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John R. Chadd

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ONE J

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*John R. Chadd**

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* John R. Chadd is Of Counsel with Steptoe & Johnson PLLC in the Denver, Colorado office, where he focuses his practice in oil and gas transactions and corporate and securities law. He is licensed in Colorado, Massachusetts, and Wyoming.

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I. Introduction

This article summarizes and discusses important developments in Wyoming’s oil and gas law between August 1, 2019 and July 31, 2020. During this time period, the Wyoming Legislature passed bills into law providing changes to the state’s statutory pooling structure, changing the regulatory body overseeing commercial disposal wells, and establishing the Wyoming Energy Authority. The Wyoming Oil and Gas Conservation Commission (“WOGCC”) promulgated new rules concerning the submission and protest of applications for permits to drill.

Also, during this applicable time period, there were cases of note which dealt with arbitrary and capricious WOGCC action, testing the validity of WOGCC orders, civil trespass and the exhaustion of administrative remedies at the WOGCC, and the nature of valid offers under the Wyoming Eminent Domain Act.

II. Legislation

A. Changes to Statutory Pooling

House Bill 0014, signed into law on March 9, 2020, with an effective date of July 1, 2020, amended Wyoming Statute 30-5-109 to make mineral owner-friendly changes to the state’s statutory pooling (also known as “forced pooling”) regime.¹

The Wyoming statutory pooling law had previously assessed a uniform non-consent penalty against all types of non-consenting parties; the amended law now assesses different maximum non-consent penalties depending on the type of non-consenting party.²

Non-consenting unleased mineral owners now are subject to a lower maximum penalty than that assessed against non-consenting mineral

1. H. B. 0014, 65th Budget Sess., (Wyo. 2020).

2. *Id.*

lessees: for the first well drilled in a drilling unit, the maximum penalty is 200% of drilling costs and 125% of well equipment cost, and for any subsequent well drilled in a drilling unit, the maximum penalty is 150% of drilling costs and 125% of well equipment cost.³

The amended law also grants a statutory royalty to any unleased mineral owner who does not consent to participate in the drilling of a well and is subsequently statutorily pooled by a pooling order of the WOGCC, with such royalty to be paid during the time period the participating owners are collecting the recovery of costs and the applicable penalty as set forth in the WOGCC order.⁴ The statutory royalty is calculated as the greater of 16% and the acreage-weighted average of the royalty being paid on the leased tracts in the applicable drilling unit.⁵

Additionally, after the participating owners have received proceeds from production that satisfy the established non-consent penalties, the operator of the well must offer any non-consenting unleased mineral owners the option either to continue receiving the non-consent royalty or to participate in the well as a working interest owner.⁶

The amended law now provides an expiration date for pooling orders issued by the WOGCC; previously, a pooling order could be valid indefinitely unless an expiration date was included in the order itself. Now, a pooling order expires twelve months after issuance if the person authorized to drill and operate the force-pooled well fails to commence operations within twelve months of issuance of the pooling order.⁷

These changes to Wyoming's forced pooling law became effective on July 1, 2020 and are not retroactive.⁸

B. Change to Regulation of Commercial Disposal Wells

Senate File 0045, signed into law on March 10, 2020, with an effective date of July 1, 2020, amended Wyoming Statute 30-5-104 to give the WOGCC regulatory authority over both commercial and noncommercial underground disposal of salt water, nonpotable water, and oilfield wastes into Class II Injection Wells (as defined under the federal Safe Drinking Water Act).⁹ The WOGCC is to promulgate any rules necessary to

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

8. Wyo. Stat. Ann. § 30-5-109 (West 2020).

9. H. B. 0045, 65th Budget Sess., (Wyo. 2020).

implement this change, and the WOGCC has currently released proposed rules for comment.¹⁰

Previously, the WOGCC only regulated noncommercial underground disposal of such products (noncommercial operation being when an oil and gas well operator injects oilfield wastes into Class II Injection Wells that such operator owns), and the Wyoming Department of Environmental Quality regulated commercial disposal (commercial operation being when an oil and gas well operator pays a third party to inject oilfield wastes into Class II Injection Wells owned by that third party).¹¹

