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Arkansas

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I. Introduction

In Arkansas, there was little development in oil and gas law during the period of August 1, 2018 through July 31, 2019. In the courts, oil and gas litigation primarily handled procedural updates in cases rather than precedential impacts on state law.

II. Statutory Law

There were not any notable statutory developments in Arkansas between August 1, 2019 to July 31, 2020.

III. Administrative Law

A pending U.S. Forest Service rule could streamline the approval process of oil and gas development.¹ The proposed rule will guide potential future oil and gas leasing in forests, including those in the Ozark Mountains of Arkansas. The rule draft was set to be released in June or July, 2020, but has not yet been published.

IV. Common Law

A. The Supreme Court of Arkansas Interprets Royalty Payment Statute

In *Hurd v. Arkansas Oil & Gas Comm'n*, 2020 Ark. 210, 601 S.W.3d 100, the Supreme Court of Arkansas affirmed the clear and unambiguous language of a statute governing the Arkansas Oil and Gas Commission’s (“AOGC”) integration of oil and gas drilling units. The statute allows for one operator to drill the area and share production from the unit and it explicitly authorizes the AOGC to ensure that all integration orders are upon terms that are “just and reasonable.” Further, the statute authorizes the AOGC to reduce the royalty rate contained in leases. This case largely focused on statutory interpretation regarding the AOGC’s ability to reduce

1. Federal Register / Vol. 83, No. 178. <https://www.regulations.gov/document?D=FS-2018-0053-0001>.

royalty rates payable under an oil and gas lease. The court found that, while there is no explicit statute that gives the AOGC the ability to reduce a royalty rate, there is also no statute that expressly states that consenting parties are responsible for payment of royalties when an uncommitted leasehold working interest-owner elects to go “non-consent” with regard to operator's integration application.²

B. A Supreme Court of United States Case May Impact Arkansas Oil and Gas Regulation

In *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020) the Supreme Court of the United States clouded the jurisdiction in the entire eastern half of Oklahoma. The Court held that certain Native American territory established by Congress would remain subject to Native American control “in perpetuity” absent Congressional action. Because the opinion speaks in terms of broad tribal jurisdiction over the entire geographical area of the “Five Civilized Tribes” reservations within Oklahoma, it has the potential to affect jurisdiction in Arkansas where there are also reservations.³

IV. Conclusion

Although many procedural and structural changes occurred within the state as a result of the COVID-19 pandemic, Arkansas experienced minimal substantive developments in oil and gas law in 2020.

2. *Hurd v. Arkansas Oil & Gas Comm'n*, 2020 Ark. 210, at 9 (2020).

3. *McGirt v. Oklahoma*, 140 S. Ct. 2452, 2476 (2020).