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I. Introduction

The following is an update on Alaska legislative activity and case law relating to oil, gas and mineral law from August 1, 2020 to July 31, 2021.

II. Legislative and Regulatory Developments

We did not locate any notable legislation during the search period.

III. Judicial Developments

A. Supreme Court Cases

1. *PLC, LLC and MH2, LLC v. State of Alaska, Department of Natural Resources*¹

In *PLC, LLC and MH2, LLC v. State of Alaska, Department of Natural Resources*, the Supreme Court of Alaska addressed, in part, whether the owner of an overriding royalty interest in an oil and gas lease has standing to challenge a decision by the Department of Natural Resources (“DNR”) related to a unit operator’s application to expand a production unit.²

a) *Facts*

PLC, LLC, and MH2, LLC (collectively “PLC”), each hold an overriding royalty interest in a State oil and gas lease in the Ninilchik Unit (the “Unit”) operated by Hilcorp Alaska, LLC.³ The held interest entitles PLC to a percentage of the royalties from the oil and gas produced by the lease at the surface, when and if the lease becomes productive.⁴

As a hydrocarbon reservoir underlying a unit is explored and hydrocarbons extracted, the unit operator may expand or contract the unit to better match the reservoir that lies below. To modify the unit, the unit operator must apply to the DNR.⁵

In 2016, Hilcorp applied to expand a portion of the Unit, including an 80-acre portion of PLC’s lease in the proposed expansion. According to Hilcorp, this portion of the Unit was proven to contribute to the production of natural gas.⁶ DNR opened the issue to public comment, and PLC

1. *PLC, LLC and MH2, LLC v. Alaska, Dep’t of Nat. Res.*, 484 P.3d 572 (Alaska 2021).

2. *Id.* at 574.

3. *Id.*

4. *Id.* at 574-75.

5. *Id.* at 575.

6. *Id.*

requested that DNR expand the area further to include more than 80 acres of PLC's lease.⁷

In its review of the application, DNR applied a different methodology than Hilcorp to determine which acreage is proven to produce natural gas.⁸ DNR proposed modifications to the expansion, including the exclusion of the 80 acres from PLC's lease. DNR reasoned that the portion of the Unit was not "reasonably estimated to be capable of producing" natural gas in paying quantities.⁹ Hilcorp agreed to the modifications and submitted a revised application, which DNR approved in May 2017.¹⁰

b) Proceedings

PLC appealed the decision to the DNR Commissioner in June 2017. PLC argued that the methodology adopted by Hilcorp to determine the participating area was more accurate than that used by DNR.¹¹ The Commissioner denied PLC's appeal in July 2017, reasoning an ORRI holder lacks standing to appeal a decision regarding unit expansion, because they only hold "nonpossessory interest in a percentage of a production at the surface, free of costs," which does "not provide PLC with an interest in whether the operator produces from that lease as part of one particular area or another."¹²

PLC appealed the Commissioner's decision to the superior court, which upheld the Commissioner's decision on the grounds that PLC lacked standing to appeal.¹³ The superior court reasoned that PLC was not "aggrieved" by DNR's actions because the Unit was being expanded, but PLC would be "if the participating area was being contracted."

PLC now appeals.

c) Standard of Review

An agency interpretation of statutory terms is reviewed using one of two standards: reasonable basis or independent judgment. The independent judgement standard applies where administrative appeal of the agency decision is reviewed directly without deference to the superior court's

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.* at 575.

13. *Id.*

decision.¹⁴ The reasonable basis standard applies when the agency's adjudication of a regulated party's claim requires resolution of policy questions within the agency's area of expertise.¹⁵ Under the reasonable basis standard, the court will "give[] deference to the agency's interpretation so long as it is reasonable."¹⁶ However, the court will substitute its own judgment where the agency's specialized knowledge and experience are not particularly relevant to resolve the issue.¹⁷

Because standing is a fundamental legal concept that determines who can and cannot pursue legal claims, the court applied its independent judgment to interpret the statutory standing requirement.¹⁸

d) Discussion

The Supreme Court considered two issues on appeal, including whether PLC has standing to challenge DNR's unitization decision. The issue of standing is the only issue addressed in this article.

To determine whether a litigant has standing, the court asks whether the party is "a proper party to request an adjudication of a particular issue."¹⁹ The court will "interpret the concept [of standing] broadly," with an eye toward increased access to justice.²⁰ The two types of standing generally recognized by courts are: (1) citizen-taxpayer; and (2) interest-injury.²¹ However, the legislature has limited standing by statute in some highly regulated areas, including appealing decisions of the DNR.²²

Alaska Statute 44.37.011(b) limits standing to appeal DNR decisions to a person who "is aggrieved by a decision of the Department of Natural Resources not made by the Commissioner and is otherwise eligible to see the Commissioner's review of the decision..." Whether PLC has standing to appeal the DNR's decision hinges on whether PLC is "aggrieved."²³ Because the statute does not define the term, the court looked to other

14. *Id.* at 576.

