

ONE J

Oil and Gas, Natural Resources, and Energy Journal

VOLUME 8

NUMBER 2

ALASKA



*Steven A. Rhodes & Zachary H. Barrett**

Table of Contents

I. Introduction	328
II. Legislative and Regulatory Developments.....	328
III. Judicial Developments	328

* Steven A. Rhodes and Zachary H. Barrett are Of Counsels in the Charleston, West Virginia office of Steptoe & Johnson PLLC, and concentrate their practice in the areas of energy, with a focus on mineral title and coal, oil, and gas transactions, and related industry contracts.

I. Introduction

The following is an update on Alaska legislative activity and case law relating to oil, gas and mineral law from August 1, 2021 to July 31, 2022.

II. Legislative and Regulatory Developments

None reported.

III. Judicial Developments

A. Supreme Court Cases

1. *French v. Alaska Oil & Gas Conservation Commission*¹

“Investigating and Identifying Oil and Gas Waste.”

a) Background

The Alaska Oil and Gas Conservation Commission is a quasi-judicial agency charged with investigating waste of oil and gas resources with a mandate to “investigate to determine whether . . . waste exists or is imminent, or whether . . . facts exist which justify or require action by it.”² At controversy in *French v. Alaska Oil & Gas Conservation Commission* is Hollis S. French’s petition asking the Alaska Oil and Gas Conservation Commission to determine whether a leak in Hilcorp Alaska LLC’s gas line into the Cook Inlet constituted “waste” under Alaska law.

b) Prior Proceedings

In *French v. Alaska Oil & Gas Conservation Commission*, Hollis S. French petitioned the Alaska Oil and Gas Conservation Commission to determine if a natural gas leak was “waste” under Alaska law. In March of 2019 the Commission responded to French’s petition asserting that the leak at issue had already been investigated, and the Commission had already determined that “because the leaking gas had been ‘metered and severed from the property,’ the leaking gas could not be waste and the Commission therefore had no ‘waste jurisdiction over [the] gas.’”³ On appeal, the superior court affirmed the Commission’s decision and Frank appealed to the Supreme Court of Alaska.

1. *French v. Alaska Oil & Gas Conservation Comm’n*, 498 P.3d 1026 (Alaska 2021).
 2. Alaska Stat. Ann. § 31.05.005 (West).
 3. *French v. Alaska Oil & Gas Conservation Comm’n*, 498 P.3d 1026, 1027 (Alaska 2021).

c) Standard of Review

The Supreme Court of Alaska applies an independent review when reviewing a decision by the superior court acting as an intermediate court of appeal in an administrative matter, meaning they exercise independent judgment on any issue concerning the scope of an agency's authority.

d) Discussion

Hollis S. French contends that since Alaska Stat. Ann. § 31.05.030 obligates the Commission to investigate whether waste exists, the Commission has jurisdiction over waste determination. In opposition, the Commission contends that since it determined that the leak did not constitute waste, it had no jurisdiction.

The Supreme Court of Alaska reversed the superior court's ruling, vacated it in part, and remanded the matter to the Commission.

B. Appellate Activity

None reported.

C. Trial Activity

None reported.