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I. Introduction

This article summarizes and discusses significant developments in Wyoming’s oil and gas law between August 1, 2022, and July 31, 2023. During this period, the Wyoming legislature passed a bill into law amending the purposes of the Wyoming Energy Authority (“WEA”) to include the construction and expansion of oil and gas refineries in Wyoming and specifying that WEA may finance refinery projects under its bond issuance power. The Wyoming Oil and Gas Conservation Commission (“WOGCC”) amended its rules to change the definition of a wildcat well, also known as an exploratory well.

Also, during this applicable period there were cases of note which dealt with severance tax valuation methods, application of severance tax and ad valorem tax to waste mine gas, the effect of leasing by a life estate holder and the standing of an oil and gas lessee to initiate a quiet title action, and Wyoming Split Estate Act damages.

II. Legislative Developments

A. Change to Wyoming Energy Authority Powers

Wyoming S.F. 154, signed into law March 17, 2023, amends the purposes of WEA to include the construction and expansion of oil and gas refineries in Wyoming and specifying that the energy authority may finance refinery projects in Wyoming as specified.¹ It provides in relevant part that one of the purposes of the Wyoming Energy Authority is to support efforts to maintain and expand the oil and gas industry in Wyoming through the development of oil and gas refineries.² It also provides that the Energy Authority may issue and have outstanding bonds under its bonding authority to finance the construction or expansion by other parties of oil-and-gas refineries.³

1. S.F. 154, 67th Gen. Assemb., Reg. Sess. (Wyo. 2023) (enacted).

2. *Id.*

3. *Id.*

III. Regulatory Developments

A. Change to Wildcat Well Definition

Effective as of October 12, 2022, the WOGCC amended its definition of Wildcat Well, which now may also be referred to as an Exploratory Well.⁴ The definition now requires that the WOGCC determination of a Wildcat Well be “reasonably determined.”⁵ Additionally, the definition now provides that the WOGCC’s basis of determination may also rest on “other factors that cause a significant increase in the risk associated with the well.”⁶

IV. Judicial Developments

A. United States District Court

1. Severance Tax Valuation Method

In *WPX Energy Rocky Mountain, LLC v. Wyoming Department of Revenue*, the Supreme Court of Wyoming had to determine whether the plaintiff was entitled to deduct a “reservation fee” under the “netback” severance tax valuation method for natural gas production years 2013-2015.⁷

Plaintiff WPX produced natural gas from wells, and to transport it to markets for sale it entered into long-term transportation service agreements, paying two types of charges to the transporters.⁸ There was a demand charge (reservation fee) to reserve a certain amount of capacity on the pipeline each month, and there was a commodity charge, based on the volume shipped.⁹

Wyoming levies a severance tax on the value of the gross product for the privilege of extracting oil in the state.¹⁰ To calculate the taxable value of gas for purposes of the severance tax, the Department of Revenue used the netback valuation method for WPX’s production for 2013-2015.¹¹ That method provides that the fair market value is the sales price minus expenses

4. Wyo. Admin. Code 055.0001.1 § 2 (nmn).

5. *Id.*

6. *Id.*

7. *WPX Energy Rocky Mountain, LLC v. Wyoming Department of Revenue*, 516 P.3d 449 (Wyo. 2022)

8. *Id.* at 451.

9. *Id.*

10. *Id.* at 452.

11. *Id.*

incurred by the producer for transporting produced minerals to the point of sale.¹²

The Department of Revenue said that WPX could only deduct reservation fees tied to pipeline capacity it actually used.¹³ WPX contended that the plain language of the statute governing the severance tax valuation method made its reservation fees fully deductible, regardless of whether or how much gas it shipped each month.¹⁴

The Wyoming Board of Equalization concluded that WPX: (1) was entitled to deduct reservation fees for months when it transported some, but less than its reserve capacity for each pipeline, (2) was not entitled to deduct any of its Bison Pipeline reservation fees for months when it shipped no gas on that pipeline, and (3) could not deduct any portion of its reservation fees the pipeline used to recoup pipeline costs for months when it shipped some gas on the pipeline.¹⁵

