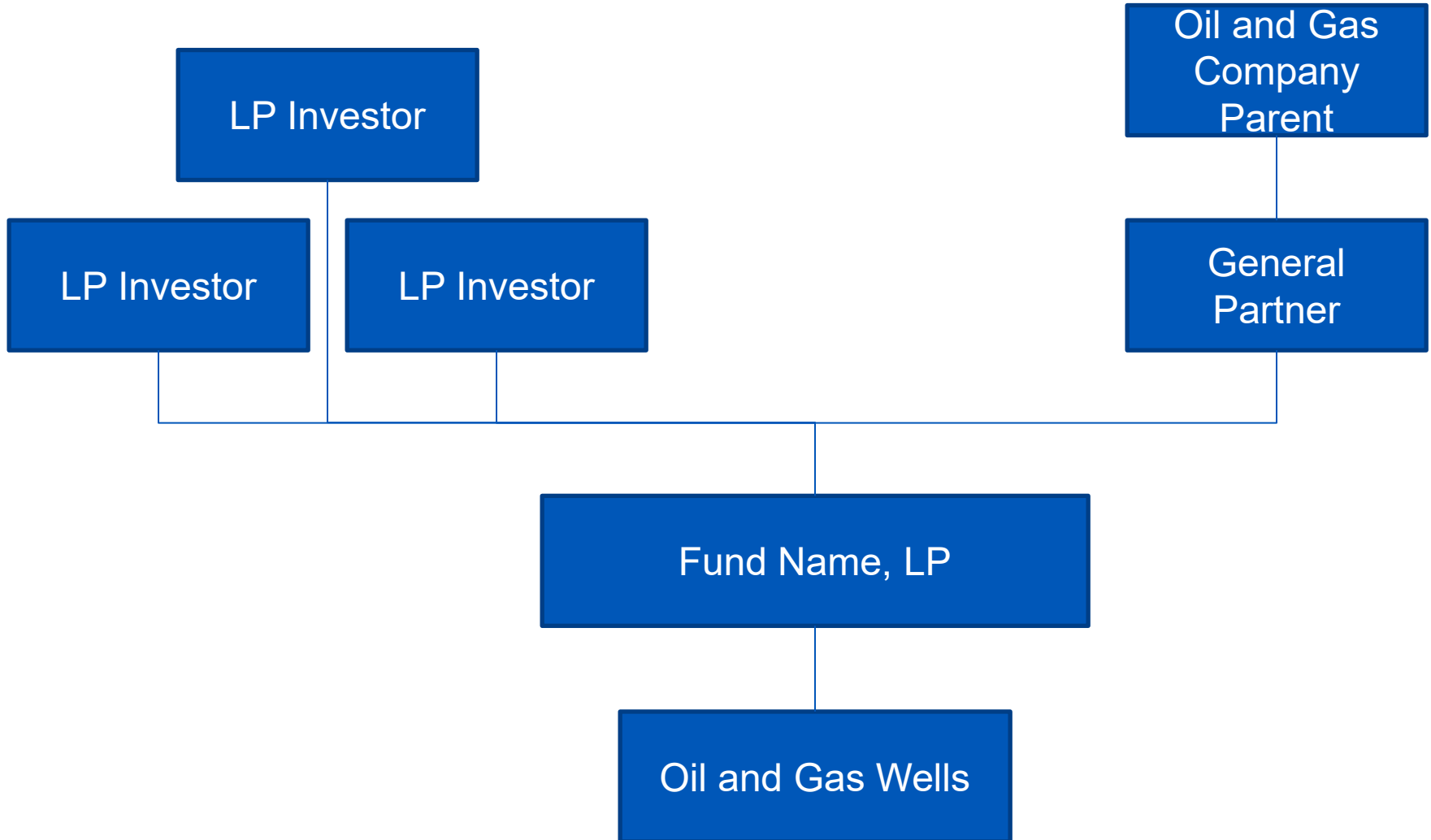
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## Fund Formations

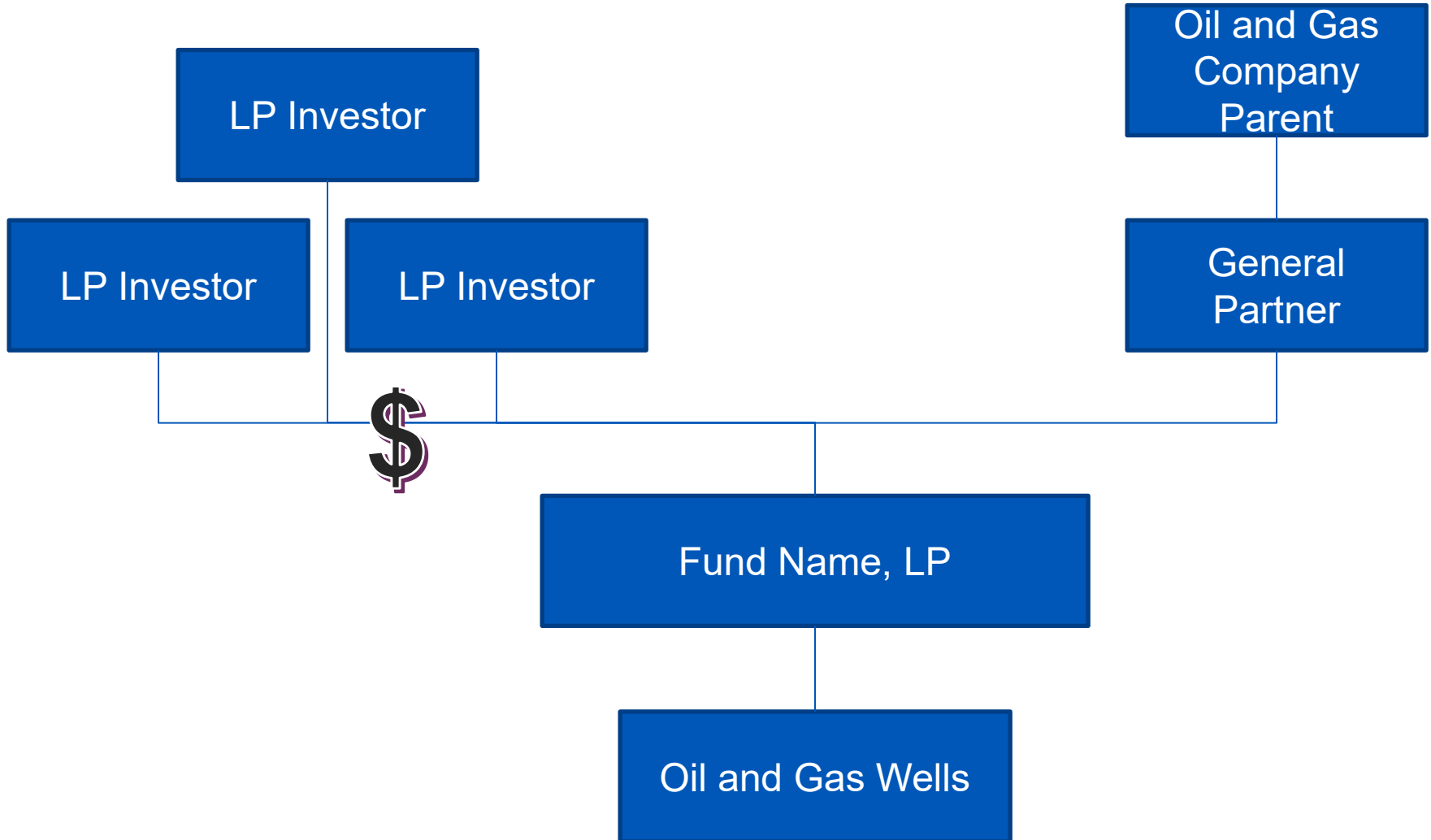
- Fund Formation are being considered now more by oil and gas companies for several reasons:
  - Capital is TIGHT
  - Traditional private equity funds or majority investors require control and motives between the oil and gas company's management team and their equity provider can diverge and conflicts
  - Drillco structures (i.e. bringing in a capital provider non-operator and oil and gas company backs-in through working interest) requires dilution of project area and consent-non-consent dynamic



