

Energy Law

Winstead attorneys counsel clients in the energy industry on a wide-range of matters involved in the oil and gas value chain. Our team has deep experience with upstream exploration and development companies, oilfield service businesses, pipeline, storage and terminals companies, and refining and chemicals companies, as well as commercial banks, investors and private equity investors, and investment banks of all sizes investing in companies in the upstream, midstream and downstream energy sectors regarding transactional, regulatory and dispute resolution matters.

Oil & Gas Areas of focus:

- Corporate M&A
- Environmental Regulation
- Insurance Recovery
- Land and Right-of-Way
- Lending
- Litigation
- Private Oil & Gas Funds
- Taxation

Corporate M&A

Winstead's transactional attorneys have effectively represented clients in the energy industry in matters ranging from providing general operational advice to negotiating and closing transactions dealing with a wide variety of projects involving acquisition and disposition of mineral interests, exploration, drilling, and production services, development, joint ventures, financing, gathering and transportation, offshore transportation services, processing and refining, among others. Winstead's experience extends across a broad spectrum of transactions varying in complexity and size from thousands of dollars to hundreds of millions of dollars in significant oil and gas plays throughout the United States. Our energy transaction attorneys work closely with the Firm's environmental, corporate, tax, fund formation and finance attorneys to provide full service representation and appropriate expertise to examine every aspect of an energy transaction. Our clients include independent exploration and production businesses, large integrated petroleum companies, midstream oil and gas companies, private investment funds and financial institutions.

Environmental Regulation

Our attorneys have experience navigating a wide variety of federal and state regulatory programs that impact the oil and gas industry, including environmental regulation. Regulatory compliance is critical, and assisting clients with maintaining compliance is a top priority. Winstead has deep experience in representing numerous midstream companies, from gathering to long-haul transmission, to everything from tariff and commercial structuring of capacity to pipeline safety. Our Environmental Law Practice Group has significant experience in virtually all areas of environmental law that impact midstream clients.

- Bureau of Ocean Energy Management (BOEM)
- Energy tax issues
- Environmental Protection Agency (EPA)
- Federal Energy Regulatory Commission (FERC)
- General Land Office
- Oil and gas pipeline tariffs and economic regulation
- Pipeline Hazardous Materials Safety
- Pipeline Integrity Management program compliance
- Texas Commission on Environmental Quality (TCEQ)
- Texas Railroad Commission regulatory and enforcement issues
- Upstream, midstream, downstream environmental permitting and compliance

Insurance Recovery

Winstead's insurance recovery team partners with corporate policyholders to provide a strategic and comprehensive approach to their insurance and risk management needs from a legal standpoint. The full spectrum of commercial coverages include:

- Business Interruption
- CGL
- D&O
- Cyber
- Intellectual Property
- E&O
- Reps and Warranties
- Builder's Risk
- Fiduciary Liability
- Employment Practices
- Pollution

With a history of advocating for clients against major insurers in the U.S. and internationally, we have recovered policy proceeds in response to:

- Pandemic-related business disruptions
- Natural disasters, including hurricanes, wildfires, and winter storms
- Cyberattacks, terrorism, and piracy incidents
- A host of other incidents involving commercial coverages

Land and Right-of-Way

The firm boasts one of the largest right-of-way practices in the state of Texas. Our attorneys regularly develop easements and other right-of-way agreements including, where necessary, pursuant to condemnation of pipeline rights-of-way.

Lending

Energy lending is a core practice at Winstead. Our energy finance attorneys have handled billions of dollars of credit facilities for lenders and borrowers in both single lender and syndicated debt financing transactions involving all sections of the energy industry throughout the United States, Canada, Mexico, offshore Gulf of Mexico, and Native American reservation lands. Winstead's energy finance attorneys have also handled many types of finance transactions, including exploration and production, marketing and transportation, energy trading, well service equipment, supplies and seismographic services, onshore and offshore drilling rigs, as well as the construction, acquisition and operation of marine vessels.

