

Morgan Lewis

together

Navigating the Pitfalls of Parallel Challenges to Shale Development

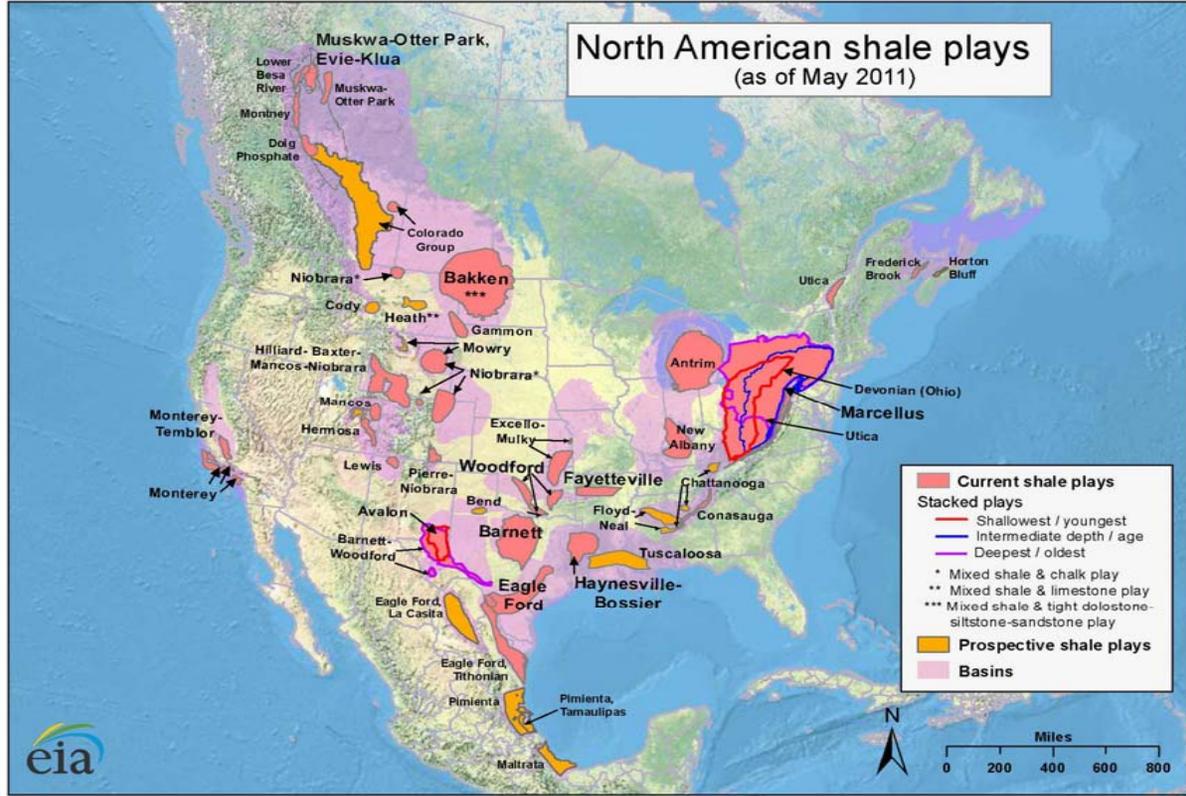
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(September 5, 2014)