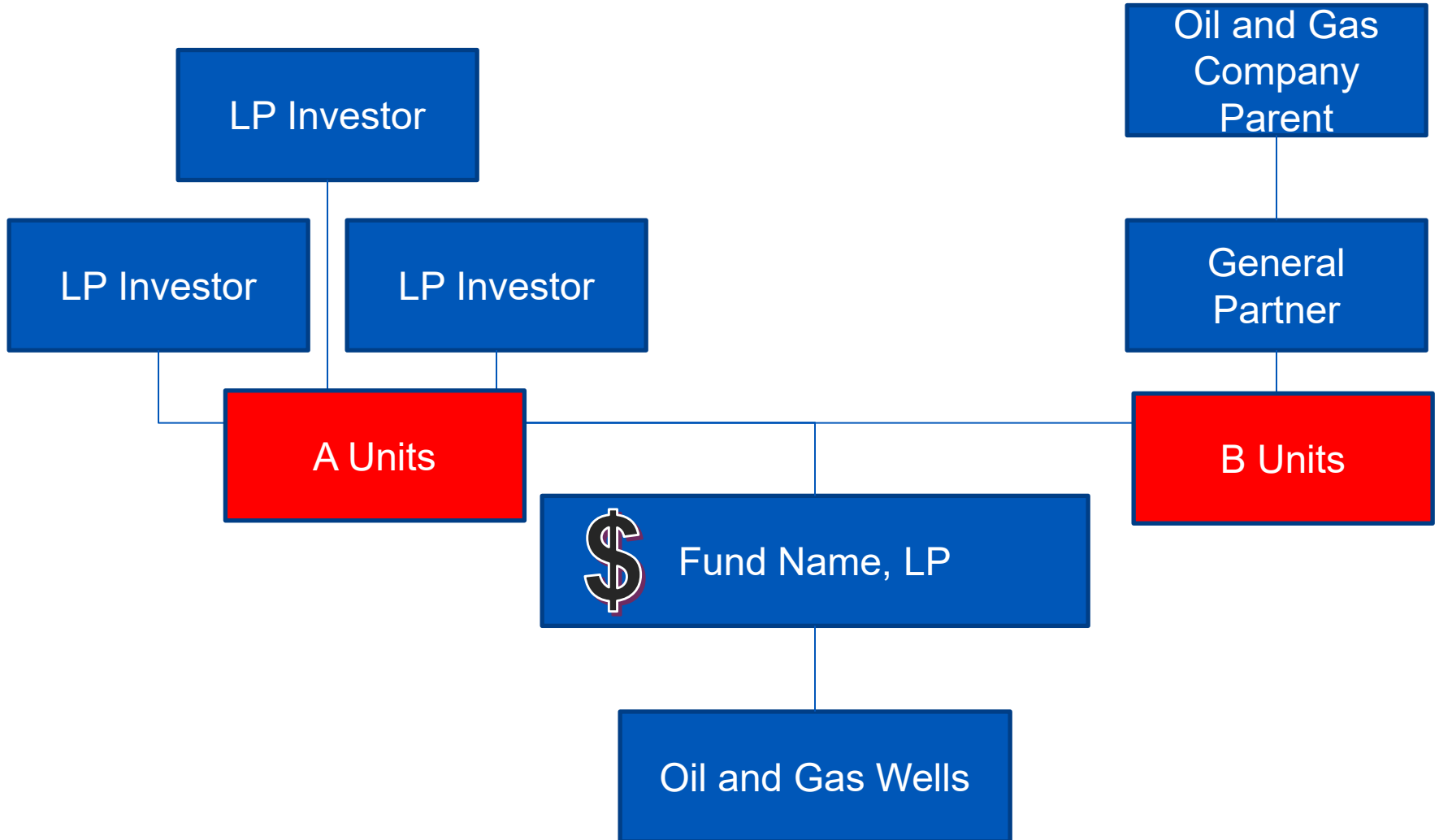
## Fund Formations



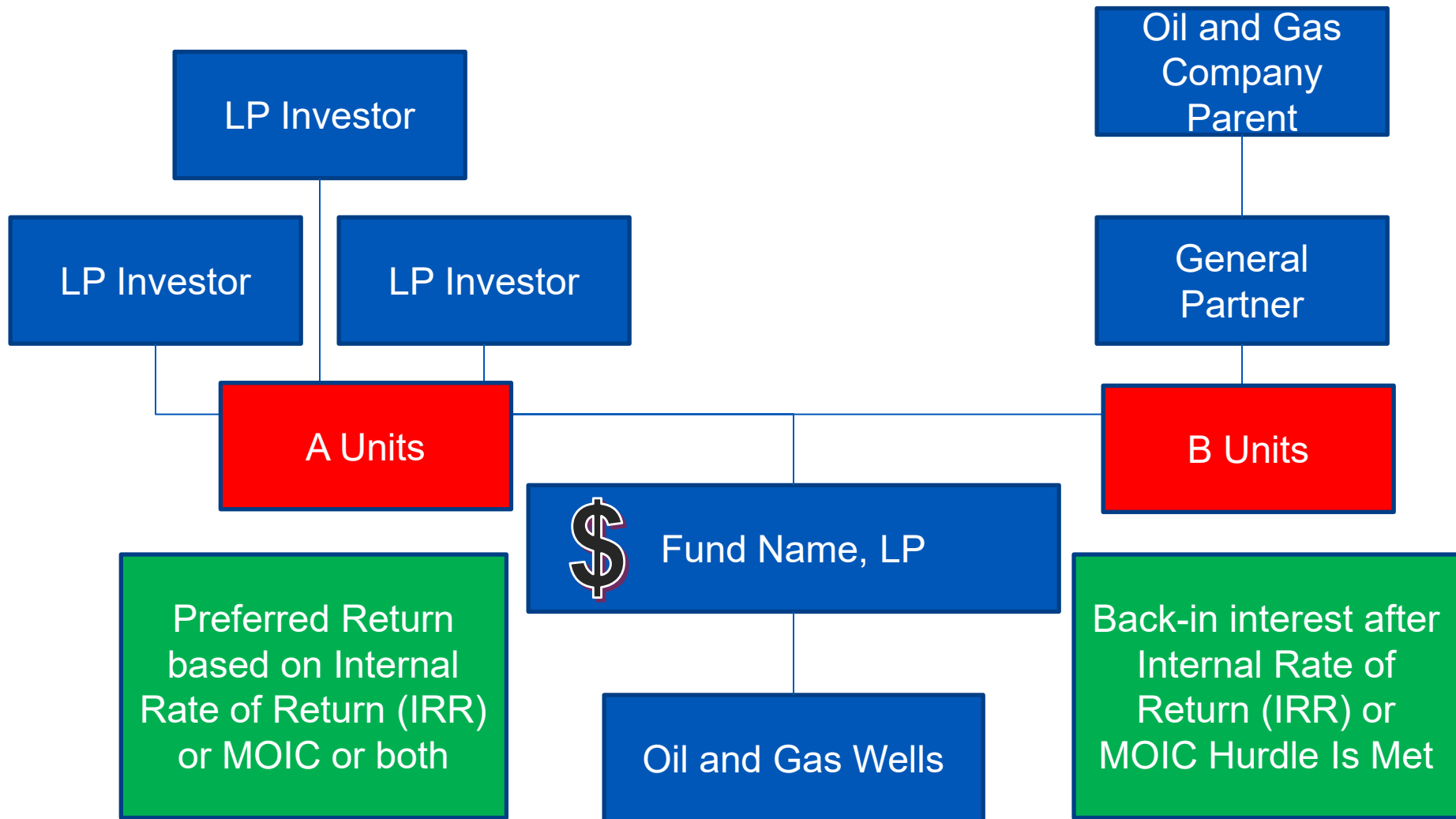
# Fund Formations



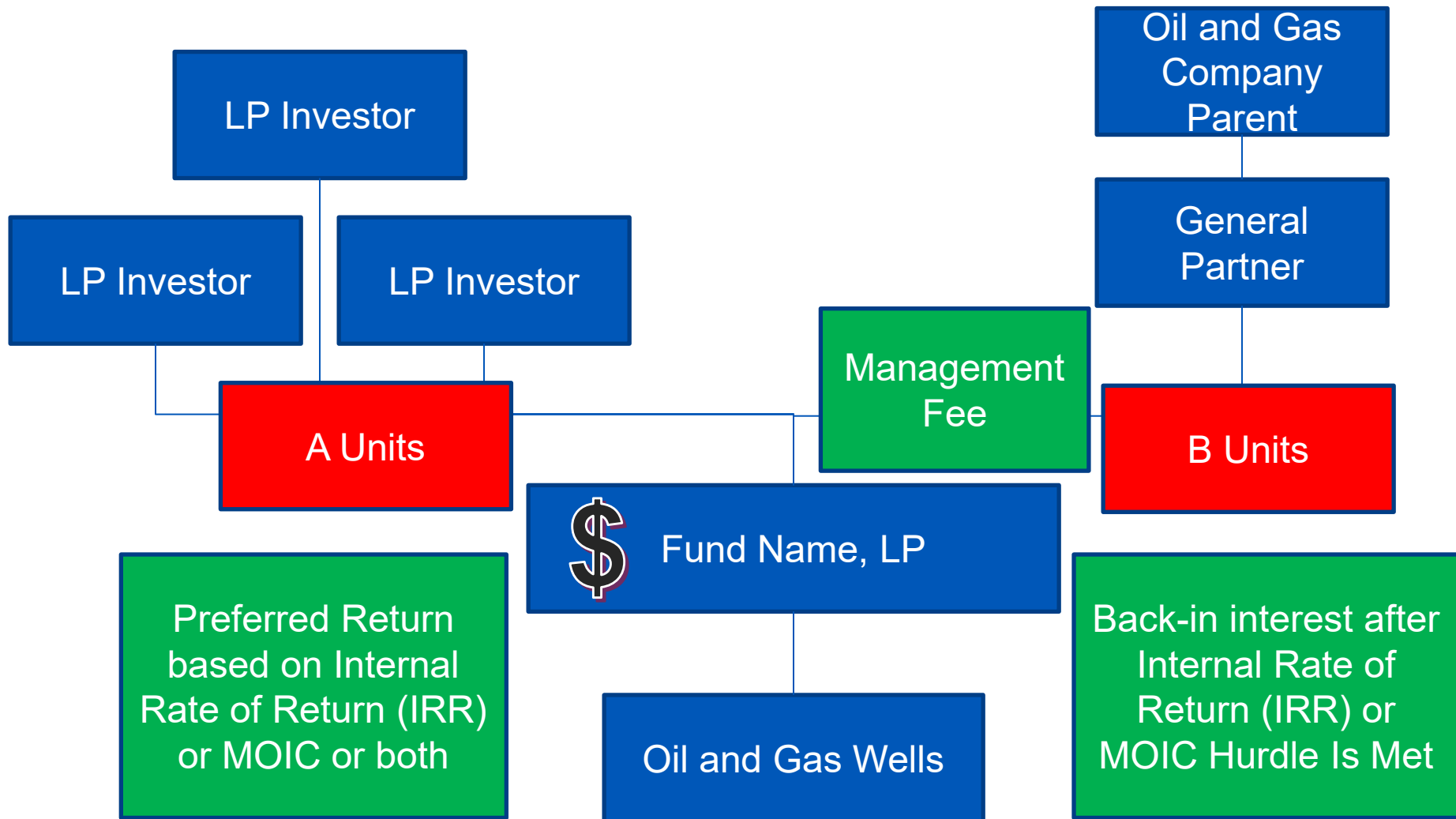
# Fund Formations



# Fund Formations



# Fund Formations



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## Fund Formations

- **Key Considerations**

- Class A versus Class B Split

- How high will the IRR or MOIC hurdle be
- What does the GP receive after the hurdle (traditional 20% after hurdle is met)

- Management Fee

- Management fee to generally cover G&A costs
- Traditionally 2% of funds raised – paid annually

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## Fund Formations

- **Key Considerations**

- Securities law

- Broker-Dealer Rules – Investment Advisors Act
- Accredited Investors
- Disclosure obligation to avoid securities law fraud claims under state and federal law

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## Fund Formations

- **Movements in Fund Formation Space**

- Creative, multi-tier splits
  - MOIC gets higher, back-in gets higher
- Small portion of back-in kicking in before IRR/MOIC hurdle is met due to longer hold times
- General Partner Led Secondaries
  - Constantly growing investment round by round by oil and gas company
    - Round 1 - \$50 MM raise
    - Round 2 - \$100 MM raise – Round 1 LPs can monetize or roll



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## Fund Formations

- O'Melveny has a funds formation team that works on these regularly
- Legal compliance is critical

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## Novel Deal Devices Being Used

- Fund Formations
- Upstream – Midstream JVs
- 45Q Tax Credits

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## Novel Deal Devices Being Used

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## Upstream – Midstream JVs

- Dynamics in Play

- Upstream companies own massive number of midstream assets
- Many upstream companies do not want to operate midstream assets
- Many upstream companies do not want to spend capital optimizing midstream assets and seeking new customers
- Many upstream companies do not want to cede control entirely of their midstream assets because midstream assets vital to upstream production
- Midstream companies with capital need projects

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## Upstream – Midstream JVs

- Typical Documents
  - Joint Venture Agreement
  - Contribution Agreement
  - Gathering, Processing and/or Disposal Agreement

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## Upstream – Midstream JVs

- Joint Venture Agreement - Usually a LLC Agreement
  - Contains provisions regarding the following:
    - Restricted activities regarding competition in target area
    - Non-consent penalties for failure to participate in new projects
    - Contribution obligations
    - Distribution waterfall
    - Preemptive rights for sale of additional equity
    - Governance of the joint venture – board of managers
    - Board votes versus unanimous member votes
    - Budget process
    - Assignment provisions and drag and tag rights

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- Typical Documents
  - Joint Venture Agreement
  - **Contribution Agreement**
  - Gathering, Processing and/or Disposal Agreement



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## Upstream – Midstream JVs

- **Contribution Agreement - Contains provisions regarding the following:**
  - Midstream asset contribution by upstream company and equity commitment
  - Equity commitment and if monetization transaction, cash payment by capital provider
  - Established percentage ownership in joint venture
  - Representations and indemnities on the part of the asset contributing party – think Seller-side PSA reps

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## Upstream – Midstream JVs

- Typical Documents
  - Joint Venture Agreement
  - Contribution Agreement
  - **Gathering, Processing and/or Disposal Agreement**

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## Upstream – Midstream JVs

- Gathering, Processing and/or Disposal Agreement -  
Contains provisions regarding the following:
  - Joint venture entity agrees to gather and dispose gas, crude, or water for upstream company for gathering, processing and disposal rate(s)
  - Acreage dedication and releases for non-performance
  - Minimum volume commitments
  - Reserved capacities
  - Firm service at highest level

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## Upstream – Midstream JVs

- Gathering, Processing and/or Disposal Agreement -  
Contains provisions regarding the following:
  - Connection and build out obligations
  - Quality and measurement specifications
  - Assignment provisions
  - Changes in law
  - Force majeure

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## Novel Deal Devices Being Used

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## Novel Deal Devices Being Used

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## Novel Deal Devices Being Used

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## 45Q – Tax Credit

- A tax credit based on the number of metric tons of qualified carbon oxide captured and disposed.
- The amount of the credit is based on the use of the captured carbon:
  - (i) \$60 per metric ton for carbon used in a traditional industrial process (including enhanced oil recovery) and (ii) \$85 per metric ton for carbon sequestered.
- Direct air carbon capture is eligible for even greater credits. These rates assume the “wage and apprenticeship” requirements are met with respect to the project.

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## 45Q – Five Year Depreciation and Bonus Depreciation

- Five Year Depreciation and Bonus Depreciation – Carbon capture property is typically depreciable over five years using a method that allows for greater depreciation in earlier years than in later years.

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## 45Q - Eligibility

- Eligible Taxpayers – The taxpayer that owns the carbon capture project and disposes of the carbon or contracts with another party to dispose of the carbon is eligible to claim the Section 45Q Credit.
- The taxpayer may also elect to transfer all or a portion of such credits to the person contracted to dispose of the carbon. The Section 45Q Credit may also be transferred to an unrelated party for cash consideration.

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## 45Q - Advice

- Midstream contracts – Splitting the Credit
- Inflation Reduction Act
- Free assessment and education by OMM's 45Q experts – Art Hazlitt and Alex Roberts - happy to arrange introduction and meeting/video conference with them

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# Jason Schumacher



## Partner

## Resident Office

Dallas

## Telephone

+1 972 360 1942

## Email

[jschumacher@omm.com](mailto:jschumacher@omm.com)

## Education

The University of Texas,  
J.D.: Executive Editor,  
Journal of Law and Politics

Abilene Christian University,  
B.B.A., Finance: summa  
cum laude

Jason Schumacher represents clients in the energy and oil and gas sectors on mergers, stock and asset acquisitions, and divestitures. He advises on project development and joint development matters, day-to-day operational affairs, litigation and dispute resolution, and financing arrangements, including commercial midstream agreements and specialty energy financing, involving volumetric production payments, prepayments, net profits interests, overriding royalty interest, securitizations and Drillco structures.

Jason is recognized as a leading Oil and Gas Law practitioner by The Best Lawyers in America, and has been named a Rising Star in Energy & Natural Resources by Super Lawyers Dallas in multiple years; he has also been named several times to *D Magazine's* list of The Best Lawyers in Dallas.

Prior to joining O'Melveny, Jason was a partner at an international, full-service law firm, where he co-chaired its Energy Practice Group.



**DRC** | NATIONAL  
DALLAS REGIONAL CHAMBER | CHAMBER  
OF THE YEAR 

# DRC OVERVIEW

## Whitley Penn Energy Conference

**Wednesday, Oct. 25, 2023**



**WHO WE ARE,  
WHAT WE DO**

# LEADERSHIP



**RAFAEL LIZARDI**

2023 Chair of the Board

Chief Financial Officer  
**Texas Instruments**



**DALE PETROSKEY**

President & CEO





# OTHER BRANDS OF THE DRC





# COUNCILS & TASK FORCES

## COUNCILS

**ECONOMIC DEVELOPMENT**  
**EDUCATION & WORKFORCE**  
**PUBLIC POLICY**  
**DIVERSITY, INCLUSION &**  
**COMMUNITY ENGAGEMENT**

## TASK FORCES

**INNOVATION**  
**INTERNATIONAL**  
**SOUTHERN DALLAS COUNTY**  
**HEALTH CARE INNOVATION**  
**INFRASTRUCTURE**  
**TECH POLICY**  
**TALENT**



# LEADERSHIP PROGRAMS

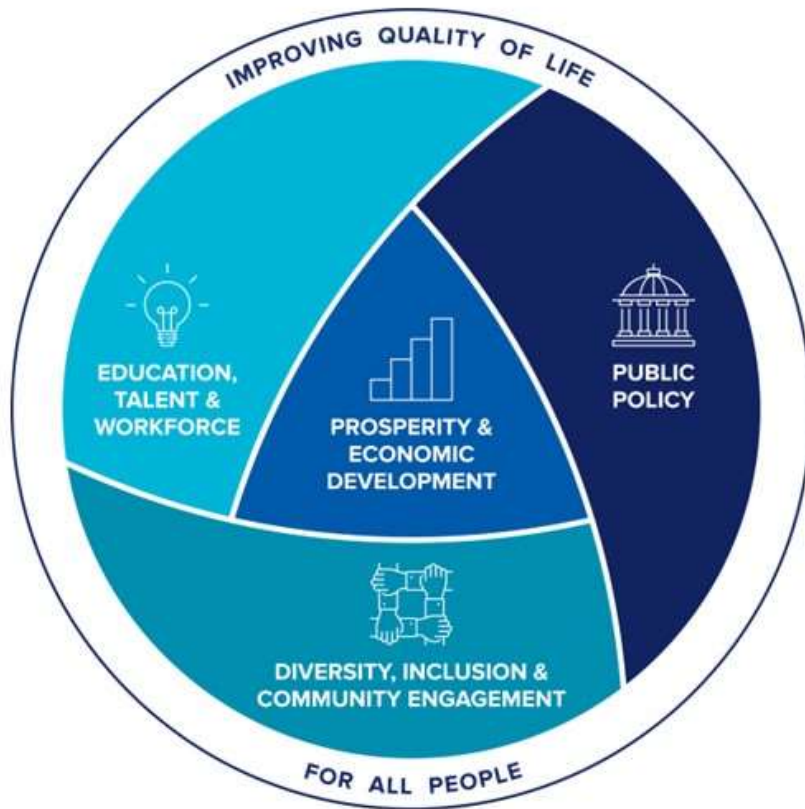




# STRATEGIC INITIATIVES

# BUILDING TOMORROW TOGETHER

2024 - 2026



## PROSPERITY & ECONOMIC DEVELOPMENT

We champion the growth of existing Dallas Region companies and innovation while positioning our region as a prime destination for living, working, and doing business.