Our attorneys have experience in a wide variety of areas that intersect with energy lending, including:

- Review, analysis and negotiation of hedging agreements in connection with energy lending transactions. Winstead is also an active member of the International Swaps and Derivatives Association (ISDA).
- Review and analysis of drilling, development, production sharing, joint venture and operating agreements, as well as agreements for the purchase and sale of oil and gas properties.
- Review and analysis of sales, marketing, storage, processing and transportation agreements affecting oil and gas collateral.
- Review and analysis of oil, gas and mineral leases and production sharing agreements affecting oil and gas collateral.
- Review and analysis of environmental issues affecting oil and gas collateral.
- Review and analysis of title opinions and title issues that arise regarding lien status.

Litigation

Winstead's energy litigation attorneys are experienced in all aspects of the energy industry, having handled matters concerning disputes from the bottom of the wellbore, on and offshore, to the pipeline and on to final distribution. Our achievements include resolving disputes involving:

- Operator/non-operator disputes
- Breach of lease and royalty underpayment claims
- Lease termination disputes
- Mineral and leasehold title disputes
- Antitrust claims in the energy field
- Condemnation
- COPAS accounting procedures and other energy accounting issues
- Development rights and obligations
- Drainage issues
- Environmental issues including contamination/remediation
- Indemnity claims
- Joint venture/partnership issues
- Land, boundary and mineral ownership issues
- Offshore marine construction and transportation issues
- Patent infringement – oil and gas equipment
- Plant construction and maintenance issues
- Plugging and abandonment obligations
- Product liability claims
- Qui tam cases
- Reserve issues
- Royalty and overriding royalty claims
- Seismic and trade secret matters
- Working interest/surface owner disagreements

Private Oil & Gas Funds

Winstead regularly represents sponsors and investors with respect to private funds that focus on the oil & gas industry. Specifically, Winstead assists clients with the formation of private funds that acquire oil & gas assets, such as minerals, royalty interests, production and infrastructure. We also represent management teams seeking capital from private equity capital managers.

Restructuring and Bankruptcy

Winstead has been involved in nearly every significant energy company bankruptcy over the last decade, and we have multi-disciplinary experience dealing with the financial restructuring issues that arise in energy cases. We also have extensive experience dealing with the issues that are unique to energy cases, including:

- Royalty interests, net profit interests and other lease burdens
- Statutory mineral liens
- Oil and gas regulatory issues including P&A liability
- Offshore vessel and fleet mortgage security matters

Taxation

Oil and gas taxation is both complex and volatile, not unlike the industry at large. Our team is experienced in tax structuring and planning for a large cross-section of clients, including public and private energy companies, energy funds and investors, pipeline companies, and energy service providers.

Our work with oil and gas clients routinely includes:

- Advising oil investment funds and their managers on maximizing their opportunities with respect to depletion and intangible drilling cost (IDC) deductions
- Tax structuring of production payments and oil and gas tax partnerships
- Facilitating nonprofit investments in the oil patch
- Structuring investment in midstream assets
- Joint ventures
- Cash and carry transactions
- Production payment transactions
- Like-kind exchange transactions involving oil and gas interests
- Oil and gas asset acquisitions
- Tax planning and representation with respect to federal and state tax matters

