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Enhanced energy capabilities to help you capitalize on opportunities in 2022 and beyond

With the slowdown of the COVID-19 pandemic and return of stable prices, energy companies are assessing available resources and skillsets, and developing strategic plans and budgets for 2022 and beyond. In a prescient move, Thompson & Knight and Holland & Knight executed a merger in August 2021, which combines the traditional oil and gas practice of Thompson & Knight with the clean technology and renewable energy practice of Holland & Knight. The combination enhanced and expanded the overall energy capabilities at Holland & Knight, which is ideally positioned to help clients with existing oil and gas commercial requirements as well as navigate them through the energy transition.

The new Holland & Knight LLP

“We’re truly one of the few law firms that can offer end-to-end services across the energy spectrum—from traditional hydrocarbon clients, to those seeking to shift at least a portion of their portfolios to low-carbon alternatives, to those fully invested



JUAN ALCALÁ

in renewable and alternative energy,” explained Juan Alcalá, an international disputes attorney and co-chair of Holland & Knight’s

Energy and Natural Resources Industry Sector Group.

For more than 120 years, the firm’s attorneys have counseled oil, gas, and energy industry clients in more than 80 countries through decades of highs and lows in the market. Holland & Knight’s Energy and Natural Resources Industry Sector Group provides access to more than 225 experienced attorneys and professionals, who represent

a wide array of stakeholders operating in conventional and renewable energy markets, to help clients take advantage of the opportunities and challenges presented by today’s marketplace.

Increasing oil and gas production

Oil and gas production is now increasing in response to stable prices and rising demand. According to attorney Josh Downer, who focuses his practice on oil and gas transactions, with



JOSH DOWNER

a particular emphasis on midstream commercial projects, one major challenge will be how to obtain commitment to long-term mid-

stream projects that will require build out and associated capital expenditure. He explains, “Traditionally, midstream operators have often relied upon an acreage dedication from a producer and a commitment of all production from a defined area to ensure sufficient utilization of infrastructure to generate returns on the investment in such infrastructure. Courts have recently made clear, however, that many of those dedications are not going to be enforced in the same way that parties traditionally contemplated. One area where we can provide guidance is how to deal with such case law and provide solutions and alternatives.”

Jolisa Dobbs, an experienced oil and gas attorney who concentrates on oil and gas acquisition and disposition transactions, notes an uptick in the transactions due to these strong



JOLISA DOBBS

and stable prices. “I think anyone can make a deal if both parties feel the price point works for them,” Dobbs said. “The next play for the upstream sector will include the pursuit of low-carbon alternatives through technology, investment, and unique joint ventures that showcase the creative spirit that is the hallmark of the upstream players.”

“What makes Holland & Knight special under these conditions is that we actually have a dedicated group focused on energy 24/7, many with direct experience in the industry as accountants or landmen and beyond,” Dobbs explained. “This experience makes us nimble and value adding.”

Navigating the energy transition

“We saw a big movement last year toward energy transition,” explained attorney George Humphrey, who



GEORGE HUMPHREY

focuses on U.S. and international project development and finance. “Big and small energy companies started looking very hard at what energy transition means for

them, what are their skill sets, and how they can fit into it.”

Beth Viola, senior policy advisor in the firm’s Washington, D.C. office and a former White House advisor, agrees that the energy industry is heading toward a low-carbon economy.

“It is certainly the priority of the Biden administration and this Congress,” said Viola. “Regardless of what happens in the next Congress or the



BETH VIOLA

next administration, the energy industry has decided, whether it is through shareholder pressure, state and local mandates, or international initiatives, they have to move toward a low-carbon or net-zero business model. What is coming out of this Congress before the end of the year is unprecedented amounts of funds to ensure the energy industry makes that transition.”

"A lot of the upcoming projects are new," explains Humphrey. "So, Holland & Knight is at the vanguard of helping our clients, who are market makers, by coming up with a proper set of contracts and novel financial structures behind the meter, whether it is negotiating a wind power agreement or trading hydrogen on a short-term basis."