## EDUCATION, TALENT & WORKFORCE

We foster a talent pipeline that meets the needs of employers and prepares workers and future workers for job opportunities that lead to a fulfilling life and career.

## PUBLIC POLICY

We advocate for policies and outcomes that preserve Texas' economic competitive advantage and support a prosperous life for Texans in the near and long term.

## DIVERSITY, INCLUSION & COMMUNITY ENGAGEMENT

We work to narrow opportunity gaps that exist within companies, communities, and educational institutions to promote a high-quality life for all people in the Dallas Region.



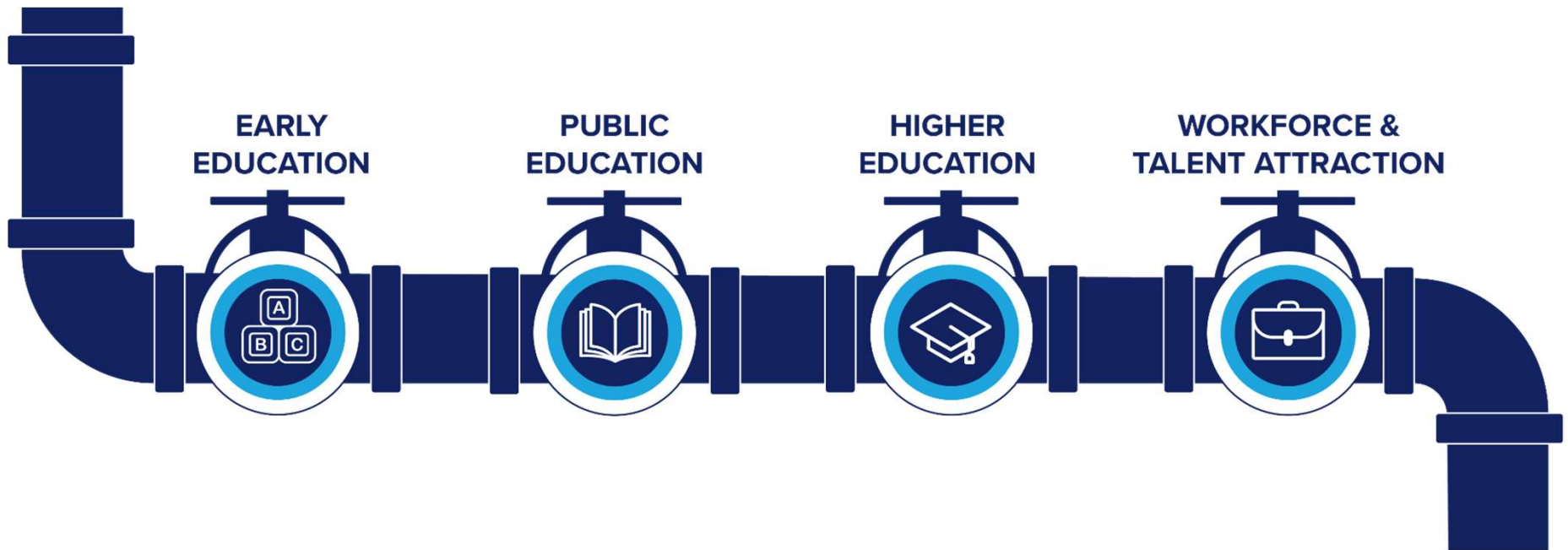
# EDUCATION, TALENT & WORKFORCE

- Foster employer-education partnerships
- Prepare future workers for college and career
- Upskill adult learners
- Retain and grow local talent



# EDUCATION, TALENT & WORKFORCE

## Talent Pipeline





# EDUCATION, TALENT & WORKFORCE

## Landscape Overview

**596K**

CHILDREN  
UNDER AGE 6

**1.3M**

PK-12  
STUDENTS

**325K**

POSTSECONDARY  
STUDENTS

**4.4M**

WORKERS

*SERVED BY*

**111**

PUBLIC SCHOOL  
DISTRICTS

**70+**

HIGHER EDUCATION  
INSTITUTIONS & CAMPUSES





# **PUBLIC POLICY**

- **Protect Texas' business climate**
- **Build an educated workforce**
- **Invest in our future**
- **Advocate for North Texans**



# PUBLIC POLICY

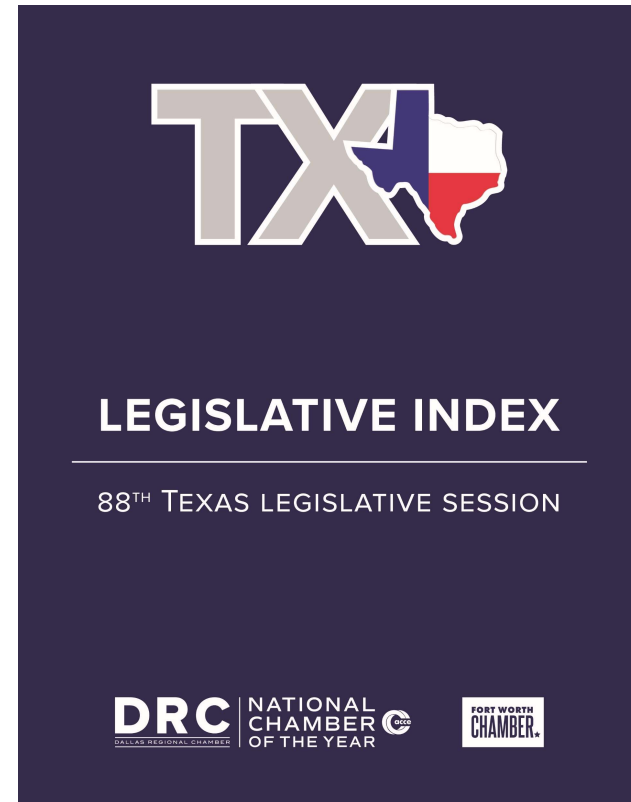
## Advocacy

### 88th Texas Legislative Session

- 225 Bills Tracked
- 58 Letters of Support / Opposition
- 32 DRC Priority Bills Passed
- 20 Policy Newsletters
- 17 Weekly Calls with DRC Members



[View the Index](#)





# PUBLIC POLICY

## Key 88th Texas Legislative Session Wins

### **Economic Development**

- New transparent and accountable statewide economic development incentive program
- Creation of the Texas Water Fund to support large-scale investments in Texas' water supply and infrastructure needs

### **Education & Workforce**

- Modernization of Texas' community college finance system to align with the needs of job seekers and employers

### **Quality of Life**

- \$20 million for a Regional Law Enforcement Training Center

### **Supporting a Healthy Talent Pool**

- \$101.9 million for a behavioral health hospital serving the region



# PUBLIC POLICY

## DRC supported '120 Hours to Test' Legislation

### **Texas Senate Bill 159**

- Sponsored by Dallas Region Rep. Angie Chen Button
- Amends the Texas Public Accountancy Act
- Allows CPA candidates and students to begin taking the CPA Exam after completing 120 credit hours
- Signed into law by Gov. Greg Abbott on May 13, 2023
- Took effect on Sept. 1, 2023



# ‘GOOD FOR TEXANS’ CAMPAIGN



Campaign launched by the DRC to promote the passage of **eight** propositions in the upcoming Texas constitutional amendment election.

[2023TexasPropositions.com](https://2023TexasPropositions.com)

# CAMPAIGN OVERVIEW

This November, Texans have the opportunity to vote for propositions that will:

- ✓ Enhance our quality of life
- ✓ Grow our economy
- ✓ Improve our infrastructure
- ✓ Lower our property taxes

**Vote for Propositions 2, 4, 5, 6, 8, 9, 10, and 14** to support a prosperous and bright future for all Texans.

# PROPOSITIONS EXPLAINED



**Proposition 2** supports quality child care facilities for Texas kids.



**Proposition 8** empowers and connects Texans through expanded high-speed internet.



**Proposition 4** lowers property taxes for Texans.



**Proposition 9** ensures teachers can retire and maintain their quality of life.



**Proposition 5** provides research funding to Texas universities.



**Proposition 10** decreases Texas' reliance on foreign countries for medical and health care supplies.



**Proposition 6** provides funding to ensure Texans have sustainable access to water.



**Proposition 14** establishes a fund to maintain and improve Texas parks.





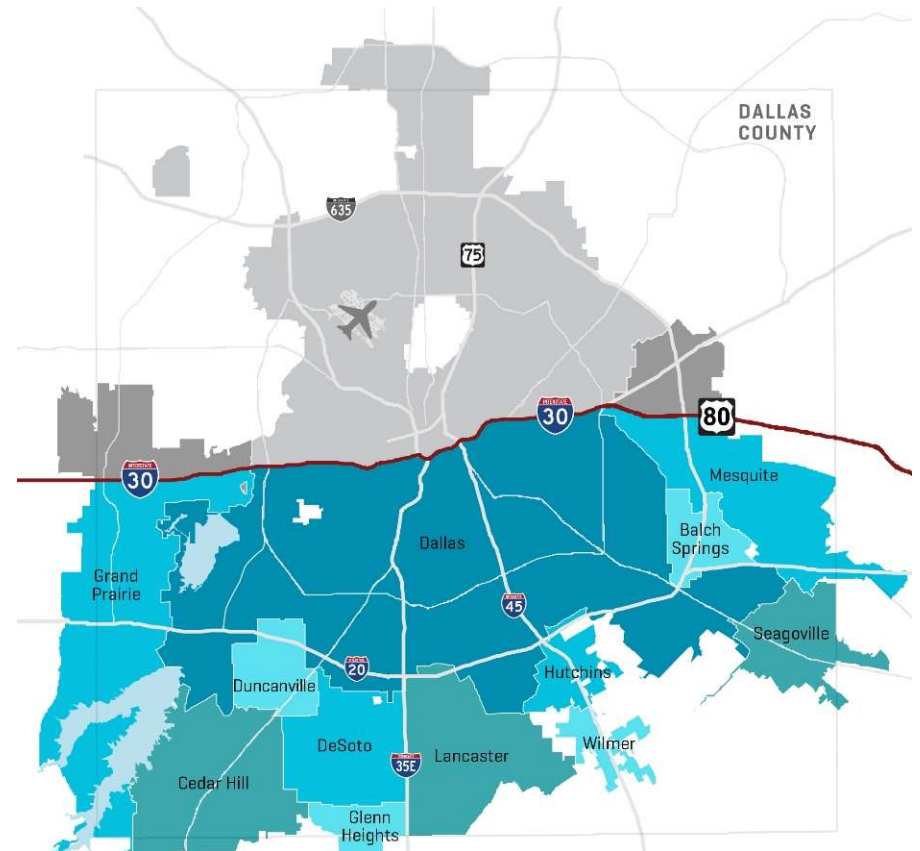
# DIVERSITY, INCLUSION & COMMUNITY ENGAGEMENT

- Promote diversity in leadership
- Invest in under-championed communities
- Education for all
- Strengthen public safety relationships



# SOUTHERN DALLAS COUNTY

- **Economic Development:** Create and implement a plan to grow economic development in Southern Dallas County with a focus on creating an environment that results in increase economic activity and jobs for residents.
- **Catalyst Projects:** Take specific actions to catalyze investment in projects that have long been barriers to economic growth
  - Food Deserts
  - Banking Deserts
  - Housing
  - Health Deserts
  - Access to Transportation
- **Community Engagement:** Being present in the community, bring the business community to Southern Dallas
  - Nonprofit engagement
  - Supplier Diversity
  - Small Business





# PROSPERITY & ECONOMIC DEVELOPMENT

- Grow local companies
- Market to talent
- Attract companies
- Advance innovation



## Slide 21

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**DJ0** We need to add a subhed to these bulleted slides, something like "2024-2026 Plan Objectives"

Dana Jennings, 2023-09-29T17:22:03.764

**DJ1** I'd also love to find a way to make these bulleted more visually distinct from the focus area description slides that precede them

Dana Jennings, 2023-09-29T17:22:36.998

# Corporate Moves and Growth in DFW Since January 2020





# LIFE SCIENCE RECRUITMENT

lifesciencedfw.com

## WORKFORCE

Life Science is **ACCESSIBLE** in Dallas-Fort Worth

- TWO major airports
- Centrally located
- One of two IATA CEIV Pharma Community airports



**EXPLORE DFW'S ACCESS FOR LIFE SCIENCE**



**7th**

Most life science and biotech jobs in the U.S. (90,267)



**4th**

Most computer, mathematical, engineer and engineering tech jobs in the U.S. (224,954)



**1st**

One of the most diverse economies in the country, including 24 Fortune 500 and 43 Fortune 1000 companies

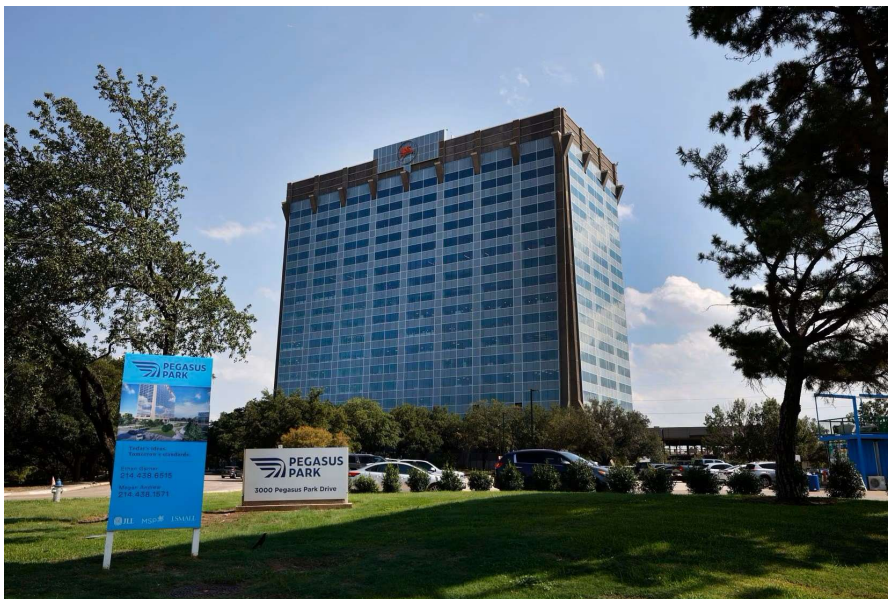


# ARPA-H HUB COMING TO DALLAS

BUSINESS > HEALTH CARE

## Dallas lands coveted U.S. biotech research hub after months of campaigning

One of three ARPA-H headquarters, the hub at Pegasus Park will focus on patient access and diversity for the agency's projects.



