Firms With Energy, IP Practices Thrive

By Ali McNally

DENVER — For the future of energy law in the U.S., there’s no place like home, say Colorado’s top energy attorneys.

Colorado has one of the newest shale plays in the U.S., the Niobrara, spanning Greeley and southeastern Wyoming. Much of the shale acquisitions, which many predict will continue for at least three more years, gave way to more transactional activity both inside and outside the state this year. Colorado also has a new energy law firm in town, Houston-based Burleson, which in mid-August opened its newest office in Denver with 10 attorneys.

“We’ve had a tremendous change in the energy market just from the few years I was in the Bush administration in 2002, until now,” said Rebecca Watson, a partner at Welborn Sullivan Meck & Tooley and former sub-cabinet official for the U.S. Department of Interior under the first term of George W. Bush. “When I was in office, we were under a natural gas supply shortage and there was a lot of interest in developing onshore and offshore to keep up with demand. In 2007, that changed with the discovery of our ability to access shale gas. Instead of being short of supply, we have more than 100 years of domestic natural gas here in the U.S.”

Newer technological developments like hydro-fracking allow access to oil and natural gas reserves in deep shale formations using pressurized liquids. The process is criticized by environmental groups who say fracking raises levels of pollution and radiation in water supplies.

“The shale reserves are greater than the oil reserves of Saudi Arabia, but the tricky part is developing the technology to extract it and make it economical,” said Tom Sansonetti, of counsel of Holland & Hart and former assistant attorney general for the Environment and Natural Resources Division of the Department of Justice.

Transactional activity in the shale plays involving law firms and energy companies inside and outside the state are a force to be reckoned with. Law Week’s quarterly big deals issues have included a few multi-billion dollar transactions. Attorneys who specialize in oil and gas deals say clients are drilling more and acquiring lease packages from other operators, as well as ground

Young attorneys and law students looking to enter the energy sector should prepare with federal experience.

“You need to learn administrative law in order to be effective for your clients,” Holland & Hart’s Sansonetti said. “The challenges are usually from the environmental arena, from the area of the Endangered Species Act, the National Historic Preservation Act, the Environmental Policy Act or water law. I advise law students to pay attention and gain some exposure to those laws and particularly water law.”

Shale plays and wind farms aren’t Colorado’s only growing industries. The state’s entrepreneurial hotbed is also creating more opportunities for intellectual property lawyers.

“We’ve seen a trend recently where there have been more tech and natural foods start-up companies in the Rocky Mountain region and it’s important those companies develop an intellectual property strategy early on because venture capital funding may be dependent in part on patent filings,” said Sheridan Ross managing partner Bruce Kugler. “Additionally, start-ups like natural foods manufacturers rely on trademarks and branding to differentiate their products in their markets. It’s important they get accurate legal counsel up front to avoid legal disputes and to take advantage of
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more drilling, and we're seeing a higher demand from our clients for legal work, which makes us excited about the future," said Patrick McRorie, of counsel at Lathrop & Gage who specializes in energy transactional matters. "Drilling in general is very active right now. All of our clients are drilling more than they were in 2008."

Separate from oil and gas is Colorado's emphasis on renewable energy, which bloomed with former Gov. Bill Ritter's New Energy Economy.

"Whether you agree with it or not, Ritter put a lot of policy into making the state a center for renewable projects," Watson said. "All states want to be the renewable capital of the U.S., but I think Ritter did a much stronger job of attracting companies like Vestas by emphasizing educational institutions like the Colorado Renewable Energy Collaboratory. It was a very important policy development for the governor and it built on our history of energy expertise in Denver, which has existed from the early days of coal mining."

Boutique IP law firm Sheridan Ross not only added 8 attorneys since last year, it also expanded last week with a new office in Colorado Springs, headed by of counsel Scott Hawranek, formerly of Hogan Lovells. Much like the boutique growth seen in employment law firms, IP boutique growth was spring-loaded by the economic downturn.

"Over the last two to three years, there has been a lot of consolidation in the Denver markets, particularly in IP law firms, which was a result of the downturn in the economy," Kugler said. "There was unprecedented growth in the last five or 10 years of firms trying to get into the IP realm. We see opportunities in the Denver market because our cost structure is lower than those on the coasts. There are a lot of good patent attorneys and a lot of good IP litigators in this region. I think it looks promising."

Separate from industrial trends, Denver is also on the short list for a satellite patent office. A team of three attorneys from Sheridan Ross, Holland & Hart and Kilpatrick Townsend & Stockton have spent hundreds of hours since 2008 and have met frequently with key government officials in Washington, D.C., in hopes of a satellite office.

"It would be huge for the Rocky Mountain area," Kugler said. "First, it would put Denver on the map as a prominent IP town. At least certain clients appreciate there are a lot of IP attorneys in Denver that charge considerably less than the coasts. It would be beneficial economically because there would be programs and training going along with the patent office."