Experience

Energy / Oil & Gas Representative Matters

Bankruptcy & Restructuring

Selected Energy Bankruptcy Representations

- Represented lender group in connection with \$750M pre-petition and DIP loan facility secured by offshore oil and gas properties located in the Gulf of Mexico in *ATP Oil & Gas Corporation* bankruptcy proceeding in Houston, Texas. This representation also included addressing hedging issues on behalf of our lender clients in connection with the case.
- Represented administrative agent for secured lender group in connection with \$83M loan facility secured by offshore oil and gas properties located in Louisiana and Texas in *Energy Partners, Ltd., et al.* bankruptcy proceedings in Houston, Texas. This representation also included addressing hedging issues on behalf of our lender client in connection with the case.
- Represented working capital and revolving-credit facility lenders in *SemCrude, L.P. / SemGroup Holdings L.P.* bankruptcy proceeding in Delaware. This representation also included addressing hedging issues on behalf of our lender clients in connection with the case.
- Represented secured lender in connection with \$42M loan facility secured by oil and gas properties located in Oklahoma, Colorado, New Mexico, and Wyoming in *Redwine Resources, Inc. et al.* bankruptcy proceeding in Dallas, Texas. This representation also included addressing hedging issues on behalf of our lender client in connection with the case.
- Represented secured lender group in *Renovo Energy, Inc./Wyoming Ethanol, LLC* bankruptcy proceeding in Wyoming. This representation also included addressing hedging issues on behalf of our lender clients in connection with the case.
- Represented secured lenders in connection with \$40M loan facility in *Bristol Resources* bankruptcy proceeding in Corpus Christi, Texas.
- Represented first lien lenders in connection in *Quicksilver Resources* bankruptcy proceeding in Delaware.
- Represented working capital and revolving credit facility lender in *Aurora Oil & Gas Corporation* bankruptcy proceeding in Grand Rapids, Michigan.

Corporate M&A

- Reviewed, negotiated, and executed numerous gas and crude oil gathering and transportation agreements for production in the Eagle Ford, Barnett, Permian, and Bakken shale plays.
- Reviewed, negotiated, and executed numerous gas processing and treating agreements in the Barnett, Eagle Ford, and Permian shale plays.
- Facilities extension and interconnection agreements for gas utility, common carrier, and produced water pipeline facilities.

Energy and Environmental Regulation

Selected Midstream Experience

- Advice and counsel to publicly traded companies regarding regulatory issues associated with major midstream asset acquisitions.
- Advising midstream clients on potential impacts of regulatory developments, including EPA's proposed ozone standard, and the evolving aggregation requirement for air permits.
- Assisting clients in state and federal regulatory advocacy and compliance for midstream operations, including EPA's National Emission Standards for Hazardous Air Pollutants (NESHAP) OOOO and ZZZZ rules; the New Source Performance Standard (NSPS) JJJJ requirements; and the TCEQ standard permit and permit by rule for oil and gas operations.
- Counseling and advising clients in multi-billion dollar projects to strategically apply for, obtain, and comply with state and federal New Source Review permits, including Greenhouse Gas Permits and Federal Energy Regulatory Commission (FERC) related general conformity, and cumulative air impact reviews.
- Counseling pipelines and gathering systems on compliance with Texas gas utility, Texas common carrier, NGPA Section 311, and common purchaser requirements.
- Obtaining entity and operator permits for numerous Texas gas, crude, and NGL pipelines.
- Providing advice on waste related matters, including application of the oil and gas exploration and production wastes exemption.
- Providing pre- and post-acquisition advice on state and federal air permit requirements for midstream gas processing plants and compression midstream assets.
- Representing common carrier crude and gas utility pipelines in shipper complaints.
- Structuring tariffs and contracts to reflect gas utility, common carrier, NGPA Section 311, and common purchaser requirements.

Litigation

Representative Matters

- Defending operator against breach of lease and nonpayment of royalty claims
- Defending operator against trespass-to-try-title and nonpayment of royalty claims
- Defending oilfield service company against breach of contract claims
- Defended operator in litigation regarding exploration and development agreement and related joint operating agreements covering lands in multiple counties in the Barnett Shale area
- Represented operator in prosecution of claims and defense of counterclaims arising from field-wide Unit Agreement and Unit Operating Agreement
- Defended operator against trespass-related claims stemming from surface foreclosure in Barnett Shale area
- Defended corporate trustee against breach of fiduciary duty claims regarding management of oil and gas assets
- Represented oil and gas company in arbitration of title defect claims arising from acquisition of oil and gas assets
- Defended oil and gas company in multi-district and class action litigation of royalty underpayment and lease termination claims
- Represented financial institution and mineral owners in trespass to try title suit regarding oil and gas interests in multiple counties in Texas