### The DRC supported by:

- Convening lawmakers for discussions at DRC events
- Key research and data on patient populations, accessibility, and health care networks
- Mike Rosa, SVP of Economic Development, presented to the selection committee



# ECONOMIC OVERVIEW

## 2022 Population of Largest U.S. Metropolitan Regions (and change from 2021)

1. New York	19,618,000	-0.8%
2. Los Angeles	12,872,000	-0.8%
3. Chicago	9,442,000	-0.8%
4. <b>Dallas-Fort Worth</b>	<b>7,944,000</b>	<b>2.2%</b>
5. Houston	7,340,000	1.7%
6. Washington D.C.	6,374,000	0.1%
7. Philadelphia	6,241,000	-0.2%
8. Atlanta	6,222,000	1.3%
9. Miami	6,139,000	0.5%
10. Phoenix	5,016,000	1.5%

**DFW is the 4<sup>th</sup> largest metro in the U.S.**

DFW is the largest metro area in the U.S. that is also growing in population.





# DFW Population Growth in Millions

Data Redacted

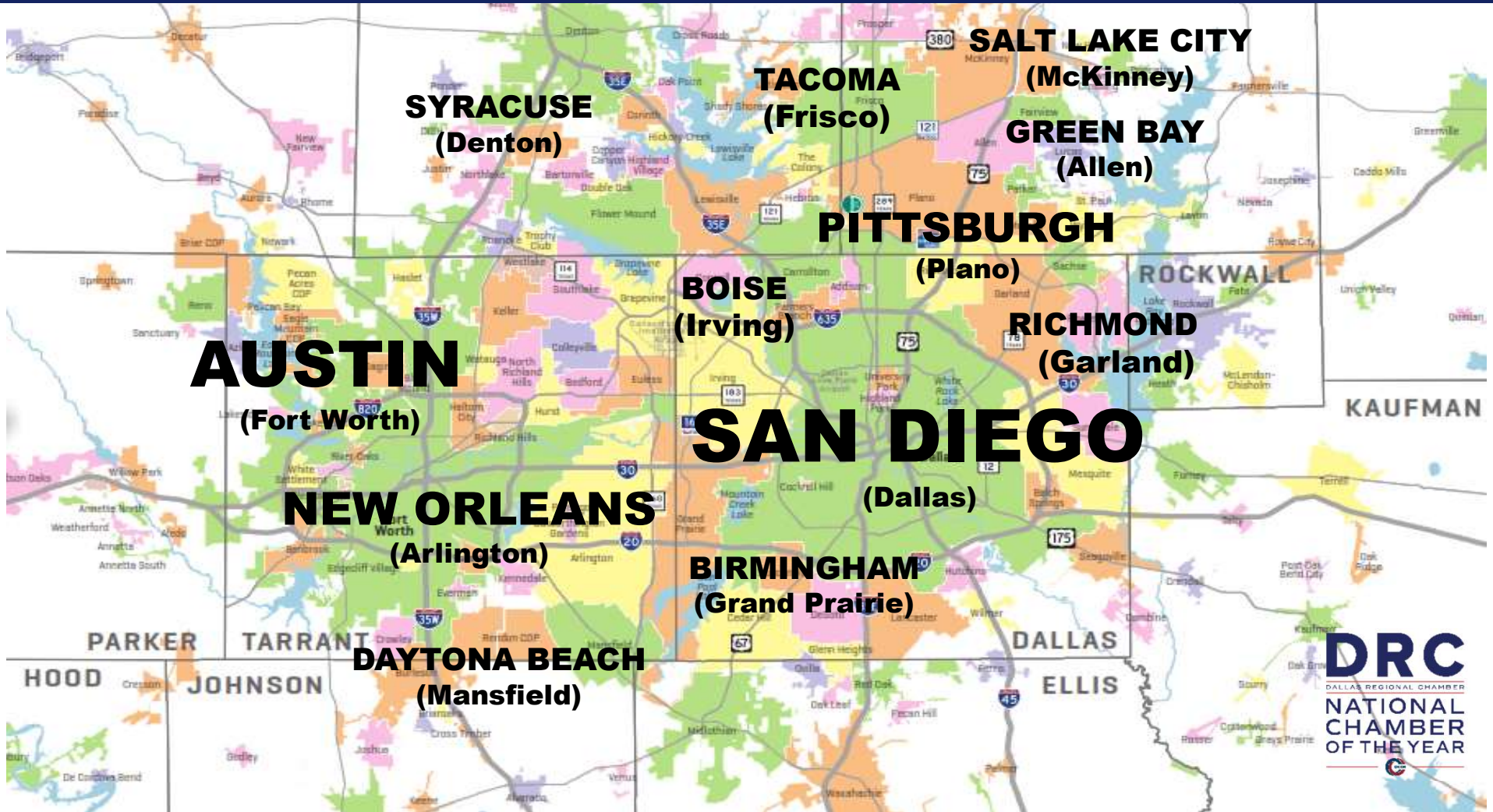
Contact Kennedy Curry at [kcurry@dallaschamber.org](mailto:kcurry@dallaschamber.org) for more information.

DFW could pass  
Chicago's  
population  
by 2028.

■ Base Population   ■ Growth   ■ Projected Growth



# U.S. Cities with Populations Similar to DFW Cities



# DFW Metro Job Growth Since 2010

Since 2010, DFW **added** more jobs than the total number of jobs today in New Orleans, Jacksonville, Raleigh or Oklahoma City.



**DFW leads U.S. metros for jobs since 2010.**

DFW's population grew by 1,500,000 since 2010.



# DFW “Punches Above its Weight” Beyond Just Headquarters

DFW Share of Tech Jobs in Texas

**33%**

DFW Share of Manufacturing Jobs in Texas

**32%**

# DFW “Punches Above its Weight” Population vs Regional Output

Data Redacted

Contact Kennedy Curry at [kcurry@dallaschamber.org](mailto:kcurry@dallaschamber.org) for more information.



# DFW 5-Year Economic Indicators

Increase in Population

**594,000**

Increase in Jobs

**423,000**

Increase in Regional Output

Data Redacted

Contact Kennedy Curry at [kcurry@dallaschamber.org](mailto:kcurry@dallaschamber.org) for more information.

Increase in Retail Sales

Data Redacted

Contact Kennedy Curry at [kcurry@dallaschamber.org](mailto:kcurry@dallaschamber.org) for more information.

Economic growth in DFW is expected to be strong.





# QUESTIONS?

Contact Kennedy Curry at [kcurry@dallaschamber.org](mailto:kcurry@dallaschamber.org).

# MINERAL MANAGEMENT

ISSUES & UPDATES FOR MINERAL OWNERS





# WHAT IS MINERAL MANAGEMENT?



- The Whitley Penn Mineral Management Team's goal is to make the owner's life as easy as possible by moving all mail, depositing, paperwork, etc. to our team. We also want the client to fully understand the status of operation on what they own, while also having peace of mind that the highest value will be extracted from those assets for years to come.
- Our team of experts include attorneys, certified landmen, certified mineral managers, CPAs, tax specialists, and certified appraisers.
- WP currently manages over 1,500,000 gross mineral acres and ~9,000 individual well bores across the United States, representing individual mineral owners, working interest owners, trusts, family offices, foundations, charities and aggregate mineral buyers.

# MINERAL MANAGEMENT 101

UNCOVER THE FULL VALUE OF YOUR MINERAL PORTFOLIO

- **Asset Inventory** - Know what you own
- **Royalty Audit** - ex: 4-year look-back period
- **Division Order Review** - Confirm interest in a well or unit
- **Proactive Land Management** - Look for issues with payments before they get out of hand, monitor permits, drilling, and timeliness of payments.
- **Software that you're comfortable working with**

## LAND & OPERATOR: THIS IS A PARTNERSHIP!

- Mineral/Landowner needs operator to drill
- Operator needs Mineral/Landowner for drillable acreage
- Without cooperation from both sides this doesn't work

ALTHOUGH, ALL PARTIES ARE DUE THEIR CORRECT PAY  
BASED ON NEGOTIATED TERMS. TERMS CAN BE  
DIFFERENT IN EVERY LEASE!

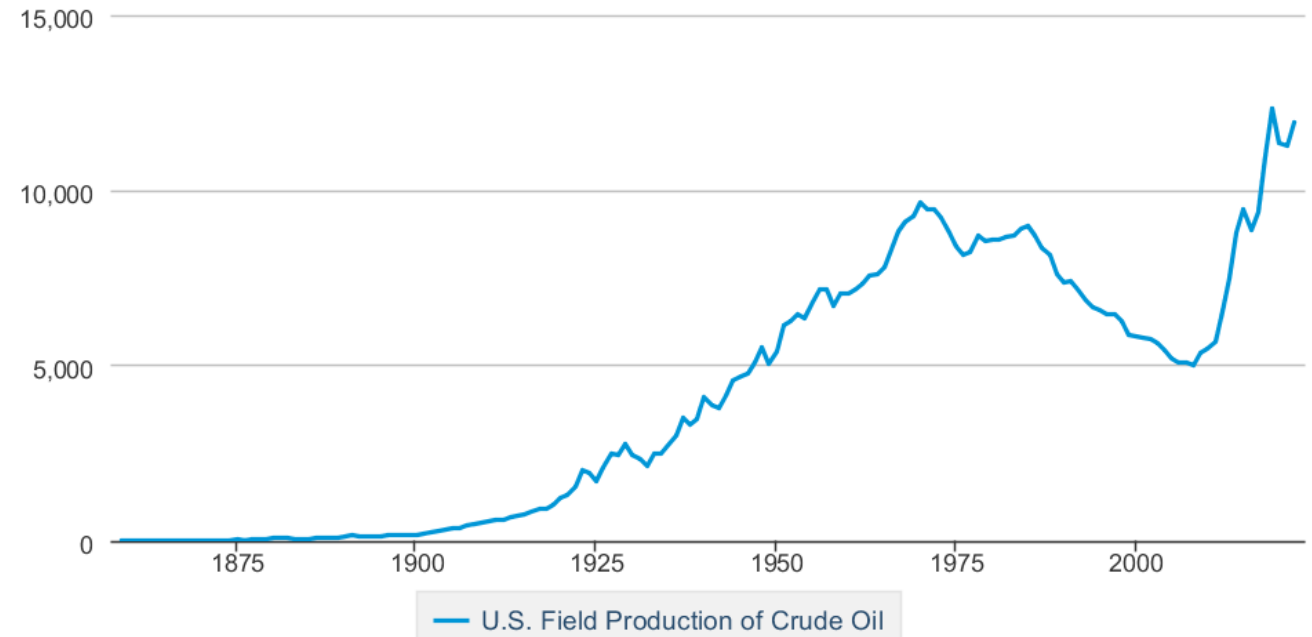


# WHAT TO WATCH OUT FOR

- Check detail reviews:
  1. Deductions
  2. Severance tax
  3. Decimal interest
  
- Property tax
  
- Case law we are watching:
  1. Produced water
  2. Rare earth minerals
  3. Pore space law

**U.S. Field Production of Crude Oil**

Thousand Barrels per Day



Data source: U.S. Energy Information Administration

# 1. DEDUCTIONS

05/2023	OIL	0.0000	R2	68.75	13104.88	900997.23	0.00	TX_SEV	TX Severance Tax
							6874.15	TX_SEV	TX Severance Tax
							81.93	TX_REG	TX Regulatory Fee
04/2023	GAS	1.0230	R3	0.17	14102.31	2376.10	41445.90	TX_SEV	TX Severance Tax
							-19601.76	TX_SEV	TX Severance Tax
							446.63	CMP	Compression
							0.00	COMP_RR	COMPRESSION
							0.00	DEHY1_RR	DEHYDRATION
							0.00	GATH1_RR	GATHERING_RR
							0.00	LVF_RR	LOW VOLUME FEE_RR
							0.00	MKTNG_RR	MARKETING_RR
							16510.55	PROCC	PROCESSING
							3268.54	TREAT_RR	Treating Fee
							1735.88	TREAT1_RR	TREATING_RR
							16.26	TX_REG	TX Regulatory Fee
04/2023	PPROD	0.0000	R3	0.61	149730.61	91655.47	0.00	TX_SEV	TX Severance Tax
							84781.32	TX_SEV	TX Severance Tax
							0.00	TX_REG	TX Regulatory Fee
04/2023	GAS	1.0230	R4	0.17	14102.31	2376.10	6874.15	TX_SEV	TX Severance Tax
							-19601.76	TX_SEV	TX Severance Tax
							446.63	CMP	Compression
							0.00	COMP_RR	COMPRESSION
							0.00	DEHY1_RR	DEHYDRATION
							0.00	GATH1_RR	GATHERING_RR
							0.00	LVF_RR	LOW VOLUME FEE_RR
							0.00	MKTNG_RR	MARKETING_RR
							16510.55	PROCC	PROCESSING
							3268.54	TREAT_RR	Treating Fee
							1735.88	TREAT1_RR	TREATING_RR
							16.26	TX_REG	TX Regulatory Fee
							0.00	TX_SEV	TX Severance Tax



# TYPES OF DEDUCTIONS

1. State imposed taxes
2. Post-production Costs - expenses incurred in order to get the product from the wellhead to market
  - Gathering
  - Compression
  - Dehydration
  - Transportation
  - Marketing
  - Treating
  - Processing
  - Handling
  - Fuel
  - Low volume fee
- 3 parts of a “no deducts” analysis:
  1. What is being valued?
  2. Where is the point of valuation (at the well, downstream, etc.)?
  3. How is value measured (amounts realized v. market value)?