C. Wyoming Energy Authority Established

In the 2019 legislature, Senate File 0037, signed into law on February 15, 2019 with an effective date of July 1, 2020, established a new state agency named the “Wyoming Energy Authority” by merging together the Wyoming Pipeline Authority and the Wyoming Infrastructure Authority.¹² Subsequently in the 2020 legislature, House Bill 0003, signed into law on March 10, 2020 with an effective date of July 1, 2020, made various revisions to the act creating the Wyoming Energy Authority.¹³

Between the two pieces of legislation, the new Wyoming Energy Authority has a broad mandate which notably includes the authority to acquire, construct, hold, use, lease, and sell pipelines, transportation infrastructure, distribution facilities, and advanced technology facilities for natural resources associated with energy or carbon dioxide capture.¹⁴

To help fulfill its purpose, the Authority may incur debt by issuing bonds.¹⁵

The Authority is governed by a seven voting member board appointed by the governor.¹⁶ Additionally there are five ex officio nonvoting members, of which one is the supervisor of the WOGCC or a designee thereof.¹⁷

10. *Notice of Intent to Amend/Adopt Rules and Regulations of the Wyoming Oil and Gas Conservation Commission*, WOGCC, August 10, 2020, <https://docs.google.com/a/wyo.gov/viewer?a=v&pid=sites&srcid=d3lvLmdvdxvaWwtYW5kLWdhc3xneDo0YzBIZWUwODJjMzczMGVm>. (last visited Sept. 9, 2019).

11. H. B. 0045, Official Summary, 65th Budget Sess., (Wyo. 2020).

12. S. File 0037, 65th Gen. Sess., (Wyo. 2019).

13. H. B. 0003, 65th Budget Sess., (Wyo. 2020).

14. Wyo. Stat. Ann. § 37-5-503.

15. Wyo. Stat. Ann. § 37-5-505(a).

16. Wyo. Stat. Ann. § 37-5-502(b).

17. Wyo. Stat. Ann. § 37-5-502(c).

III. State Regulation

A. New Rules for Submitting and Challenging Applications for Permit to Drill

Historically Wyoming has had a pure “race to permit” regulatory regime regarding the filing of Applications for Permit to Drill (“APDs”). For any given drilling unit, the first party to file APDs (up to the allowable well density amount in that drilling unit) would receive the APDs and other later-to-file parties who filed APDs in that drilling unit would have their APDs denied. Additionally, the WOGCC rules did not provide for one operator to be named as operator of an entire drilling unit – operatorship was determined on a well-by-well basis. The “race to permit” approach was considered a fair method of competition among oil and gas operators. However, the increased interest in Wyoming in recent years as a viable place to drill and operate led to a record number of horizontal well APDs being filed, which overwhelmed the capacity of the WOGCC staff to process APDs and also led to a large increase in horizontal well APD protests between operators. The increased regulatory activity was seen as a drag on the efficiency of the industry. As a result, the WOGCC amended its rules on December 19, 2019 to create a modified race-to-permit system for horizontal well APDs.¹⁸

The WOGCC promulgated new Section 8(l), in Chapter 3 of the WOGCC Rules, which provides that for any given drilling unit for horizontal wells, there is an established priority as to who may submit an APD in that drilling unit. Only APDs from the operator of a spud or completed well in that drilling unit may submit APDs for that drilling unit.¹⁹ In the event there is no spud or completed well in that drilling unit, only the operator with the oldest pending or approved APD may submit further APDs in that drilling unit or have its existing APDs extended.²⁰ By implication, in the event there are no spud or completed wells in a drilling unit and there are also no pending or approved APDs in that drilling unit, then the traditional race-to-permit rules apply.

While new Chapter 3, Section 8(l), of the WOGCC Rules provides for a type of operatorship control over an entire drilling unit, the WOGCC also

18. *Wyoming Oil and Gas Conservation Commission Rules*, Chap. 3, Secs. 8(l) and 8(m).

19. *Id.*, Sec. 8(l).

20. *Id.*

promulgated new Section 8(m) in Chapter 3 of the WOGCC Rules, which provides an avenue for challenging that operatorship.²¹

Section 8(m) states that for any operator who cannot submit or extend an APD in a given drilling unit pursuant to 8(l), such operator may file APDs in certain limited time intervals.²² At certain times this 8(m) filing acts as a protest and counter-filing against a new APD filed by the current operator in control of the drilling unit, and at other times the 8(m) filing may be made because of a lack of drilling activity in the unit by the operator in control.²³

If the operator in control files a new APD, any other party owning an interest in that drilling unit may file notice of intent to file an “8(m) hearing application” within fifteen days after receiving the operator’s APD notice, and then file the complete 8(m) hearing application within thirty days after receiving the APD notice.²⁴

The non-control party may also file an 8(m) hearing application within 15 days of the two-year anniversary of the most-recent spud date in the DSU in question.²⁵ This provision allows a non-control party to challenge the operator in control of the DSU if two years have elapsed with no drilling activity in the DSU.