- INTRODUCTION
- CONSIDERATION
 - FORUM
 - PROCEDURE
 - STANDARD
 - JUDGMENT
 - OTHER
- PRACTICAL ADVICE

INTRODUCTION

NORTH AMERICAN SHALE PLAYS

HYDRAULIC FRACTURING

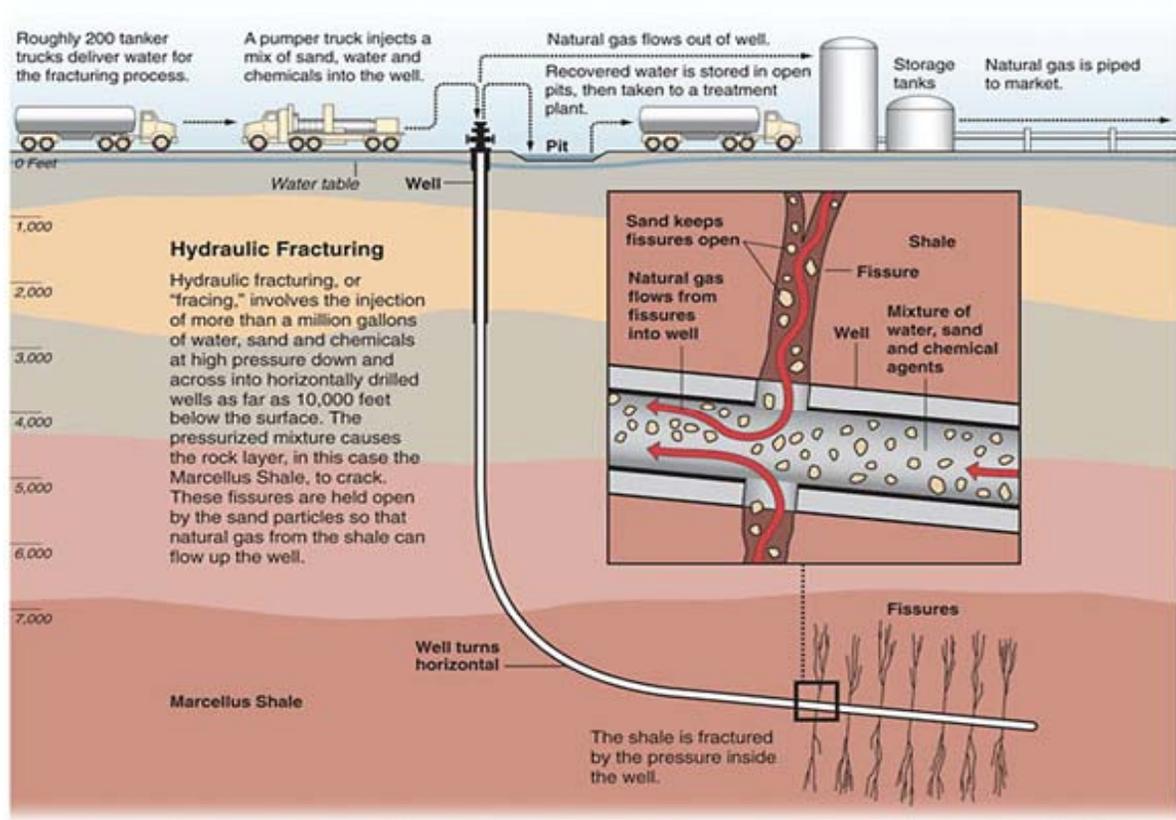


Source: U.S. Energy Information Administration based on data from various published studies. Canada and Mexico plays from ARI. Updated: May 9, 2011

INTRODUCTION

NORTH AMERICAN SHALE PLAYS

HYDRAULIC FRACTURING



Graphic by Al Granberg

CONSIDERATION

FORUM

- Federal and State Courts

PROCEDURE

- Administrative Bodies

STANDARD

- SOAH (Texas)

- EHB (Pennsylvania)

JUDGMENT

- EQB (West Virginia)

OTHER

- ERAC (Ohio)

CONSIDERATION

FORUM

PROCEDURE

STANDARD

JUDGMENT

OTHER

- Rules and Requirements
 - Evidence
 - Procedure
 - Standards of Review
- Strategic Consideration
 - Stand Alone vs. Coordinated Effort

CONSIDERATION

FORUM

PROCEDURE

STANDARD

JUDGMENT

OTHER

- Standard of Review May Differ
 - “De Novo” Review
 - Information Unavailable to Agency
 - More Expansive Discovery
 - Overrule Agency
- Strategic Consideration
 - Opportunity and Challenge

CONSIDERATION

FORUM

PROCEDURE

STANDARD

JUDGMENT

OTHER

- Collateral Estoppel
 - Influence vs. Preclusion
- Potential Preclusive Effect
 - Finding of Fact
 - Judgment
 - Court-Approved Settlement
- Strategic Consideration
 - Case Management

CONSIDERATION

FORUM

PROCEDURE

STANDARD

JUDGMENT

OTHER

- Strategic
 - “Big Picture”
 - Consistent Narrative
- Public Interest
 - Consistent Messaging
 - Understand Client Sensitivities
 - Positive Representation

PRACTICAL ADVICE

- Understand the Sensitivities of the Client and its Operations
- Understand the Rules and Requirements of Each Forum
- Recognize Each Proceeding Can Influence the Other
- Close Coordination is Key
- No Room for Territorialism or Egos
- Evaluate Opportunities to Effectively Utilize the Proceeding
- Think “Big Picture” in Strategic Decisions

QUESTIONS





international presence

Almaty Beijing Boston Brussels Chicago Dallas Dubai* Frankfurt Harrisburg Houston
Irvine London Los Angeles Miami Moscow New York Palo Alto Paris Philadelphia
Pittsburgh Princeton San Francisco Tokyo Washington Wilmington

*In association with Mohammed Buhashem Advocates & Legal Consultants