## *BURLINGTON RESOURCES OIL & GAS CO., LP V. TEXAS CRUDE ENERGY LLC, 573 S.W.3D 198 (TEX. 2019)*

- *Burlington* – court re-iterated that royalty owners generally do not pay production costs, such as for geophysical surveying and drilling wells, but usually are required to pay post-production costs that are incurred to bring gas from the wellhead to market.
  - “market value at the well” defined as the commercial market value less expenses incurred to get product to market.
  
- *Burlington* allowed for varied definition of the value point and the value method so that post-production costs could be separated from the royalty calculated.
  - “gross value received” prohibits post-production deductions
  - “at the well” permits post-production deductions

## *OTHER NOTABLE CASES GUIDING POST-PRODUCTION COSTS*

### *Hawkins vs. Capitan*

- Capitan is paid based on a price formula by purchaser and product is sold at or near the wellhead. Hawkins wanted PPC that are part of the pricing to be added back or “grossing up”.
- Courts ruled in favor of Capitan, the operator is not obligated to “gross up” the price it receives from its purchaser when calculating the owners’ royalty because the PPC charged by the purchaser were not “incurred” by the operator, but by the purchaser.

### *Devon vs. Sheppard*

- Devon selling under pricing formula that sets the price based on an index and then subtracted a certain amount for “gathering, handling, and transportation.”
- Royalties paid on price Devon actually received, but lease contains “add back” provision.
- Texas Supreme Court rules in favor of Shepard, Devon must add back costs when calculating royalties.



## STRONG LEASE LANGUAGE IS KEY TO AVOIDING DEDUCTIONS

- Express wording in the Lease
- Cost-free clause for deductions
- Case law can be very specific

BE AWARE OF DEDUCTION CHANGES OVER TIME

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## 2. SEVERANCE TAX

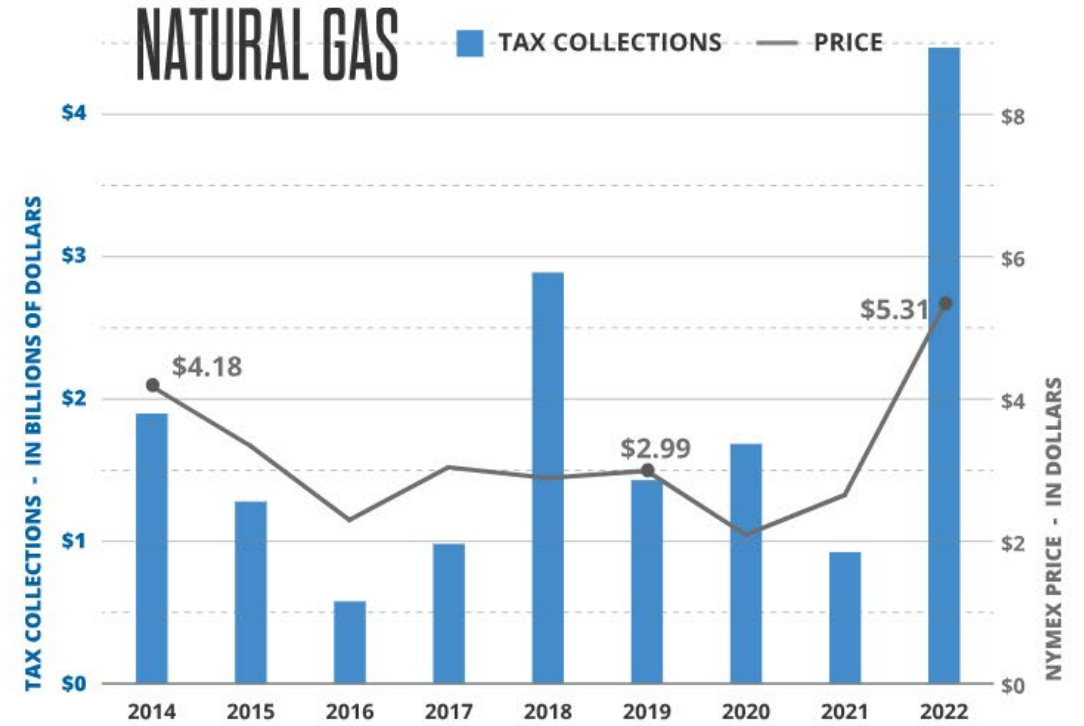
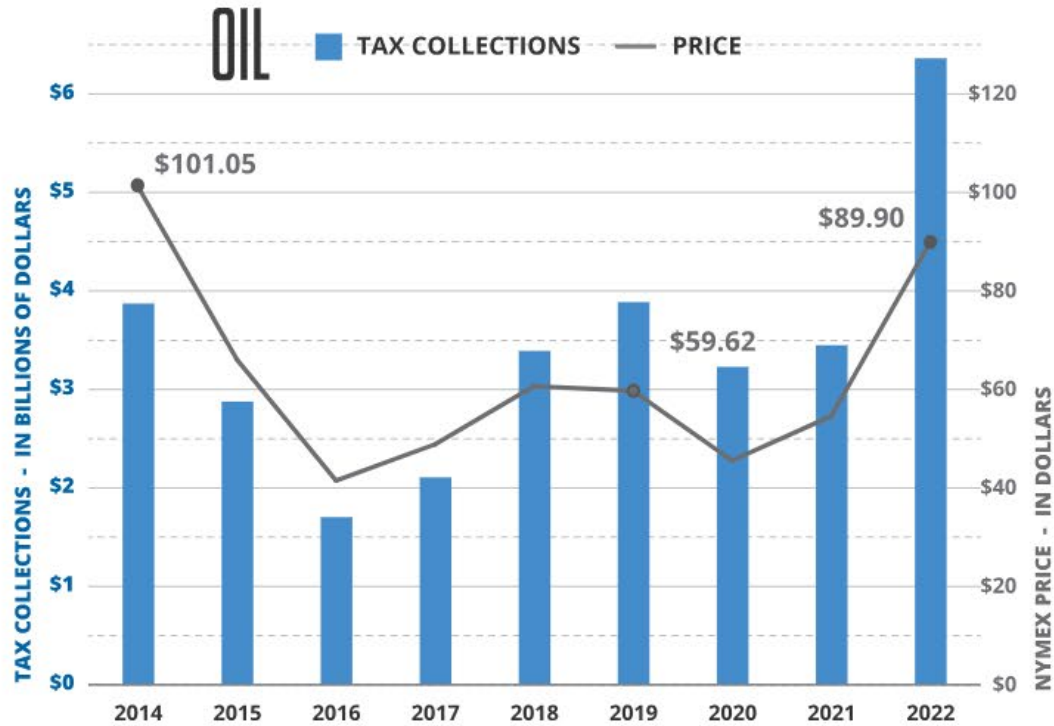
State tax imposed on the extraction of non-renewable natural resources, including oil, gas and mineral interests

**HIGHLY VOLATILE!** – determining factors are **PRICE** and **PRODUCTION**

County budgets are generally estimated based on multi-year severance tax averages



## Oil and Natural Gas Production Taxes, Annual Collections and NYMEX Oil and Natural Gas Prices, FY 2014-2022



Sources: Texas Comptroller of Public Accounts; U.S. Energy Information Agency (EIA)

**Glenn Hegar**

Texas Comptroller of Public Accounts

## SEVERANCE TAX RATES

North Dakota:  
Generally 5%

Also levies oil extraction tax  
of 6.5%

Incentives for secondary and  
tertiary recovery projects

Oklahoma:  
Generally 7%

New wells = 5% for first 36  
months

Lower tax rates for secondary  
and tertiary recovery projects

Texas:  
Gas = 7.5%  
Oil = 4.6%  
Condensate = 4.6%

Incentives for Enhanced Oil  
Recover (EOR), marginal wells  
and reuse/recycle hydraulic  
frac water, etc.

## SHOW ME THE MONEY?

Most states allocate a larger portion of severance tax revenue to the general fund

OKLAHOMA: split between counties and school districts with remainder going to the state

2022 – collected \$1.152 billion

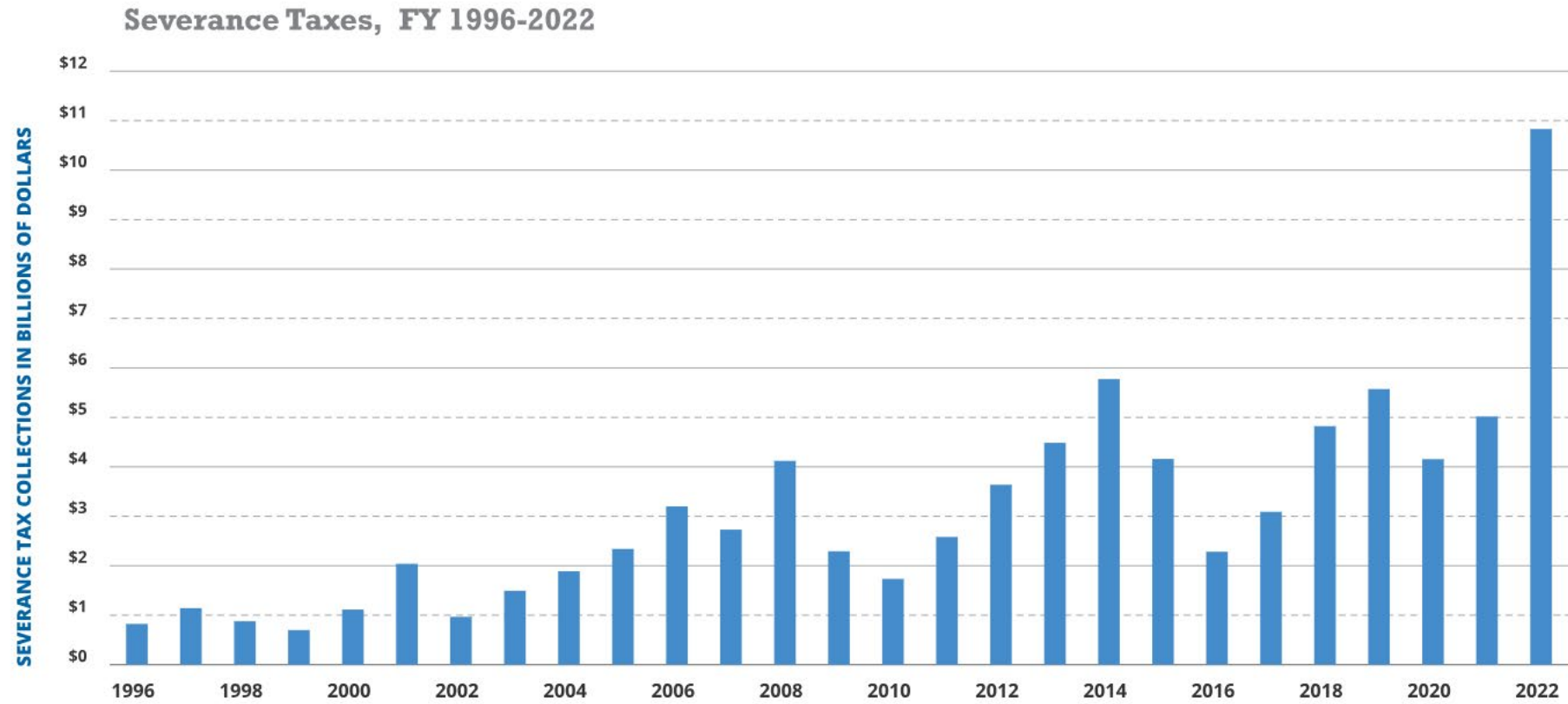
NORTH DAKOTA: split between State, Local, Tribal and permanent savings via the North Dakota Legacy Fund

2021- collected \$1.662 billion

TEXAS: split between rainy day fund, state highway fund and the Foundation School Program (ensures that all school districts, receive "substantially equal access to similar revenue per student at similar tax effort." – Texas Education Agency)



Texas collected \$10.83 billion in 2022 – HIGHEST EVER!



Source: Texas Comptroller of Public Accounts

**Glenn Hegar**

Texas Comptroller of Public Accounts

93-011 (10-22)



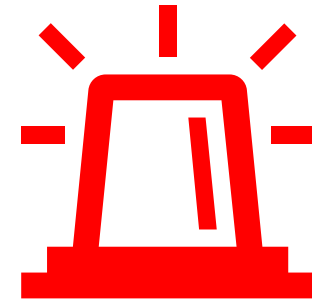
### 3. ACCURATE OWNERSHIP DECIMAL

1. Calculate your interest
2. Confirm decimal on check is consistent with executed Division Orders
3. Work with the payor if there are any discrepancies.


$$\text{Decimal} = \frac{\text{Net Acres}}{\text{Gross Acres}} \times \text{Royalty \%}$$

## WHAT CAN CAUSE DECIMAL DISCREPANCIES & CHANGE IN PAYMENTS?

- Title issues/concerns
- Human error
- System glitches
- Merger/Acquisition with incorrect deck pages
- Transitions
- Similar ownership names and/or ownership %





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# PROPERTY TAX

In March, county appraisal districts deliver value assessments which can be protested if the mineral owner does not agree with the value.

Mineral valuation can be determined using a

1. Market Value Comparison or
2. Discounted Cash Flow calculation

If not filing a protest, ask about early payment discounts.



# DISCOUNTED CASH FLOW



Gross well valuation proportionately reduced by net ownership.

Accounts for 4 variables to determine well value:

1. production decline curve
  - compare volumes on check details to volumes reported at RRC
2. operating expenses
3. prices
4. discount rate

# PENDING LEGISLATION



House Bill 456 originally allowed royalties donated and owned by charities to be exempt from property tax.

The Texas Senate amended the bill to specific charities:

non-profit hospital, certain shelters, elderly care facilities, museums, zoos, libraries, performing art theaters, volunteer fire departments, and organizations that provide direct human health, and welfare services

Signed by the Texas House and Senate in May 2023. Signed by Gov. Abbott in June 2023.  
Effective 1/1/2024.

