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Heather Graham

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Oil and Gas, Natural Resources, and Energy Journal

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*Heather Graham**

I. Introduction

While there have been new regulations enacted and proposed and judicial developments that may influence the state's oil and gas industry, there have been no substantive legislative developments in Montana related to the oil and gas industry, .

* Heather Graham is a member in the Bridgeport office of Steptoe & Johnson PLLC.

II. Judicial Developments

A. Challenging the Tax Classification of Crude Oil Gathering Pipelines

In *Hiland Crude, LLC v. State Department of Revenue*, the Montana Supreme Court affirmed the district court's grant of summary judgment in favor of Hiland Crude, LLC ("Hiland Crude") in this declaratory action challenging the tax classification of its crude oil gathering pipelines by Montana Department of Revenue (the "Department"), stating that pipelines should have been classified as class 8 property taxed at 1.5% to 3% of its market value, rather than as class 9 property taxed at 12%.¹ Hiland Crude owns and operates the Richland Gathering System, the Market Center Gathering System, and the Double H Transmission Line, for which third-party shippers pay Hiland Crude for the use of its systems.² The Richland Gathering System and Market Center Gathering System comprise a network of small diameter pipelines operating at low pressure collecting crude oil from multiple production wells and receipt points for delivery to a transmission line, such as the Double H Transmission Line.³

Following assessment of property, the Department classifies the property according to statute to determine the rate of the tax levy.⁴ Prior to 2013, the Department assessed Hiland Crude's gathering systems locally and classified the properties as class eight property.⁵ In 2013, the Department began centrally assessing Hiland Crude's property and classified all of its pipeline systems as class nine property.⁶ With regard to oil and gas production, class eight property includes, "equipment, including flow lines and gathering lines."⁷ Further, "'flow lines and gathering lines' are defined as 'pipelines used to transport all or part of the oil or gas production from an oil or gas well to an interconnection with a common carrier pipeline as defined in 69-13-101, a pipeline carrier as defined in 49 U.S.C. 15102(2), or a rate-regulated natural gas transmission or oil transmission pipeline regulated by the public service commission or the federal energy regulatory commission.'"⁸ Class nine property includes, "allocations for centrally

1. *See* *Hiland Crude, LLC v. State Department of Revenue*, 2018 MT 159, 421 P.3d 275.

2. *Id.* ¶ 2, 421 P.3d at 276.

3. *Id.* ¶ 3, 421 P.3d at 276.

4. *Id.* ¶ 8, 421 P.3d at 277.

5. *Id.* ¶ 4, 421 P.3d at 276.

6. *Id.*

7. *Id.* ¶ 9, 421 P.3d at 277 (citing MONT. CODE ANN. § 15-6-138(1)(c)(iii) (West 2017)).

8. *Id.* (citing MONT. CODE ANN. § 15-6-138(2)(c) (West 2017)).

assessed natural gas distribution utilities, rate-regulated natural gas transmission or oil transmission pipelines regulated by either the public service commission or the federal energy regulatory commission, a common carrier pipeline as defined in 69-13-101, a pipeline carrier as defined in 49 U.S.C. 15102(2), or the gas gathering facilities specified in 15-6-138(5).”⁹

The Department argued that the term “pipeline carrier” as used in the statutes does not distinguish between gathering lines and transmission lines, and based on the federal definition, the term applies to all pipelines that carry oil for compensation and for those reasons Hiland Crude’s systems fall into class nine property.¹⁰ The Court disagreed with the Department’s interpretation of the statutory definitions of class eight and class nine property, noting that their argument failed to account for an express distinction between transmission lines and gathering lines set forth in the statutes.¹¹ In pertinent part, the statutes define class nine to include a broad category of pipelines, including transmission pipelines, common carrier pipelines, and pipeline carriers and define class eight to include a specific subset of pipelines—namely, flow lines and gathering lines.¹²

The Court articulated that it is plain from the language of the statutes defining these classes that the Legislature intended to differentiate larger transmission lines from pipelines that gather and transport oil or gas “from an oil or gas well to an interconnection” for tax classification purposes.¹³ The District Court properly granted summary judgment in favor of Hiland Crude, and their order is affirmed.¹⁴

III. Enacted Regulation

A. ARM 42.25.1809

Amendments to ARM 42.25.1809 pertaining to oil and gas production tax rates adds a second tax rate table that reflects tax rate changes that were enacted by the Montana Board of Oil and Gas Conservation effective on or after October 1, 2016, and limits the effective date of the tax rates set forth

9. *Id.* ¶ 10, 421 P.3d at 277 (citing MONT. CODE ANN. § 15-6-141(1)(d)) (West 2017)).

10. *Id.* ¶ 15, 421 P.3d at 278.

11. *Id.*

12. *Id.* (citing MONT. CODE ANN. § 15-6-141(1)(d) and MONT. CODE ANN. § 15-6-138(2)(c) (West 2017)).

13. *Id.*

14. *Id.* ¶ 18.

in in table 1 from October 1, 2006, through September 30, 2016.¹⁵ The changes in the tax rates amount to a .04 percent increase over the rates that are in effect through September 30, 2016. Also amended were all references to the "Board of Oil and Gas" to the "Montana Board of Oil and Gas Conservation," to accurately reflect the board's full name.¹⁶

IV. Proposed Regulation

A. ARM 17.8.505

Currently, ARM 17.8.505 requires that an annual air quality operation fee must be submitted to the Department of Environmental Quality by the owner or operator of each registered oil and gas well facility.¹⁷ An oil and gas well facility is defined as a well that produces oil or natural gas and the equipment associated therewith for the purpose of said production; and a group of wells under common control that share common production equipment, but does not include equipment such as compressor engines used for transmission of oil or natural gas from such facility.¹⁸ The proposed amendment to ARM 17.8.505 pertaining to air quality operations fees would raise the air quality operation fee for registered oil and gas well facilities from \$800 to \$900.¹⁹

15. MONT. ADMIN. R. 42.25.1809 (2018).

16. *Id.*

17. MONT. ADMIN. R 17.8.505 (2009).

18. *See* MONT. CODE ANN. §75-2-103 (2013).

19. 2018 MT REG TEXT 495649 (NS) (June 22, 2018 West).