Carbon capture technology and reduced methane emissions

Holland & Knight can help energy companies take advantage of the funding and tax incentives for carbon capture projects. "Carbon capture by itself is not economically viable," said Humphrey, "But there's a 45Q Carbon Capture tax credit, in addition to the traditional production and investment tax credits, and depreciation benefit." Attorney Roger Aksamit, who focuses his practice on energy and private equity taxation,



ROGER AKSAMIT

said, "The tax legislation being written on Capitol Hill is expected to have substantial changes to 45Q, which would make it much more user friendly and beneficial. Instead of the credit being phased-in over time under the current law, the full amount of the credit will be available for years after 2021. This will immediately make it the maximum dollar amount at \$50/ton for sequestered CO₂ and \$35/ton if it is used in an EOR application. The legislation is also proposing direct air capture. If you set up a facility to capture CO₂ from the atmosphere, you will have a substantially increased tax credit."

Downer says there will also be tremendous amount of pressure to reduce flaring. "Even regulators in oil and gas friendly states are indicating that they are going to take steps to minimize flaring," Downer said. "There is a major opportunity for companies that can offer solutions to producers for stranded gas or gas that would otherwise be flared, and it's generating a lot of creativity, with some companies even using such gas as fuel to mine

cryptocurrencies or for other purposes that previously would have seemed somewhat unusual, but now make sense in this new environment."

Watchdog on Capitol Hill

Downer suggests that one of the biggest game changers for Holland & Knight is its considerable legislative and regulatory prowess in Washington, D.C. "We're able to get real time, on-the-ground assessments of what's going on legislatively, which is very important for us and our clients."

Viola concurs with the need to have a presence on Capitol Hill. "To access federal government resources, you need someone who understands Congressional intent, how the federal agencies work, and how the money is designed to go out the door. Holland & Knight is well equipped to help navigate Capitol Hill and the federal agencies."

Litigation trends

Attorney Greg Curry, whose litigation practice focuses on oil and gas, complex commercial, and insurance coverage, sees significant price-sensitive litigation. "We're still seeing the ramifications of low prices," Curry explained. "We're working through lawsuits that were filed years ago from royalty owners seeking higher royalties and other claims seeking to maximize revenue in a down market. Also, we are seeing some disputes, including producer fights with their midstream and downstream providers, draw to a close based upon the bankruptcies in the last two years."

Curry added, "With strong energy prices, the focus will be on operators trying to take advantage by opportunistically seeking to terminate other operator leases or taking on new leases where they believe termination has occurred. Landowners will be also trying to minimize acreage retained by wells or forcing operators to take a new lease where retention or expiration is questioned in order to force operators to pay them more money."



GREG CURRY

Curry says one of the interesting and potentially most important litigation topics in Texas is allocation wells. "Recently, a district court in Travis County concluded that allocation wells are not allowed under the rules," Curry said. "There are quite a number of these allocation wells, and producers are continuing to employ them to develop acreage. How this issue plays out will be important to the industry."

Alcalá also notes a trend in litigation driven by the recently elected nationalist administration in Mexico that has enacted legislation and proposed constitutional amendments to scale back the electricity and hydrocarbon reforms instituted by the prior administration. "We're one of most active law firms involved in Mexico representing a number of clients in the electricity and hydrocarbon space," explained Alcalá. "One of the key differentiators for us is we are able to offer extensive capabilities for both domestic litigation and international experience for clients who would like to pursue treaty claims against the Mexican government. Additionally, we can offer assistance with some of the political implications these types of claims involve through our advocacy and regulatory team in Washington, D.C. as well as in Mexico. It is a full circle of services."

At your service

Holland & Knight is a global law firm with approximately 1,600 lawyers and other professionals in 31 offices worldwide. The firm's lawyers and advisors provide representation in litigation, corporate and finance, real estate and governmental matters. Interdisciplinary practice groups and industry-based teams provide clients with efficient access to attorneys throughout the firm.

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