15. *Id.* at 577.

16. *Id.* (quoting *Matanuska-Susitna Borough v. Hammond*, 726 P.2d 166 at 175).

17. *Id.* at 577.

18. *Id.*

19. *Id.* (quoting *Trs. for Alaska v. State, Dep't of Nat. Res.*, 736 P.2d 324, 327 (Alaska 1987)).

20. *Id.* (quoting *Kanuk ex rel. Kanuk v. State, Dep't of Nat. Res.*, 335 P.3d 1088, 1092 (Alaska 2014)).

21. *Id.*

22. *Id.*

23. *Id.* at 578.

statutes in which the legislature has used the word “aggrieved.”²⁴ The court likened this case to *Griswold v. Homer Board of Adjustment*, which held that when standing is limited to those “aggrieved” by municipal decisions, the only standing available is interest-injury standing; there is no citizen-taxpayer standing.²⁵

To establish interest-injury standing, a litigant must show: (1) a “sufficient personal stake” in the outcome of the controversy²⁶, and (2) “an interest which is adversely affected by the complained-of conduct.”²⁷

The State argued that PLC, as an ORRI holder, had no right to participate in the unit management decisions and thus lacked a sufficient personal stake in the outcome of a participating area expansion. The Supreme Court of Alaska disagreed, holding that PLC had standing to challenge DNR’s unitization decision because it had a sufficient personal stake in the outcome of the controversy and an interest which is adversely affected by the complained-of conduct.

(1) PLC has a sufficient personal stake because had DNR approved the unit operator’s original proposed expansion, PLC’s lease would have been included, resulting in a direct financial benefit.

The State argued that regardless of whether PLC’s lease is included in the unit expansion, PLC would be entitled to payments from the unit operator if gas was produced from the PLC lease, so PLC should sue the unit operator in superior court to recoup any missing payments.²⁸ The court disagreed, stating that the possibility PLC could obtain some amount of money by pursuing a separate legal action against the unit operator does not negate its standing in this proceeding.²⁹

The State further argued that *Gottstein v. State, Department of Naturel Resources* was controlling. In *Gottstein*, after DNR’s approval of a unit operator’s development plan, which excluded the lease from development, a lease ORRI holders’ due process claims were dismissed.³⁰ However, the court distinguished the present case from *Gottstein*. In *Gottstein*, the unit operator excluded the ORRI holder’s leases from its development plan,

24. *Id.*

25. *Griswold v. Homer Bd. of Adjustment*, 440 P.3d 248, 252 (Alaska 2019).

26. *PLC*, 484 P.3d 572 at 578 (quoting *Keller v. French*, 205 P.3d 299, 304 (Alaska 2009)).

27. *Id.*

28. *Id.*

29. *Id.* at 578.

30. *Gottstein v. State, Dep’t of Nat. Res.*, 223 P.3d 609, 622 (Alaska 2010).

while here, the unit operator included PLC's lease in its original expansion plan; it was DNR that required modifications to the expansion plan that subsequently excluded PLC's lease.³¹

The court reasoned that the financial result of unitization is to distribute the profits of production from a subsurface reservoir to the interest holders in leases overlying that reservoir, including holders of an overriding royalty interest.³² Therefore, it found PLC's stake to be clear: if acreage from its lease is included in the unit, PLC will get paid, and if it is excluded from the unit, it will not be paid.³³

(2) PLC's interest is adversely affected by DNR's decision.

The court examined whether PLC's interest in the production of hydrocarbons from beneath its lease was adversely affected by DNR's decision.³⁴ The court ultimately reasoned that PLC need not prove hydrocarbons are actually being removed from beneath its lease. It is sufficient that the unit operator applied to expand the unit to include PLC's lease as "proven to contribute" to hydrocarbon production, and that DNR applied its own methodology, resulting in the exclusion of PLC's lease from the unit expansion.³⁵

e) Conclusion

The court concluded PLC had standing to appeal DNR's decision to the Commissioner, reversed the superior court's decision, and remanded the matter to DNR for further proceedings consistent with the court's opinion.³⁶

B. Appellate Activity

None reported.

C. Trial Activity

None reported.

31. *PLC*, 484 P.3d 572 at 580.

32. *Id.* at 578.

33. *Id.*

34. *Id.* at 580.

35. *Id.* at 581.

36. *Id.* at 583.