

## GATHERING AND PROCESSING AGREEMENTS – BANKRUPTCY “REJECTION” RISK

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Recent bankruptcy cases (e.g., Sabine Oil and Gas, Quicksilver Resources) have raised issues regarding the viability of midstream gathering and processing agreements (GPAs) with upstream producers.

Generally, these cases have involved motions to “reject” the GPAs so that the upstream producer is excused from performance. While no rulings have yet been made, the bankruptcy judge in one of the bankruptcy cases has indicated that she is inclined toward a ruling that the gathering agreements in question are not “covenants running with the land” (which were argued to protect the midstream company’s rights under its GPAs) and may be rejected. These cases are important to understand, and the bankruptcy process raises a number of key GPA questions and issues for upstream and midstream energy companies, based on their particular circumstances:

- What is the impact of a bankruptcy filing on GPAs?
- How does the automatic stay (i.e., the federal injunction which arises upon a bankruptcy filing) affect GPAs parties?
- What are the continuing performance obligations of the parties to GPAs once a bankruptcy is filed?
- What is required for GPAs to be “rejected” in a bankruptcy case?
- What is the impact and consequence when GPAs are “rejected”?
- Are GPAs restrictions on assignments enforceable in bankruptcy?
- Are GPAs minimum volume commitments enforceable in bankruptcy?
- Are GPAs covenants running with the land enforceable in bankruptcy?
- What law determines whether a covenant running with the land is valid and enforceable?
- How do 363 sales and plan sales affect the rights of GPAs parties?
- How can the GPAs' parties protect their interests? Pre-bankruptcy filing? Post-bankruptcy filing?
- What are the potential rights of third parties and their impact on GPAs?
- What practical considerations arise when evaluating the relative rights of the GPAs parties and assessing potential business solutions vs. litigation?

These issues now emerging in the bankruptcy forum can be evaluated by experienced counsel to help parties manage the risk to GPAs when insolvency and bankruptcy arise.

***For a copy of our slide deck on bankruptcy issues and midstream GPAs, please contact any of the following V&E Restructuring and Reorganization partners: Bill Wallander (RR Practice Group Leader, Dallas); Paul Heath (Dallas); Harry Perrin (Houston); or David Meyer / Steve Abramowitz (New York).***