Tenure Matters

A column by Sue Slater, Senior Advisor Petroleum, RLMS

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Welcome back. This month the topic for discussion is 'strata-titling' of tenures – and the issues that can arise with respect to approvals as the differing projects on the same tenure move through the exploration-appraisal-development cycle.

So first of all, what does 'strata-titling' of tenures mean, and is it actually common practice? It is basically an agreement where the rights to certain stratigraphically defined units are retained by or farmed-out to a, sometimes, off-title proponent. It is difficult to determine how wide-spread this practice is because this type of agreement is not always recorded on the public tenure record. However, Senex Energy announced this year a joint venture for the 'deeps' (the Permian section) in PEL 514 (South Australian Cooper Basin), whilst retaining the rights to explore other hydrocarbon plays in the tenement. Senex retains operatorship for the first two stages, but Origin Energy has the option to become operator following the completion of the second stage. Planet Gas also retains its interests in the younger oil-prone sequence.

In Queensland, Pangaea Resources retained interests in the 'deeps' (from approximately 30metres below the Walloon Coal Measures) in the Surat Basin tenures, ATP 610, 620, 648 and 788 when these assets were sold to Origin Energy or QGC. Pangaea Resources are not the operator in these tenures, and do not appear on title. Some of these have progressed to have Petroleum Leases (PL) granted over part or all of the ATP.

Dual exploration phase co-existence does not seem too complex. The ATPs themselves are granted for non-specific petroleum resources, i.e. not limited to coal seam gas or conventional hydrocarbons. The standard exploration Environmental Authority (EA) should have the scope to cover all resources (as it would if both plays were being explored by the holder). Land access issues would have to be the subject of an agreement, to ensure smooth communications between proponents and stakeholders without causing undue confusion in the community, but this is effectively no different from any other overlapping exploration tenures.

It is when one proponent has progressed through appraisal to development, with production licences issued that some attendant complexities arise. We have seen increasingly prescriptive conditions attached to production tenure, especially to coal seam gas projects, as the CSG-LNG industry has progressed. What this means is that the EAs and other required documents such as Plan of Operations required under the *Environmental Protection Act 1994* and the Development Plan under the *Petroleum & Gas (Production & Safety) Act 2004*, deal in great detail with the "primary" resource (in the sense that this is the resource focused on by the tenure holder and operator) but not at all with the "secondary" resource (the rights retained by the non-tenure holder). So what happens when that company wants to exercise those rights and begin to explore for the "secondary" resource?

Firstly, in all likelihood, the EA will contain a Schedule of authorised activities, which won't include the proposed activities, so the EA will require amendment. All the plans required by the EA, will require review and probable amendment, because the proposed activities will not have been considered when the documents were produced. The Plan of Operations, where a lot of detailed information sits about locations and timing of activities, will require amendment. Financial assurance may require an adjustment (although exploration activities are unlikely to have an impact on the year of maximum disturbance for a large-scale CSG project). The Development Plan likewise will not contain information relevant to the proposed "secondary" resource exploration. So seeking amendments to all these documents will be necessary, and can become a complex process, which needs to dovetail with the ongoing "primary" resource production activities and the proposed "secondary" resource exploration activities. And it all needs to be explained to government departments who are not likely to be particularly familiar with the concept. And of course the land access and stakeholder management issues also have to be dealt with, and well and seismic activities located to not unduly inconvenience the tenure holder or the landowners.

So if the exploration is successful and the "secondary" resource can meet the requirements for a production project – what then? The *Environmental Protection Act 1994* requires one EA for a project, and the "secondary" resource is clearly a separate project. However there can only be one EA for each tenure. Currently there is no mechanism to issue a separate PL over the "secondary" resource, and the only option would be to have a sub-lease arrangement. This is still not ideal, since the sub-lessee is not on title, and there would still be one EA. And what of the required documents? Should there be two Development Plans, two Plan of Operations, two lots of Financial Assurance and so on? These are questions that should be addressed sooner rather than later. Current sub-leases (divided by surface area) operate on a single EA, and Development Plan – but in perhaps the most well-known example in Queensland, PL94, the resource is the same (coal seam gas from the same formation) for the sub-lease area and the remainder of the lease.

Should we give consideration to having the ability to grant a separate PL over the "secondary" resource, thereby ensuring a separate EA, Plan of Operations, Financial Assurance and Development Plan? Would this be easier to administer than trying to force two resources into one set of approvals? In essence I don't see this as being much different from the current overlapping scenario between Mining Leases and PLs, except that the resource types are administered under the same legislation (and that won't be the case for long once the Modernising Queensland Resources Acts program is completed). A co-ordination arrangement would be necessary to facilitate the surface activities of course, but again no different to current overlapping requirements (and arguably perhaps easier than co-ordinating petroleum activities with mining).

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Although it is not ideal to need to have an overlapping tenure regime, the cat is well and truly out of that bag, so would this be a cleaner, and more transparent, means of dealing with the strata-titling of resources in an area than joint venture arrangements and sub-leases that are not always obvious to other stakeholders, be they landowners, government agencies or interest groups? I think this is a topic worthy of some robust discussion and consideration by policy makers.

I am happy to hear suggestions about topics you would like covered. Feel free to email me at sue.slater@rlms.com.au with the subject heading Tenure Matters.

In the meantime, remember "Tenures make the Project; the Project doesn't make the Tenures".

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