- Defended financial institution in arbitration against claims of breach of contract, fraud, and violations of Bank Company Holding Act stemming from credit facility secured by oil and gas assets

Representative Midstream Litigation Matters

- Represented Enterprise in a trespass claim arising from constructing a pipeline outside of its easement.
- Represented Enterprise in a case in which a landowner sued the pipeline operator and Enterprise for breaching agreements concerning the construction of pipelines on the property. The case was resolved via settlement with Enterprise paying little to no money.
- Represented Enterprise in case in which landowners claimed Enterprise's pipeline and/or metering station caused a water diversion/nuisance/trespass onto their property. After summary judgment motion and a motion to strike their expert, plaintiffs voluntarily moved to dismiss with prejudice. The amount in controversy was \$500,000.
- Represented a midstream company in litigation in which a group of homeowners complained about emissions from a metering station and alleged nuisance and trespass claims. There were other co-defendants who had compressor stations. The trial court granted summary judgment for our client.
- Defended a midstream company against breach of easement claims.

Land and Right-of-Way

- Representing a pipeline company in relation to eminent domain issues relating to the construction of the 580 mile, \$1.5B Texas Express Pipeline project.
- Representing Enterprise Products as eminent domain litigation and transactional counsel in connection with construction of the Seaway Pipeline, an 831-mile crude petroleum pipeline, through portions of Texas from Grayson County to Jefferson County, the construction of a 12-mile natural gas loop pipeline project through LaSalle and Webb Counties, Texas, the construction of a 12-mile natural gas loop pipeline project through LaSalle and Webb Counties, Texas, and the construction of the Rancho Pipeline, an 83-mile crude petroleum pipeline through portions of Texas from Austin County to Harris County.
- Representing Sunoco Logistics as eminent domain litigation and transactional counsel in connection with construction of the Granite Wash Extension Pipeline, a 170-mile crude pipeline from Wheeler County, Texas, across Oklahoma and to Clay County, Texas and in connection with the construction of the Permian Express II Pipeline, a 345-mile NGL pipeline from Glasscock County to Navarro County, Texas.
- Representing Targa Resources as eminent domain litigation and transactional counsel in acquiring easements and rights-of-way for NGL pipeline expansion in Harris and Chambers Counties.

Lending

Selected Energy Lending Transactions Over \$100 Million

- \$3.6B Represented the lead arranger in credit facilities for a public utility.
- \$3.5B Represented the agent bank in syndicated credit facility secured by producing oil and gas properties in multiple states.
- \$2.2B Represented the agent bank in the restructure of \$1.9B senior syndicated credit facility, including placement of new \$300M letter of credit facility and negotiation of senior notes.
- \$2B Represented the agent bank in syndicated credit facility secured by producing oil and gas properties in multiple states.
- \$1.2B Represented the agent bank in the restructure and workout of senior credit facility, including the negotiation with senior notes in the amount of \$500M.
- \$1.2B Represented the agent bank of recapitalization of company debt including a \$500M syndicated credit facility.
- \$1B Represented the agent bank in syndicated credit facility secured by producing oil and gas properties in multiple states.
- \$500M Represented the lead arranger in credit facilities for a public utility.
- \$442M Represented the lead arranger in term loan for a utility.
- \$400M Represented the agent bank in a syndicated energy lending facility secured by producing oil and gas properties located in multiple states.