On appeal the Court affirmed the first two conclusions, but reversed the Board's decision that WPX could not deduct any portion of its Bison Pipeline reservation fees that the pipeline used to recoup pipeline construction costs.¹⁶ Like the Board, the Court found that the language of the statute was unambiguous, and the statute neither supported the Department of Revenue's overbroad reading of the statute (imposing a unit-based limit on the language, such that WPX could only deduct expenses specifically tied to the volume of gas transported), nor WPX's narrow reading (such that WPX would be allowed a deduction where no gas flowed down the pipeline).¹⁷

2. Application of Severance and Ad Valorem Taxes to Waste Mine Gas

In *Solvay Chemicals, Inc. v. Wyoming Department of Revenue*, the plaintiff taxpayer challenged the Department of Revenue's imposition of taxes on waste mine gas.¹⁸ Taxpayer had captured and used waste mine gas released from its mining operations to help fuel another plant for the years 2012 through 2015.¹⁹

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.* at 452-53.

16. *Id.* at 458.

17. *Id.*

18. *Solvay Chemicals, Inc. v. Wyoming Department of Revenue*, 517 P.3d 1123 (Wyo. 2022)

19. *Id.* at 1127.

The Department of Revenue imposed taxes on the waste mine gas used during that period; taxpayer maintained that the extraction and use of waste mine gas was not subject to taxes because under the applicable tax statutes (1) the waste mine gas was not natural gas and (2) taxpayer did not have the “privilege of severing or extracting” the waste mine gas for purposes of severance taxation and was not a “taxpayer” for purposes of ad valorem taxation.²⁰

The Supreme Court of Wyoming held that taxpayer’s waste mine gas was subject to severance and ad valorem taxation.²¹ Interpreting the relevant statutes, the Court concluded that the waste mine gas was “natural gas,” and that the legislature intended that, for tax purposes, this would include natural gas consumed on the site where it is produced.²² Further, the Court disregarded taxpayer’s argument that a “taxpayer” for purposes of the ad valorem tax statute needed to be a party holding a lease; the Court notes that the applicable statute specifies which party is the taxpayer when there is a lease in place, but the statute does not require that a lease exist.²³

3. Leasing by Life Estate Holder; Standing for Quiet Title Action

In *North Silo Resources, LLC v. Deselms et al.* North Silo appealed a district court ruling which held, among other things, that North Silo’s oil and gas lease would expire upon the expiration of the lessor’s life estate in the leased minerals, and that North Silo did not have standing to bring a quiet title action regarding the matter.²⁴ The Wyoming Supreme Court reversed these rulings and held that the lease remained in effect after the life estate terminated and that North Silo did have standing to bring a quiet title action.²⁵

Through a series of assignments in 2018 and 2019, North Silo acquired all of the lessee rights under a 2010 oil and gas lease covering minerals in Laramie County, Wyoming.²⁶ The lessor was a life estate holder in the leased minerals at the time of execution of the lease.²⁷

20. *Id.* at 1128.

21. *Id.* at 1138.

22. *Id.* at 1133.

23. *Id.* at 1135.

24. *North Silo Resources, LLC v. Deselms et al.*, 518 P.3d 1074 (Wyo. 2022)

25. *Id.* at 1092.

26. *Id.* at 1079.