## CURRENT ISSUES & PENDING CASE LAW

- Produced Water
- Rare Earth Minerals
- Carbon Capture & Storage





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## What is Produced Water?

- Produced Water – fluid byproduct that is returned to the surface during drilling and fracturing of wells.
- According to Energy.gov, the water can vary from fresh to brackish. The Appalachian Basin can present produced water that is 5-10 times saltier than seawater.

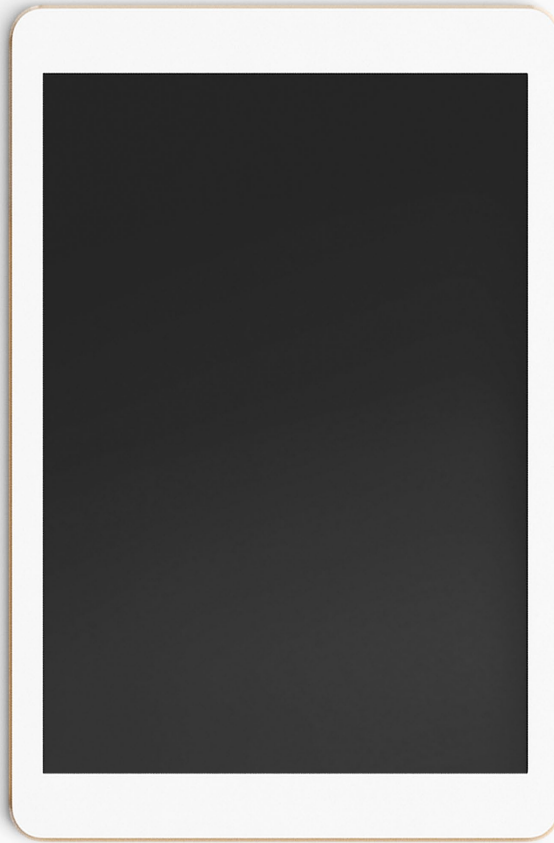


## PRODUCED WATER LEGISLATION IN TEXAS

- House Bill 4856 – TCEQ has jurisdiction over recycled oil and gas fluids. Signed by Gov. Abbott in June 2023. Effective immediately.
- Senate Bill 1047 – Funding for Texas Produced Water Consortium. Signed by Gov. Abbott in May 2023. Effective immediately.

## USING PRODUCED WATER

- Most is re-injected and stored underground
- Some operators treat and reuse on other drill sites
- Produced water can also bring up lithium and other rare earth minerals
- First projects look to be starting in Southern Arkansas. Several other targeted locations.



## RARE EARTH MINERALS

Spot pricing as of February 2023:

Lithium carbonate (precursor to compound used in lithium-ion batteries)  
averaged \$53,304/ton

Lithium-ion is most often used in rechargeable batteries



## PRODUCED WATER & RARE EARTH MINERALS

Drilling can use from 1.5M to 16M gallons of water.

- At minimum, 1.5M gallons of water = 6,259 tons
  - If rare earth minerals make up 0.05% = 3.1295 tons X \$53,304 = \$166,815
- At maximum, 16M gallons of water = 66,763 tons
  - If rare earth minerals make up 0.05% = 33.38 tons X \$53,304 = \$1,779,368

# RARE EARTH MINERALS

Who owns the rare earth minerals in produced water?

- Texas Natural Resources Code Sec. 122 – Unless expressly provided by in a contract (lease, SUA, etc.) the person who takes possession (operator) owns waste if treated for “beneficial use”
- RRC includes waste as an operator liability
- *Cactus Water Services vs. COG Operating, LLC*
  - Cactus leased the produced water from surface owner and attempted to claim the produced water
  - COG is the operator claiming produced water is waste which they possess
  - July 28, 2023 – Court of Appeals for 8<sup>th</sup> District of TX (El Paso) held that the mineral lessee under an O&G lease OWNS the water extracted simultaneously with oil and gas during production. Cactus has stated that they will appeal to the TX Supreme Court.

# CARBON CAPTURE & STORAGE

CCUS – carbon capture utilization and storage



Who owns pore space in Texas?

Senate Bill 2107 was introduced but didn't pass committee. Its purpose was to clarify pore space as part of the surface estate and establish a Carbon Dioxide Storage Trust Fund to be held by the RRC to pay for damages occurring after the state assumes title to stored carbon dioxide.

Players in the space treading lightly on project launches unless they have an owner of surface AND minerals together (no severed estate).

North Dakota's Supreme Court issued a unanimous decision in August 2022 that affirmed the right of surface owners to profits and use of pore space for waste-water disposal and they can seek damages for unauthorized injections or migration into their pore space.



## RECENT LEGISLATION IN TEXAS

- House Bill 450 – Bipartisan bill that provides a cause of action for bad faith washouts of an Overriding Royalty Interest in Oil & Gas leases Signed by Gov. Abbott in May 2023. Effective 9/1/2023.

This occurs when an operator terminates or releases an older lease that includes overriding royalty burdens and then leases the same property shortly thereafter. Since the ORRI runs with the lease and not the land, this process effectively cuts out the ORRI holder from future production. This legislation provides for actual damages, the enforcement of a constructive trust on the new lease, and attorney's fees.

## IMPORTANT TAKE-AWAYS

- Strong Lease language is essential
- Texas mineral owners are on notice to review and monitor oil and gas check detail for inaccuracies – Know what you own!
- A good rule of thumb is a 4 year look back period for reviews/corrections/adjustments
- Pay attention to new legislation and case law because it will affect your current and future leases.



## Buffie Campbell

### *Mineral Assets Senior Manager*

Buffie Campbell brings 18 years of mineral management experience to Whitley Penn. She previously served as Director of Mineral Management at Merit Advisors, Vice President, Mineral Management at J.P. Morgan Chase, and Vice President, Mineral Management at Argent Mineral Management. She served as Vice President of Symposium for the Texas Energy Council (2020 and 2021), and in 2023 was elected to serve as President for TEC. She has been a featured speaker for numerous energy-related organizations, including the National Association of Royalty Owners (NARO). Buffie has significant experience in implementing processes and procedures for energy clients including bank set-up, internal accounting and controls, software set-up, and GIS mapping integration with revenue software. Throughout her career, she has managed assets for trusts, estates, foundations, charitable organizations, and agency accounts with real property and mineral interests throughout the United States.

Buffie received her BA in Psychology from the University of North Texas and JD from the Texas A&M University School of Law.



#### Contact

214.393.9305  
Buffie.Campbell@whitleypenn.com



#### Practice Areas

Land Administration



#### Industry Experience

Asset Management  
Business Development  
Title Review  
Royalty Revenue Audits



#### Education

Juris Doctorate - Texas Wesleyan University School of Law (now Texas A&M School of Law)

Bachelor of Arts in Psychology - University of North Texas



#### Professional Affiliations

State Bar of Texas

State Bar of North Dakota

Certified Professional Landman with  
American Association of Professional  
Landmen



## Jason Fitzgerald

### *Mineral Assets Manager*

Jason Fitzgerald comes from a long line of oil & gas producers spanning four generations in North Texas and brings a unique perspective to the Mineral and Royalty space. With a background in both operating and mineral management, he leverages this knowledge daily, to shape the best management solutions possible for interest owners nationwide. Prior to joining Whitley Penn, Jason spent 4 years with MineralWare, a leading oil and gas management software where he led the business development team. Jason has participated and presented at several royalty owner education events including the World Oilman's: Mineral and Royalty Conference (MARC) and the Royalty Owner Institute's Mineral Management 101 classes. Jason is also a Registered Mineral Manager with the National Association of Royalty Owners. In 2023, Jason joined the Board of Directors for the National Association of Royalty Owners where he will serve a 3 year term as Director At Large.

Jason holds a Bachelor of Business Administration in Finance and Real Estate from Texas Christian University, and he is an active member of the TCU Block T Association and the TCU Frog Club. He currently resides in Fort Worth, TX.



#### Contact

817.259.9267

Jason.Fitzgerald@whitleypenn.com



#### Practice Areas

Oil and Gas Production  
Mineral Management  
Texas, Oklahoma, & Colorado



#### Industry Experience

Oil and Gas Software  
Data and analytics  
Oil and Gas Management  
Oil and Gas Operations



#### Education

BBA in Finance and Real Estate from Texas Christian University



#### Professional Affiliations

National Association of Royalty Owners  
National Association of Division Order Analysts  
American Association of Professional Landman







## Lee Caple

*Mineral Advisor*

Lee Caple draws from four decades of experience in the management of corporate and personal oil and gas interests in order to provide outstanding service and results for his clients. His experience includes mineral marketing, mineral appraisals, lease acquisitions, lease marketing on behalf of clients, advisory and support related mineral management services, exploration, and large production sales. Having worked extensively in the non-profit world, Lee provides distinctively wholistic counsel to clients, focusing upon client's personal and financial goals with consideration given to their risk tolerance and financial obligations. Lee is a former NARO Board Member and received his BBA in Marketing from Southern Methodist University.

 **Contact**  
lee@capleroyalty.com

 **Practice Areas**  
Lease Negotiation & Marketing  
Mineral Management  
Texas, & Oklahoma

 **Industry Experience**  
Operations  
Expert Testimony  
Land Management

 **Education**  
BBA in Marketing, Southern Methodist University

 **Professional Affiliations**  
National Association of Royalty Owners





October 24, 2023

COMMERCIAL INSURANCE, SURETY & RISK MANAGEMENT EDUCATION

# NAVIGATING THE INSURANCE MARKET

David Artzerounian, Partner, SVP, Energy Team Lead  
[www.usi.com](http://www.usi.com)



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# Agenda

- Who is USI?
- Current State of Market
- Challenge Areas / News
- Risk Financing
- Risk Mapping
- Risk Control | Risk Profile
- Risk Transfer | Niche Coverage
- Optimizing Value
- Questions | Contact | Connect

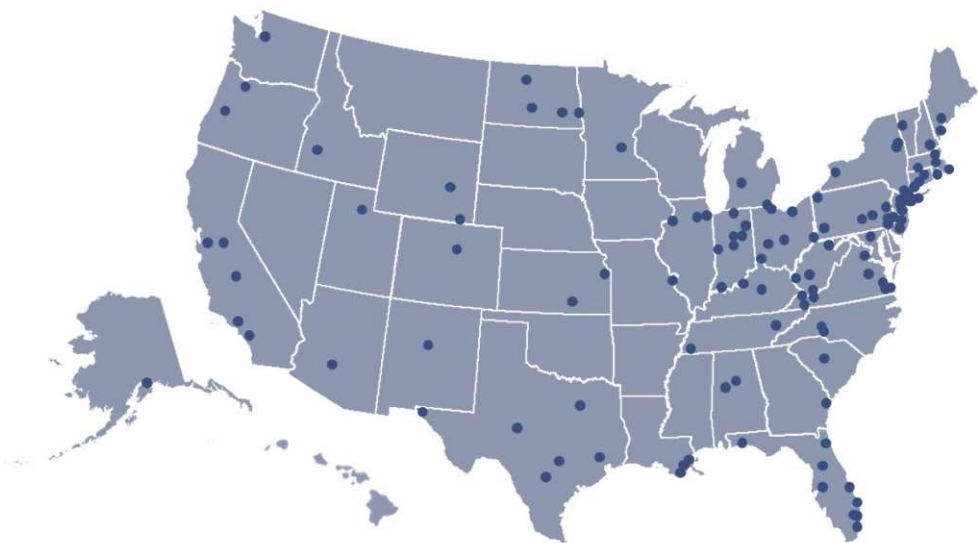




# USI Brings National Capabilities & Local Expertise

USI is a national insurance brokerage and consulting firm with more than 200 local offices connected across the U.S. and a leading market position in all core businesses.

Top 10 US Broker - \$2.6B+ in U.S. revenue



Commercial  
P&C

Employee  
Benefits

Personal  
Risk

Retirement  
Consulting

## USI's Southwest Region

- Revenue \$310M+ and over 750 insurance professionals with an average tenure of 13 years and specialists across a broad range of industries
- Dedicated technical experts in analytics, risk financing, claims advocacy, risk control, environmental, surety and executive risk
- Industry focus on **Energy**



# Growing Fatigue Due to High-Rate Increases, Demanding Renewals



Source: The Council of Insurance Agents & Brokers



# The Exponential Rise of Nuclear Verdicts

Extreme jury awards – known as “nuclear verdicts” – the new normal? From 2015 to 2019, the average verdict in the National Law Journal’s [Top 100 Verdicts](#) more than **tripled from \$64 million to \$214 million**

What is a “nuclear” verdict? According to Harold Kim, President of the Institute for Legal Reform, it’s **any verdict in excess of \$10 million**. “It sounds very apocalyptic, but I think it’s a fitting term,” he remarked. “We’ve seen national headlines with verdicts reaching in the billions of dollars and, unfortunately, it’s not just an isolated event.”

The trucking industry is “under siege.” In addition to pandemic-related pressures, freight carriers are among the hardest hit, with many forced to file for bankruptcy after receiving nuclear verdicts. “There is a significant concern that moving freight, which is so critical to our economy, is going to start freezing up,” said Kim. **“The blast radius of this reaches well beyond the trucking industry,”** he said.