- \$320M Represented the agent bank in syndicated credit facility (\$250M revolver and \$70M term loan) for energy company with oil and gas producing properties in Texas.
- \$300M Represented the agent bank in the restructure and subsequent bankruptcy of syndicated credit facility, including negotiation with the MMS and placement of debtor-in-possession financing.
- \$250M Represented the lead arranger in credit facilities for a public utility.
- \$250M Represented the agent bank in syndicated credit facility for energy company with oil and gas producing properties in Texas.
- \$200M Represented the borrower E&P company in a reserve based credit facility to fund the acquisition and development of oil and gas properties in Texas.
- \$196M Represented the agent bank in the restructure of senior syndicated credit facility, including refinancing of senior debt.
- \$150M Represented the agent bank in a syndicated energy lending facility secured by producing oil and gas properties located in multiple states.
- \$125M Represented the agent bank in a syndicated energy lending facility secured by producing oil and gas properties located in multiple states.
- \$120M Represented the agent bank in a secured revolving credit facility (U.S. and foreign tranches) to a diversified oilfield service company providing products and services used primarily for the drilling, completion and production of oil and natural gas wells.
- \$110M Represented the agent bank in a syndicated Brownfield construction and term loan facility for an ethanol plant, ancillary crush plant and food grinding mill in Missouri, with tax abatement structure and pollution control bonds.
- \$100M Represented the borrower E&P company in a reserve based credit facility to fund the acquisition and development of oil and gas properties in North Dakota, Wyoming, Montana, and Colorado.
- \$100M-plus credit facility secured by Texas oil and gas properties. We have represented the borrower in this credit facility since its inception in 2007.
- \$100M Represented the agent bank in single bank credit facility secured by intrastate gas transmission pipelines in Louisiana.

Selected Midstream Lending Experience (Agent Representation Only)

- \$500M Represented the agent bank in a syndicated credit facility secured by midstream assets
- \$420M Represented the agent bank in a syndicated credit facility secured by midstream assets
- \$250M Represented the agent bank in a syndicated credit facility secured by midstream assets
- \$250M Represented the agent bank in a syndicated credit facility secured by midstream assets
- \$200M Represented the agent bank in a syndicated credit facility secured by midstream assets
- \$190M Represented the agent bank in a syndicated credit facility secured by midstream assets
- \$160M Represented the agent bank in syndicated credit facility secured by midstream assets (\$150M revolver and \$10M term loan)
- \$120M Represented the agent bank in a syndicated credit facility secured by midstream assets
- \$105M Represented the agent bank in a syndicated credit facility secured by midstream assets
- \$100M Represented the agent bank in a syndicated credit facility secured by midstream assets
- \$100M Represented the agent bank in a syndicated credit facility secured by midstream assets
- \$88.5M Represented the agent bank in a syndicated credit facility secured by midstream assets (\$32.5M Facility A and \$56M Facility B)
- \$75M Represented the agent bank in a syndicated credit facility secured by midstream assets
- \$36M Represented the agent bank in a syndicated credit facility secured by midstream assets

Selected Midstream Lending Experience (Single Bank Deals)

- \$150M Represented lender in a credit facility secured by midstream assets
- \$100M Represented lender in a credit facility secured by midstream assets

- \$75M Represented lender in a credit facility secured by midstream assets
- \$50M Represented lender in a credit facility secured by midstream assets
- \$50M Represented lender in a credit facility secured by midstream assets
- \$35M Represented lender in a credit facility secured by midstream assets
- \$25M Represented lender in a credit facility secured by midstream assets
- \$25M Represented lender in a credit facility secured by midstream assets
- \$20M Represented lender in a credit facility secured by midstream assets
- \$20M Represented lender in a credit facility secured by midstream assets
- \$20M Represented lender in a credit facility secured by midstream assets
- \$20M Represented lender in a credit facility secured by midstream assets
- \$15M Represented lender in a credit facility secured by midstream assets
- \$15M Represented lender in a credit facility secured by midstream assets (\$1M revolver and \$14M term loan)
- \$14M Represented lender in a credit facility secured by midstream assets
- \$8.6M Represented lender in a credit facility secured by midstream assets
- \$8M Represented lender in a credit facility secured by midstream assets
- \$6.7M Represented lender in a credit facility secured by midstream assets
- \$1M Represented lender in a credit facility secured by midstream assets