The operator in control of the DSU will receive notice of the 8(m) hearing application and may decide to protest the application if it so desires.²⁶ Notably, in a contested hearing before the WOGCC under 8(m), if the WOGCC deems equal the evidence presented by the parties, the WOGCC shall approve the application or the protest (as applicable) of the party who has secured the largest percentage of working interest ownership in the DSU, combining with it the working interest ownership of other working interest owners who have expressed written support to partner with such party in the proposed well(s).²⁷

21. *Id.*, Sec. 8(m).

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.*, Sec. 8(m)(iii).

27. *Id.*, Sec. 8(m)(iv).

IV. Judicial Developments

A. Supreme Court of Wyoming

1. Arbitrary and Capricious Agency Action

The issue in *Exaro Energy III, LLC v. Wyoming Oil and Gas Conservation Commission and Jonah Energy, LLC* arose from a WOGCC order that denied a drilling and spacing unit (“DSU”) application by Exaro Energy III, LLC (“Exaro”), which had been protested by Jonah Energy, LLC (“Jonah”).²⁸

Exaro had initially made two DSU applications in the Jonah Field, and the proposed DSUs were adjacent to each other.²⁹ Jonah then protested the applications, claiming that the orientation of the proposed units was new for the Jonah Field and would cause waste if initial drilling was unsuccessful.³⁰

A consolidated contested hearing for the two proposed adjacent units was held at the WOGCC; Exaro and Jonah agreed that the evidence presented at the hearing would apply to both DSU applications.³¹ At the hearing, the WOGCC decided that Exaro had met its burden of proof as to both proposed units, but nevertheless, the WOGCC approved only one DSU application, stating as its reason for denying the second application “additional data from horizontal development in the Jonah Field should be analyzed prior to approving the Application.”³²

Exaro then filed a petition for review of administrative action with state district court.³³ Exaro then requested that the district court certify the review to the Wyoming Supreme Court and the district court granted Exaro’s request, and the Supreme Court accepted the certified case.³⁴

The Supreme Court started its analysis by noting that the applicable standard of review was set by statute in the Wyoming Administrative Procedures Act, specifically in Wyo. Stat. Ann. § 16-3-114(c).³⁵ The statute states in relevant part that a reviewing court shall set aside agency action if the court finds it was either unsupported by substantial evidence in a case

28. *Exaro Energy III, LLC v. Wyo. O&G Conservation Comm.*, 2020 WY 8, 455 P.3d 1243 (Wyo. 2020).

29. *Id.* at ¶ 1, 455 P.3d at 1246.

30. *Id.* at ¶ 5, 455 P.3d at 1247.

31. *Id.* at ¶ 1, 455 P.3d at 1246.

32. *Id.* at ¶ 8, 455 P.3d at 1247–48.

33. *Id.* at ¶ 2, 455 P.3d at 1246.

34. *Id.*

35. *Id.* at ¶ 9, 455 P.3d at 1248.

reviewed on the record of an agency hearing, or it was arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law.³⁶

The Court noted that the arbitrary and capricious standard is more lenient than the substantial evidence standard, because it only requires that there be a rational basis for the agency's decision.³⁷ The Court then cited to precedent that an agency should treat like cases alike, and that if an agency treats two cases differently that are the same in all material respects, that act is arbitrary.³⁸

Because the WOGCC decided both DSU applications on the same evidence, and also found that Exaro had met its burden of proof as to both DSU applications, yet however only approved one DSU application and denied the other, the Court found that act to be inconsistent action by the WOGCC.³⁹

The Court held that the WOGCC decision to deny Exaro's DSU spacing application was arbitrary and capricious, and the agency decision was reversed.⁴⁰