## Nuclear Verdicts (cont.)

### CAUSES

- **Online, TV and billboard advertising.** “Trial advertising is one of the biggest drivers of nuclear verdicts,” noted Kim. Punctuating his point: in a poll of our 2,000-person audience, 88% had seen a mass tort ad in the past week. In addition to bringing in plaintiffs, these ads influence jury pools. “On TV alone, the plaintiffs’ bar is spending billions,” Kim added. “This is not just one-off ads ... this is a systematic, orchestrated marketing effort.”
- **Unregulated third-party funding.** “It’s like the Wild West,” Kim observed. Litigation funding – the leveraging of capital from third parties like hedge and sovereign wealth funds to back potentially lucrative lawsuits – is now a \$39 billion industry, with limited regulation or disclosure requirements. Kim sees third parties with no interest injecting themselves into the system as a major concern. “They really hide in the shadows. If you’re a defendant, you’re not going to know who has a financial interest in the case.”
- **Social inflation.** As public exposure to news of extreme jury awards, attorney advertising and litigation funding increases, jurors become desensitized to nuclear settlements. “It’s hard to predict social inflation trends, making it challenging to underwrite the risks,” noted Cruz. “And society seems to be getting more comfortable with overlooking the personal responsibility.” Think Mahomes Contract

### ACTIONS:

- **Pick your battles.** “We need to pick the right cases to settle, and the right cases to take to trial,” Cruz noted – adding that, when a case goes to court, “it’s imperative we win.”
- **Pick the right insurance partner.** “Look for a carrier with a strong risk control department to help you evaluate the risks,” Cruz advised. “Make sure your carrier is leveraging data and analytics to optimize outcomes for your clients. When the loss happens, you also want a carrier that will put the right resources on the case to protect your clients.”
- **Require transparency in third-party funding.** A handful of states and judicial districts require disclosure of third-party funding agreements, and it’s being discussed in the hallways of Congress. “There has to be an urgency in terms of making sure that your elected officials know that this is an important issue,” Kim emphasized. (Travelers Institute)



# JUDICIAL Hellholes®

## JUDICIAL HELLHOLES®

1. GEORGIA
2. THE SUPREME COURT OF PENNSYLVANIA & THE PHILADELPHIA COURT OF COMMON PLEAS
3. CALIFORNIA
4. NEWYORK
5. COOK COUNTY, ILLINOIS
6. SOUTH CAROLINA ASBESTOS LITIGATION
7. **LOUISIANA**
8. ST. LOUIS

## WATCH LIST

TEXAS'S COURT OF APPEALS FOR THE FIFTH DISTRICT repeatedly misapplies established U.S. Supreme Court and state precedents and procedures, requiring review and reversal by the state's high court. It has developed a reputation for being pro-plaintiff and pro-liability expansion.



# Balance Sheet – Over/Under Insured

## Universe of Coverage:

- **Workers' Compensation**
- **General Liability**
- **Automobile Liability**
- **Umbrella/Excess**
- **Property / Equipment / Lease Property**
- **Control of Well / Operators Extra Expense**
- **Pollution**
- **Directors & Officers**
- **Employment Practices**
- **Crime**
- **Fiduciary**
- **Cyber**
- **Downhole Tool**
- **International / Kidnap & Ransom**
- **Maritime / Hull / Cargo**
- **Other**







# Art & Science of Program Design

- **Guaranteed Cost**
- **Dividend**
- **Deductible**
- **Captives**
- **Self - Insurance**





# Articulate Your Risk Profile





# MSAs & Contractual Risk Transfer





# HSE Program | HR Procedures

## Safety Hazards Associated with Oil and Gas Extraction Activities

Oil and gas well drilling and servicing activities involve many different types of equipment and materials. Recognizing and controlling hazards is critical to preventing injuries and deaths. Several of these hazards are highlighted below. See [Standards and Enforcement](#) for more information on evaluation and control requirements:

- Vehicle Collisions
- Struck-By/ Caught-In/ Caught-Between
- Explosions and Fires
- Falls
- Confined Spaces
- Ergonomic Hazards
- High Pressure Lines and Equipment
- Electrical and Other Hazardous Energy
- Machine Hazards
- Planning and Prevention

Potential health hazards are highlighted below. See [Standards and Enforcement](#) for more information on evaluation and control requirements.

- Diesel Particulate Matter
- Fatigue
- Hazardous Chemicals
- Hydrocarbon Gases and Vapors (HGVs) and Low Oxygen Environments
- Hydrogen Sulfide
- Naturally Occurring Radioactive Material (NORM)
- Noise
- Silica
- Temperature Extremes

## Surety Bonds vs. Traditional Insurance

### Surety Bonds

#### Three Party Agreement

Most surety bonds are three party agreements – the surety guarantees the faithful performance of the principal to the obligee

**Risk Transfer**

**Premium: fee for prequalification**

**No expectation of loss**

### Traditional Insurance

#### Two Party Agreement

Insurance is usually two party agreements whereby the insurance company agrees to pay the insured directly for a covered loss incurred

**Risk Transfer**

**Premium: based on expected loss**

**Actuarially determined premiums cover losses and expenses**





# Well Control Risk





# What is Downhole Tool Insurance

	SELF-INSURED	LOST-IN-HOLE (CONTRACTOR)	DOWNHOLE TOOL INSURANCE
Coverage Limit	N/A	50% value (select tools)	100% value (max limit)
Insured Exposure	N/A	50%	10% deductible
Pricing	\$0	Day rate	Day rate
Fishing Requirements	N/A	Most common wording: make three attempts	Make an attempt to retrieve tools
Damaged Tools	N/A	Not typically covered	Covered
Tools From Multiple Carriers Coverage	N/A	No	Yes, if scheduled
Operator-Owned Tool Coverage	N/A	No	Yes, if scheduled



# 'Gradual' Environmental Risks



Tanks Collapse & Pipeline Leak





# Questions? Connect:



DAVID ARTZEROUNIAN, MBA, CPCU, ARM, AU-M, ARe, CRIS, ERIS, AFSB  
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# State And Local Tax Update

whitleypenn 

# Pass-through Entity Tax Elections

- 36 states including: Colorado, Kansas, Louisiana, Montana, Nebraska, New Mexico, Oklahoma
- Provides a “work-around” the \$10K limit on state tax deduction in effect through 2025
- Allows for payment of state tax at the entity-level by a pass-through entity
  - State tax is deductible at the entity-level where there is no limit
  - Owners of the pass-through entity receive a credit or a deduction (depending on the state)
  - Some states allow the entity to pay tax on the pre-apportioned income of residents, which provides enhanced benefit

# Pass-through Entity Tax Elections

- Colorado provides the ability to retroactively elect back to 2018 (must amend prior year return(s) between Sept 1, 2023 and July 1, 2024.)
- Louisiana 2023 legislature updated statute to provide income exclusion to estates, trusts and partnerships (previously was available only to individuals)
- Montana, Nebraska and New Mexico elections are all new beginning with 2023.
- Note that while there are many similarities between the states in how they operate their pass-through entity tax, virtually no two states are alike in how the “mechanics” of the tax work. So it’s important to look at each state individually.
- Key Considerations:
  - Timing and method of election
  - Estimated payment requirements
  - Method of claiming the benefit if a non-individual
  - Whether refundable or not / partners’ other income from the state
  - Administrative burden (e.g. Louisiana requires filing as if entity was a C Corp)



# Pass-through Entity Tax Elections

- Generally, most valuable in a closely held business context where there are individuals and/or trusts with similar residency considerations
- Often not valuable in the context of a fund given multiple types of owners that may or may not benefit as well as various residency considerations
- We have seen a lot of value in doing a pass-through entity election when businesses have made a large sale of assets.

# Severance Tax Exemption

- Earlier this year, the Texas Legislature passed legislation that provides a waiver from the severance tax that is otherwise imposed on flared gas consumed at the well site.
  - Exempts from severance tax gas produced and used onsite
  - Texas exemption became effective September 1, 2023. Wyoming exemption has been effective since January 1, 2022.
  - The exemptions have been billed as an incentive related to crypto-mining. However, the exemptions apply broadly to stranded gas of a qualifying well.
  - The well must meet certain qualifications in order for the flared gas at the site to apply.

# Texas Franchise Tax Considerations

- The basics
  - $(\text{Revenue minus COGS or Compensation}) \times \text{sales percentage} = \text{taxable margin}$
  - $\text{Taxable margin} \times .75\% = \text{Tax}$
- Cost of Goods Sold: Generally includes the direct costs of acquiring or producing goods.
  - May include costs attributable to research, experimentation, engineering and design activities directly related to the production of the goods
  - Includes: Labor or materials related to a real property construction, improvement, remodeling, repair or industrial maintenance
  - Includes: Intangible drilling costs, depreciation (no bonus), depletion severance taxes and lease operating expense

# Texas Franchise Tax – Sale of Business

- For purposes of apportionment, net gains (but not net losses) should be included. The net gain or loss is determined separately for each sale of a capital asset or investment.
  - For instance: Sale of Asset A gain of \$100, Sale of Asset B loss of \$200, sale of Asset C gain of \$50.
  - Include \$150 in apportionment (i.e. exclude \$200 loss)
- For purposes of apportionment, the sale of an intangible (including sale of partnership interest, goodwill, sale of stock etc.) is sourced based on the “location of payor”
  - If the buyer is a corporation or an LLC, the location of payor is deemed to be the state of formation of the corporation or LLC.
  - Texas generally follows federal treatment of a deemed asset sale.



# Texas Franchise Tax – Sale of Business

- Texas does not conform to federal bonus depreciation rules (100% expensing of qualifying assets between Sept 27, 2017 and Dec 31, 2022 then 80% expensing in 2023, etc.)
  - As a result, a gain on sale of assets for Texas franchise tax purposes is generally less than a gain on sale of assets for federal tax purposes.
  - Consider sale of an asset that was acquired in 2022 for \$100, fully expensed for federal purposes and sold in 2023.

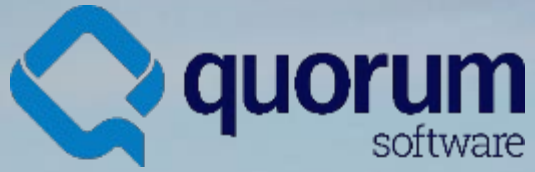
	Federal Tax	Texas Franchise Tax
Asset Basis	\$0	\$86
Sale Price	\$90	\$90
Gain / (Loss)	\$90	(\$4)

# State Withholding on Non-Resident Owner

- Required by many states, generally at highest individual rate
- Owner claims the withholding on its state return for that year
- Treated as distribution to the owners
- Some states provide exemption affidavits which are an affirmative statement by the owner saying that the owner will file on its own.
  - Owner should consider, especially if offsetting losses from other investments/sources
  - Some affidavits (Montana is one) require the entity to meet very specific conditions (such as principal place of business in Montana)
- Most states do not provide for the deduction of separately stated items (such as excess business interest expense and depletion)

# Texas Tax Update

- Revised Texas Sales Tax regulations potentially forthcoming
  - Replaces taxable/non-taxable well-site services with real property new construction vs. repair/remodel distinction
  - Manufacturing exemption – pumps/compressors and chemicals not eligible for the manufacturing exemption for use after the oil/gas is “pipeline quality”
- The Comptroller’s office has indicated that it is also working on
  - Additional guidance related to the taxability of flowback services
  - What equipment qualifies for the water recycling exemption



# On Demand

A Modern Technology Suite in Oil & Gas

September 20, 2023





# Introductions



**Ryan Monahan**  
Director, Channels & Global Alliances

# Transforming the Business of Energy through Technology

## Industry Leadership

**95%**  
Top 20 E&P companies  
in the US trust Quorum

**1,300+**  
Customers from  
emerging operators to  
supermajors & NOCs

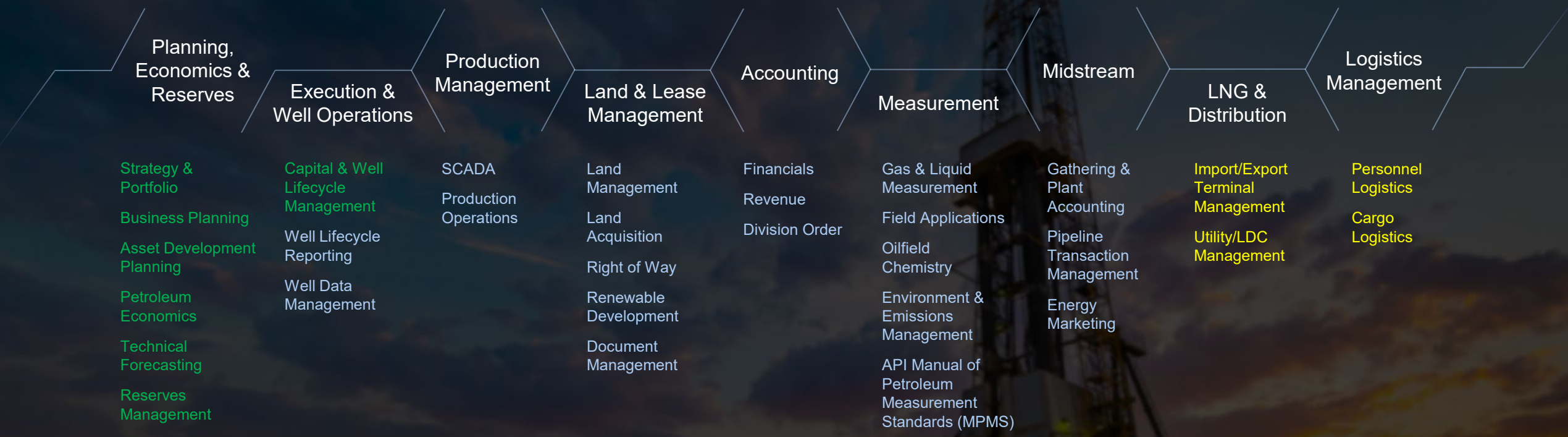
**1,450+**  
Team members with  
centuries of combined  
energy experience

## Technology Leadership

**25 Years**  
Of developing and  
delivering Energy Solutions

**25%**  
Annual budget for  
R&D as a percentage  
of software revenue

**500+**  
Employees dedicated  
to product development  
and innovation



Energy IQ: Master Data Management | Visualization & API Integration | Document Management