27. *Id.*

Crucially, in the deed reserving the life estate in the minerals, the lessor also reserved “the exclusive right and privilege of making, executing and delivering leases of the land for the extraction or production of minerals.”²⁸

Deselms, the holder of the remainder interest in the mineral estate, argued that while the life estate holder could enter into leases during the period of the life estate, any lease entered into during that period would terminate upon the expiration of the life estate.²⁹ North Silo argued that the life estate holder could enter into leases during the life estate period, and that any leases entered into during the life estate could last beyond the life estate period.³⁰

The Wyoming Supreme Court noted that this issue was a case of first impression for the court.³¹ As such, the Court looked to other jurisdictions for guidance, mainly Texas and Oklahoma.³² The court first noted that if a life estate owner held the power to lease, but that such a lease could not last beyond the term of the life estate, such power was of little utility.³³ The court also noted other precedent which held that, while a life estate holder with the power to lease was time-limited as to when the power could be exercised (during the period of the life estate), absent other language the life estate holder was not limited as to the types of leases it could execute (leases for a set term of years or leases that may be held indefinitely by production are both permitted).³⁴

The court found that the deed reservation which created the life estate expressly reserved the executive power to enter into leases and did not expressly restrict the types of leases that could be entered into.³⁵ Accordingly, the Court held that the lease remained in effect according to its terms when the life estate terminated.³⁶

North Silo initiated the legal proceedings in this case by seeking to quiet title to the minerals under its oil and gas lease.³⁷ The Deselms argued, and the trial court held, that North Silo lacked standing to initiate the quiet title

28. *Id.*

29. *Id.* at 1087.

30. *Id.*

31. *Id.* at 1087.

32. *Id.* at 1087-89.

33. *Id.* at 1087.

34. *Id.* at 1088.

35. *Id.* at 1089.

36. *Id.*

37. *Id.*

action, because North Silo had no fee ownership interest in the mineral estate itself.³⁸

Upon North Silo's appeal, the Court began its review by examining the Wyoming statute governing who may bring a quiet title action, and the standing requirements that such parties must meet.³⁹ The court found that the statute required a plaintiff in a quiet title action to meet three requirements to bring the action: (1) possession of the real property; (2) some interest in the property; and (3) the party against whom the action is brought must claim "an estate or interest" adverse to the plaintiff.⁴⁰ In this case, it was undisputed that North Silo met requirements (1) and (3). The court then examined requirement (2), whether North Silo had "some interest" in the property at issue – the mineral estate – due to its oil and gas lease.⁴¹

Looking to precedent, the court found that under Wyoming law, a lessee's right under an oil and gas lease is a "profit à prendre" – the right to search for oil and gas, and if either is found, to remove it from the land.⁴² Other precedent also stated that since the grant of a right involves the transfer of an interest in land, the oil and gas lease is an interest in land.⁴³ The court found that for purposes of quiet title standing under Wyoming's statute, a lessee's interest in an oil and gas lease constituted an interest in the mineral estate, and therefore North Silo had standing to bring the quiet title action.⁴⁴

4. Wyoming Split Estate Act Damages

In *EOG Resources, Inc. v. JJLM Land, LLC*, plaintiff JJLM sued for breach of a surface use agreement and sought double damages under the Wyoming Split Estate Act.⁴⁵ JJLM claimed that the statute entitled it to double damages not only when an operator does not pay an installment payment owed under a surface use agreement, but also when an operator underpays an installment payment.⁴⁶ The district court found that the double

38. *Id.*

39. *Id.* at 1089-90.

40. *Id.* at 1090.

41. *Id.*

42. *Id.* at 1091.

43. *Id.*

44. *Id.*

45. *EOG Resources, Inc. v. JJLM Land, LLC*, 522 P.3d 605 (Wyo. 2022)

46. *Id.* at 607.

damages statute applies when an operator underpays the surface owner.⁴⁷ EOG Resources appealed the ruling.

The Supreme Court of Wyoming agreed with the lower court that the Split Estate Act applied in such a way to entitle JJLM to double damages when EOG underpaid.⁴⁸ The statute renders an “oil and gas operator who fails to timely pay an installment under any annual damage agreement” liable for “twice the amount of the unpaid installment if the installment payment is not paid within sixty (60) days of receipt of notice of failure to pay from the surface owner.”⁴⁹ The Court interpreted the word “fails” in the statute to include deficiencies not only in the time of payment, but also in the amount.⁵⁰

47. *Id.*

48. *Id.* at 613.

49. *Id.* at 610.

50. *Id.* at 613.