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Oil and Gas, Natural Resources, and Energy Journal

VOLUME 9

NUMBER 2

ARKANSAS



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Table of Contents

I. Introduction	142
II. Legislative and Regulatory Developments.....	142
A. New Statutes and Bills.....	142
B. New Administrative Rules	142

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III. Case Law Developments..... 142
 A. Court of Appeals Considers Duty to Restore Surface in *Taylor v. XTO*..... 142
 IV. Conclusion 143

I. Introduction

Other than the appellate decision summarized below, there were no notable developments affecting oil and gas law in Arkansas during the survey period.

II. Legislative and Regulatory Developments

A. New Statutes and Bills

There was no notable legislation affecting oil and gas development in Arkansas enacted during the time period of August 1, 2022, to July 31, 2023.

B. New Administrative Rules

There were no notable regulations affecting oil and gas development in Arkansas passed from August 1, 2022, to July 31, 2023.

III. Case Law Developments

A. Court of Appeals Considers Duty to Restore Surface in Taylor v. XTO

In *Taylor v. XTO Energy, Inc.*,¹ the Arkansas Court of Appeals (Division III) reversed a trial court’s summary judgment order, clarifying the scope of an operator’s implied duty to reclaim wellsites after oil and gas operations conclude.

This case centered on the sufficiency of XTO’s site restoration efforts at two wells that XTO plugged and abandoned in 2017. These wells were drilled by XTO’s predecessor(s) under 1960’s oil and gas leases, which granted the lessee broad rights to utilize the surface of the leaseholds as needed to support operations. Neither lease expressly required surface restoration.

According to trial evidence, XTO plugged and abandoned the wells, and performed substantial reclamation (costing around \$70,000), the results of which were inspected and approved by the Arkansas Oil and Gas Commission (“AOGC”). However, Taylor argued that, notwithstanding

1. 658 S.W.3d 455 (Ark. App. 2022).

AOGC approval, XTO's work was inadequate and breached the lessee's implied duty to conduct post-drilling surface restoration.

Arkansas law has recognized this implied duty as arising from two sources: the standard set by AOGC regulation, and the judicial precedent of *Bonds v. Sanchez-O'Brien Oil and Gas Co.*² At trial, the circuit court granted XTO's summary judgment motion, ruling that AOGC Rule B-9(e)'s reasonably prudent operator standard governs compliance with the implied covenant to restore the surface, consistent with the decision in *Bonds*, which "itself 'suggests that the operator's restoration obligations are to be tempered by a standard of reasonableness.'"³ Accordingly, the trial judge found "'no material fact[s] in dispute as to whether [XTO] followed all AOGC rules and met its implied covenant to restore.'"⁴ Taylor appealed, arguing that *Bonds* imposes a higher, more specific duty on the lessee "to restore the surface, as nearly as practicable, to the same condition as it was before drilling."⁵

The appeals court reversed the grant of summary judgment. While the court did not overtly endorse the higher *Bonds* duty proffered by Taylor, it articulated a fact-intensive inquiry imposed by the precedent: "We view *Bonds* as holding that a lessee unreasonably uses the surface when, after the lease has expired, he or she continues to occupy the surface to a degree that prevents or impairs the surface owner's use of the property. What those damages may be will surely differ depending on the particular facts of each case."⁶ In turn, the court found that, even under a reasonably prudent operator standard, summary judgment was improper because the competing trial evidence presented genuine issues of material fact as to whether XTO complied with its obligations in restoring Taylor's surface.⁷

IV. Conclusion

Other than *Taylor v. XTO* discussed above, there were no notable developments affecting oil and gas law in Arkansas during the preceding year.

2. *See id.* at 458-460 (citing *Bonds*, 715 S.W.2d 444 (Ark. 1986)).

3. *Id.*

4. *Id.* at 460.

5. *Id.* at 460.

6. *Id.* at 461-462.

7. *Id.* at 462.