2. "Testing the Validity" of WOGCC Rules

The issues in *Black Diamond Energy of Delaware, Inc. v. Wyoming Oil and Gas Conservation Commission* arose from a WOGCC order that forfeited the blanket bonds posted by Black Diamond Energy of Delaware, Inc. ("BDED") concerning its operations in Wyoming.⁴¹ Rather than seek administrative review of the WOGCC order under the Wyoming Administrative Procedures Act ("WAPA") and Wyoming Rule of Appellate Procedure 12 ("WRAP 12"), BDED decided to challenge the bond forfeiture by filing suit in Johnson County District Court utilizing the right to contest WOGCC orders found in Wyo. Stat. Ann. § 30-5-113(a) of the Wyoming Oil and Gas Conservation Act (the "Conservation Act").⁴²

Wyo. Stat. Ann. § 30-5-113(a) provides in relevant part: "Any person adversely affected by and dissatisfied with any rule, regulation, or order...

36. *Id.*

37. *Id.* at ¶ 11, 455 P.3d at 1249.

38. *Id.* at ¶ 23, 455 P.3d at 1251.

39. *Id.* at ¶ 24, 455 P.3d at 1252.

40. *Id.* at ¶ 28, 455 P.3d at 1253.

41. *Black Diamond Energy of Del., Inc. v. Wyo. O&G Conservation Comm.*, 2020 WY 45, 460 P.3d 740 (Wyo. 2020).

42. *Id.* at ¶ 1, 460 P.3d at 743.

may within ninety (90) days after the entry thereof bring a civil suit... to test the validity of any provision of this act, or rule, regulation, or order.”⁴³

BDED filed suit under Wyo. Stat. Ann. § 30-5-113(a) eighty-seven days after the entry of the WOGCC order.⁴⁴

At the district court, the WOGCC argued that WAPA and WRAP 12 repealed the challenge right contained in Wyo. Stat. Ann. § 30-5-113(a), and therefore BDED had filed its appeal too late, as the applicable appeal right under WAPA only gives thirty days to file an appeal.⁴⁵ The district court agreed with the WOGCC and dismissed BDED’s case on those grounds.⁴⁶ BDED then appealed the ruling to the Wyoming Supreme Court.⁴⁷

The Supreme Court rejected the WOGCC’s argument that WAPA expressly repealed Wyo. Stat. Ann. § 30-5-113(a).⁴⁸ Further, the Court found that WAPA and WRAP 12 are not “so repugnant” to Wyo. Stat. Ann. § 30-5-113(a) that they cannot logically stand together, and therefore there was no implied repeal of Wyo. Stat. Ann. § 30-5-113(a) by WAPA and WRAP 12.⁴⁹

After finding that Wyo. Stat. Ann. § 30-5-113(a) was not repealed, the Court examined whether BDED’s complaint was proper under Wyo. Stat. Ann. § 30-5-113(a).⁵⁰ The Court examined what the language “to test the validity” meant, and found that it means to test the legal sufficiency, which is akin to an action for declaratory judgment.⁵¹ The Court then found that an action under Wyo. Stat. Ann. § 30-5-113(a) could test the legal sufficiency of the WOGCC’s rules, but it could not be used to review the merits of a WOGCC order.⁵²

Since BDED was asking for a review of the merits of the WOGCC’s decision to forfeit BDED’s bonds, an action under Wyo. Stat. Ann. § 30-5-113(a) was not available for such review, and therefore BDED’s filing for review was too late under the applicable WAPA appeal procedure.⁵³ The

43. *Id.* at ¶ 11, 460 P.3d at 744–45.

44. *Id.* at ¶ 7, 460 P.3d at 744.

45. *Id.*

46. *Id.*

47. *Id.* at ¶ 9, 460 P.3d at 744.

48. *Id.* at ¶¶ 14–19, 460 P.3d at 745–47.

49. *Id.* at ¶¶ 31–32, 460 P.3d at 749–50.

50. *Id.* at ¶ 33, 460 P.3d at 750.

51. *Id.* at ¶ 40, 460 P.3d at 752.

52. *Id.* at ¶¶ 41–43, 460 P.3d at 752–53.

53. *Id.* at ¶ 42, 460 P.3d at 752.