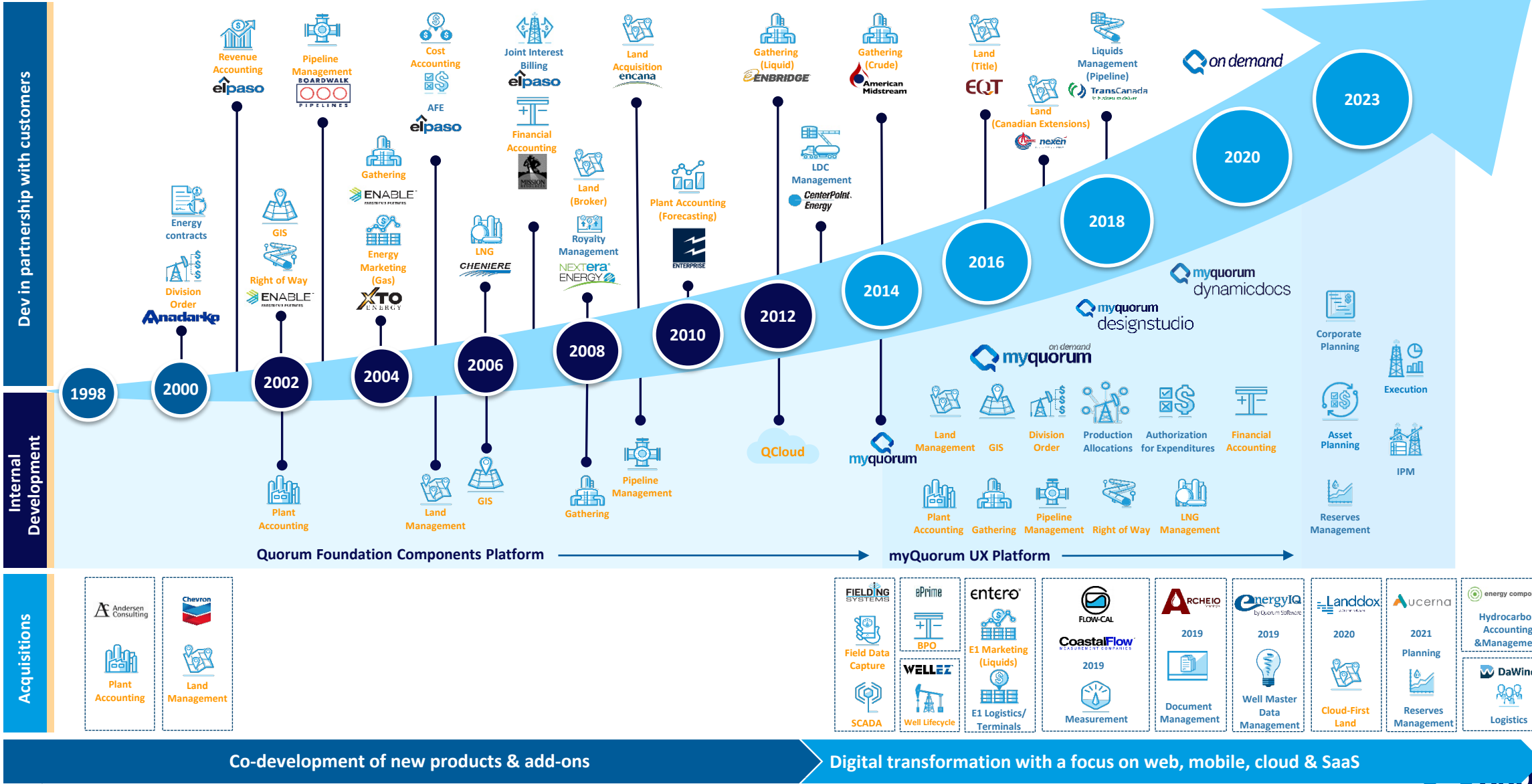
### Services & Support

Consulting | Implementation | Upgrades | Managed Services | Quorum University

Self Service | Help Desk | Incident & Service Requests | Out of Scope Support | Core Engineering Support | Hypercare



# Quorum's Technology Evolution





# What is SaaS?

- SaaS stands for Software-as-a-Service
- A software model in which software is licensed on a subscription basis and centrally hosted
- Delivery models:
  - Single-tenant
  - Multi-tenant



# Understanding SaaS

## ◇ Overall SaaS Benefits

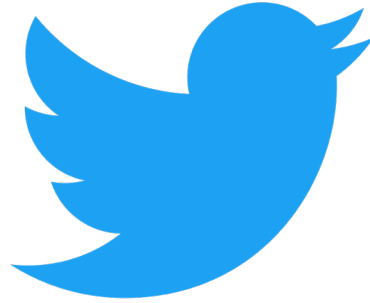
- ◇ Eliminate IT infrastructure Costs
- ◇ Accessible from anywhere
- ◇ Predictable price model

## ◇ Multi-Tenant SaaS Benefits

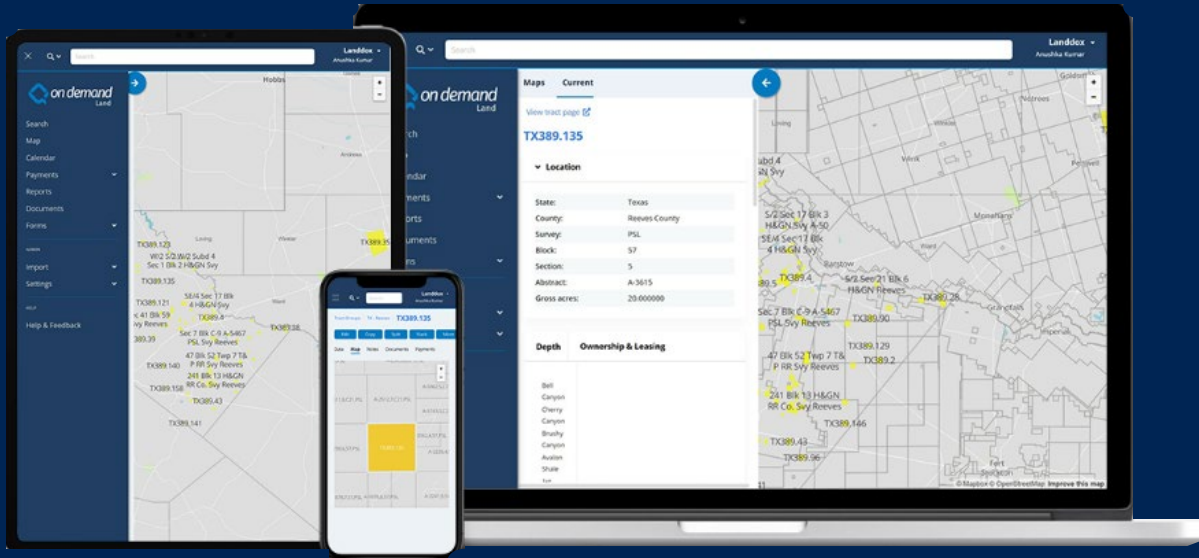
- ◇ Speed
- ◇ Lower Cost
- ◇ Scalability
- ◇ Customization without Coding
- ◇ Continuous, consistent updates & maintenance
- ◇ Consistency improves product quality and supportability



# SaaS Applications in Daily Life



# Software Built for the Modern Energy Business



## Modern Platform Unique to O&G

The Upstream On Demand applications have a consistent, underlying architecture allowing each tool to be utilized uniquely and effectively for all different use cases.

Accessibility

Maintenance  
And Support

Scalability

Flexible  
Configuration

Transparent  
Costs

Speed of Delivery

# Core Functionalities

Accessibility

Maintenance  
and Support

Scalability

Flexible  
Configuration

Transparent  
Costs

Speed of Delivery

# Built for the internet

Accessibility

Maintenance  
and Support

Scalability

Flexible  
Configuration

Transparent  
Costs

Speed of Delivery



**Access your tools anytime & anywhere.**

All of the On Demand applications are natively-built to be used on the web. Whether you access through a laptop, tablet, or mobile device, as long as you have an internet connection, you can connect to your business.

# Improved approach to maintenance

Accessibility

Maintenance  
and Support

Scalability

Flexible  
ConfigurationTransparent  
Costs

Speed of Delivery



**Standardized experience =  
simplified maintenance**

All clients run the same version of each application meaning all updates and maintenance tasks can be performed centrally.

# Sized for Startups & Majors

Accessibility

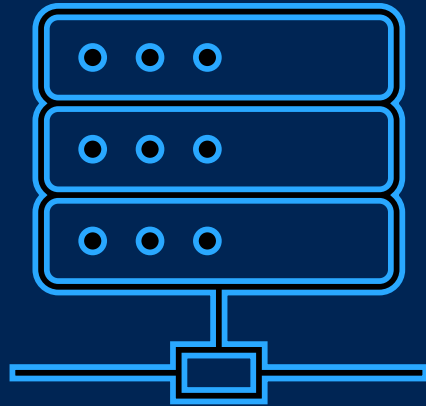
Maintenance  
and Support

Scalability

Flexible  
Configuration

Transparent  
Costs

Speed of Delivery



## Architected to grow with you.

Each On Demand application has infrastructure designed to scale with your business. Companies managing 10s of wells can be running the same system as companies managing 1000s.



# Unique Setup for Each Company

Accessibility

Maintenance  
and Support

Scalability

Flexible  
Configuration

Transparent  
Costs

Speed of Delivery



## Configurable for every client.

Clients can tailor their environments to suit their specific needs and requirements. Additional customization can occur via APIs and connecting 3<sup>rd</sup> party applications.

# Simplified Subscription Model

Accessibility

Maintenance  
and Support

Scalability

Flexible  
Configuration

Transparent  
Costs

Speed of Delivery



## No hidden fees.

Subscription-based pricing includes all support and maintenance elements. The upgrade and patch process are long gone and you no longer experience metered support.

# Faster Time to Value

Accessibility

Maintenance  
and Support

Scalability

Flexible  
ConfigurationTransparent  
Costs

Speed of Delivery



## Database ready within days.

New environments can be created within a matter of days or weeks from request. These new databases can be uploaded with your data, configured to meet your needs, and set up 'live' in a matter of weeks.

# Core Capabilities

Roles & Permissions

Auditability

Report Writer

API Capabilities

Master Data Integration

Validated Uploads

Enhanced Security

SOC Compliance

Public Cloud Stability

Disaster Recovery

Enhanced Data Reporting

# Core Functionalities

Accessibility

Maintenance and Support

Scalability

Flexible Configuration

Transparent Costs

Speed of Delivery

# Unlock your data

- Accessibility
- Maintenance and Support
- Scalability
- Flexible Configuration
- Transparent Costs
- Speed of Delivery

## Data Hub

No compiling, no correcting, just clean data from every part of your business in no time.



**Free Your Data:** Pull the data into your own on-premise data stores and integrate with other enterprise data.



**BYO-BI:** Use any leading BI tool (PowerBI, Spotfire, Tableau) to connect and build your own BI analytics.



**Future Proof:** We focus on serving you data so that you have the freedom to evolve your data visualization strategy independent of the operational applications



# Upstream On Demand

Upstream Energy Software with the Simplicity of the Cloud

Planning,  
Economics &  
Reserves

**Execution &  
Well Operations**

**Production  
Management**

**Land & Lease  
Management**

**Accounting**

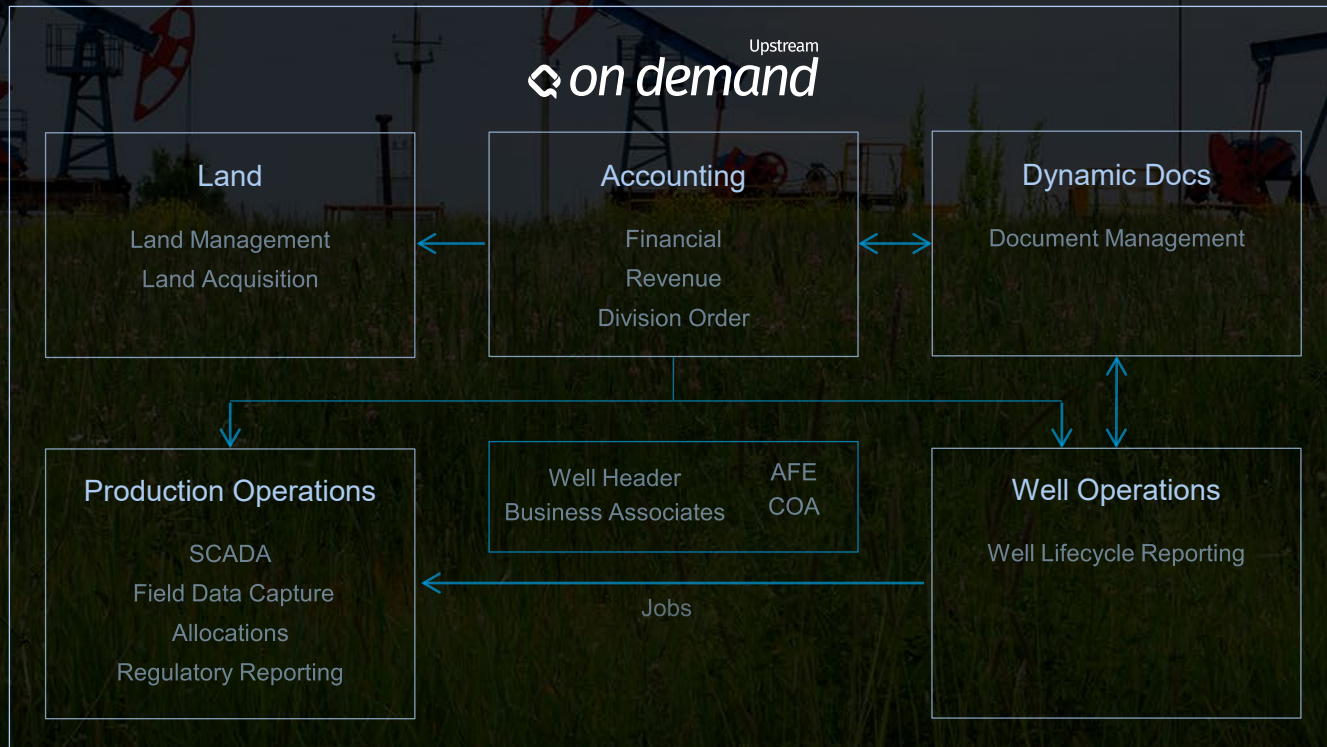
Measurement

Midstream

LNG &  
Distribution

Logistics  
Management

OGsql





# Key Highlights

96%

Customer Renewal Rate  
Through On Demand Suite  
of Solutions

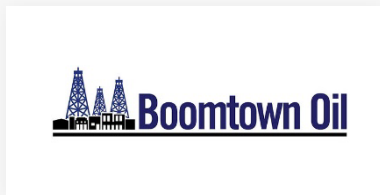
500+

Companies (and Counting)  
Trust One or More On  
Demand Products

95%

Average CSAT Score Across  
On Demand Suite of  
Solutions

# Some of Our Customers...







Thank You.  
May We Answer Your Questions?

[quorumsoftware.com](https://quorumsoftware.com)