Court therefore affirmed the district court's dismissals, but for different reasons than provided by the district court.⁵⁴

3. *Civil Trespass and Exhaustion of Administrative Remedies*

The issue in *Devon Energy Production Company v. Grayson Mill Operating, LLC* arose from a civil trespass lawsuit that Devon Energy Production Company ("Devon") filed against Grayson Mill Operating, LLC ("Grayson Mill") while, at the same time, the parties had competing APDs filed at the WOGCC.⁵⁵

Devon and Grayson Mill had filed competing APDs in a group of DSUs, such that Devon then filed a lawsuit in state district court under a civil trespass statute, Wyo. Stat. Ann. § 40-27-101, claiming that Grayson Mill had trespassed on lands of the applicable DSUs when Grayson Mill was obtaining information to file its competing APDs.⁵⁶ Shortly thereafter, Devon filed applications with the WOGCC to deny or revoke Grayson Mill's APDs.⁵⁷ Devon also petitioned the WOGCC for the related administrative proceedings to be stayed while the civil trespass case proceeded, and the stay was granted by the WOGCC.⁵⁸

Pursuant to this particular civil trespass statute, if a party is found to have trespassed, certain data that the party obtained shall be expunged from filings with governmental agencies.⁵⁹ Devon claimed that Grayson Mill had trespassed, and requested that the court order the data obtained by Grayson Mill to be expunged from Grayson Mill's APDs filed with the WOGCC.⁶⁰

Grayson Mill claimed that "Devon failed to exhaust its administrative remedies through the Commission... it [Grayson Mill] claimed the doctrine of primary jurisdiction required the district court to dismiss the complaint because the Commission was the proper forum for Devon's claims. Grayson also argued Devon failed to exhaust its administrative remedies under the Commission's rules."⁶¹

54. *Id.* at ¶ 1, 460 P.3d at 743.

55. *Devon Energy Prod. Co. v. Grayson Mill Operating, LLC*, 2020 WY 28, 458 P.3d 1201 (Wyo. 2020).

56. *Id.* at ¶¶ 5-6, 458 P.3d at 1204.

57. *Id.* at ¶ 3, 458 P.3d at 1204.

58. *Id.*

59. *Id.* at ¶ 21, 458 P.3d at 1208.

60. *Id.* at ¶ 4, 458 P.3d at 1204.

61. *Id.* at ¶ 7, 458 P.3d at 1204.

The district court found that Devon had failed to exhaust its administrative remedies at the WOGCC and also that the WOGCC had primary jurisdiction over the issues at hand, and summarily dismissed the civil trespass case for lack of subject matter jurisdiction.⁶²

Devon appealed to the Wyoming Supreme Court. After Devon's appeal, the WOGCC dismissed Devon's applications to deny or revoke the Grayson Mill APDs on the grounds that the WOGCC did not have jurisdiction to decide civil trespass under Wyo. Stat. Ann. § 40-27-101.⁶³

The Court first examined the language of the civil trespass statute, and noted that the statute did not expressly exclude oil and gas matters.⁶⁴ Therefore the civil trespass statute's "lessee of the land," which is a party that can bring a claim under the statute, could include an oil and gas lessee such as Devon.⁶⁵

The Court reviewed applicable parts of the Conservation Act to analyze whether or not the WOGCC had jurisdiction to determine civil trespass issues, which would impact the Court's decision as to whether Devon was required to exhaust its administrative remedies at the WOGCC before proceeding with a civil case in state court.⁶⁶ The Court noted precedent which stated the "purpose of the exhaustion doctrine is to avoid premature interruption of the administrative process where the agency has been created to apply a statute in the first place."⁶⁷ The Court then stated "[T]he Court agrees with Devon that [w]hile the Commission does have authority to determine the validity of the APDs, the predicate question is whether there was a civil trespass.[?]' The Commission does not have jurisdiction to consider a civil trespass and, therefore, there was nothing for Devon to exhaust at the administrative level."⁶⁸

The Court also noted that the doctrine of primary jurisdiction, where an administrative agency and a court both have subject matter jurisdiction over a matter but the court defers to the agency's expertise, also did not apply because the agency (the WOGCC) did not have jurisdiction over civil trespass matters.⁶⁹

62. *Id.* at ¶ 8, 458 P.3d at 1204–05.

63. *Id.* at ¶ 9, 458 P.3d at 1205.

64. *Id.* at ¶ 22, 458 P.3d at 1208.

65. *Id.* at ¶¶ 24–28, 458 P.3d at 1208–10.

66. *Id.* at ¶ 26, 458 P.3d at 1209.

67. *Id.* at ¶ 31, 458 P.3d at 1210 (citation omitted).

68. *Id.* at ¶ 33, 458 P.3d at 1211.

69. *Id.* at ¶ 38, 458 P.3d at 1212.

Since the Court found state district court to be the body with jurisdiction over civil trespass claims, and that Devon had standing as a “lessee of the land” to bring a civil trespass claim under Wyo. Stat. Ann. § 40-27-101, the Court reversed the district court’s dismissal of the case and remanded the case back to district court for further proceedings.⁷⁰

4. *Good Faith Offer for Wyoming Eminent Domain Act*

The issue in *EOG Resources, Inc. v. Floyd C. Reno & Sons, Inc.* arose from a proposed Surface Use Agreement that would grant additional rights over the property.⁷¹ EOG Resources, Inc. (“EOG”) filed a condemnation action against Floyd C. Reno & Sons, Inc. (“Reno”) seeking to condemn roughly 2,100 acres of Reno’s ranch.⁷²

EOG conducted oil and gas operations on Reno’s ranch pursuant to a 2010 surface use agreement.⁷³ EOG proposed an amended surface use agreement that would grant it additional surface use rights, access rights-of-way, and easements.⁷⁴ Reno rejected the offer and proposed a counteroffer that sought higher compensation for the project.⁷⁵ Reno also noted that EOG was already authorized under the existing agreement to “undertake most of [the] proposed development”.⁷⁶ EOG responded with a “Final Offer Letter” claiming that the Reno’s counteroffer proposed compensation far greater than the value of the agreement.⁷⁷ EOG then filed a complaint under the Wyoming Eminent Domain Act, seeking to condemn rights-of-way, easements, and surface use rights on approximately 2,100 acres of the ranch.⁷⁸

The district court had an expedited hearing on the complaint.⁷⁹ During the hearing, Reno’s president testified that EOG had rights under the existing agreement to complete most of the proposed projects on Reno’s ranch. Nearly four months later, EOG amended its complaint, now only seeking to condemn a 70-acre pipeline easement.⁸⁰ EOG argued that they stripped all of the existing rights out of the condemnation suit, and were

70. *Id.* at ¶ 40, 458 P.3d at 1213.

71. *EOG Res., Inc. v. Floyd C. Reno & Sons, Inc.*, 2020 WY 95, ¶ 1 (Wyo. 2020).

72. *Id.*

73. *Id.* at ¶ 3.

74. *Id.*

75. *Id.* at ¶ 7.

76. *Id.*

77. *Id.*

78. *Id.* at ¶ 8.

79. *Id.* at ¶ 9.

80. *Id.* at ¶ 13.

now seeking the rights to complete the pipeline.⁸¹ The district court dismissed EOG's complaint, concluding that they had not complied with the Eminent Domain Act's good-faith negotiation requirement because the 70-acre easement was not included in EOG's offer.⁸² EOG appealed.⁸³

On appeal, EOG argued that it had complied with the Wyoming Eminent Domain Act because the seventy acres it sought to condemn were included within its offers to Reno and depicted on the maps it provided Reno.⁸⁴ EOG also argued that the district court's holding would require an exact match between a purchase offer and property rights to be condemned.⁸⁵ The Court disagreed.⁸⁶ Instead, the Wyoming Supreme Court held that the good-faith negotiation requirement of the Eminent Domain Act requires a "sufficient resemblance" between the property sought in the offer and the property sought in the condemnation action such that "the subject of the negotiation was clear to both parties".⁸⁷ Further, "there must be sufficient resemblance . . . to allow a court to conclude that the offer might have been accepted as it related to the property ultimately sought to be condemned."⁸⁸

In this case, the property EOG ultimately sought to condemn was "a needle in the haystack of the original offer."⁸⁹ It was not clear that the 70 acres were the subject of the negotiations.⁹⁰ The Court ruled that it is not reasonable to expect Reno to see that EOG's offer contained a discrete sub-offer for the 70-acre pipeline easement from the map, financial summary chart, and proposed agreements covering 2,100 acres and containing a multitude of well-site locations, access roads, pipelines, water sources, etc.⁹¹

The Court affirmed the district's court dismissal of EOG's condemnation action.⁹²

81. *Id.*

82. *Id.* at ¶ 15.

83. *Id.*

84. *Id.* at ¶ 14.

85. *Id.* at ¶ 25.

86. *Id.*

87. *Id.* at ¶ 25.

88. *Id.*

89. *Id.* at ¶ 24.

90. *Id.*

91. *Id.*

92. *Id.* at ¶ 27.