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ONE J

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I. Introduction

The state of Nevada has historically been an oil producing state, with the only natural gas production being that which is associated with gas from oil wells.¹ Approximately 281,000 barrels of oil were produced in Nevada in 2015, down from 316,000 barrels in 2014, and 334,000 barrels in 2013.² In 2016, the state is averaging a production of approximately 22,000 barrels a month through April 2016.³ During the examination period of this article, only two oil and gas permits were issued.⁴

II. Legislative and Regulatory Developments

Regulatory changes to the Nevada Revised Statutes (“NRS”) and the Nevada Administrative Code (“NAC”) made by the Nevada Division of Minerals (“NDOM”) became effective December 21, 2015, after approval by the Commission on Mineral Resources, Mining Oversight and Accountability Commission, and the Interim Legislative Commission.⁵ The notable changes are as follows:

A. R056-15: Permitting Fee Increase For Drilling of Oil and Gas Wells

In 2013, the Nevada legislature passed Senate Bill 390, which required that the NDOM establish and develop regulations related to hydraulic fracturing for oil and gas exploration in the state. The NDOM, in conjunction with the Division of Environmental Protection, set forth the

1. *See Nevada State Profile and Energy Estimates*, U.S. ENERGY INFO. ADMIN., <https://www.eia.gov/state/analysis.cfm?sid=NV#39> (last visited Aug. 29, 2016).

2. *See Crude Oil Production*, U.S. ENERGY INFO. ADMIN., http://www.eia.gov/dnav/pet/pet_crd_crdpn_adc_mbb1_a.htm (last visited Aug. 29, 2016).

3. *Nevada Oil Patch Briefing*, NEV. COMM’N ON MINERAL RES., DIV. MINERALS, MARCH / APRIL 2016, http://minerals.nv.gov/Programs/Oil_and_Gas/Forms_Reports_Word/OilPatch20160304/.

4. *See Oil and Gas Permits and Permit Notices*, NEV. COMM’N ON MINERAL RES., DIV. MINERALS, http://minerals.nv.gov/Programs/Oil_and_Gas/OandG_Permits/Permits/ (last visited August 29, 2016).

5. *Oil and Gas Regulations Final Announcement*, NEV. COMM’N ON MINERAL RES., DIV. MINERALS, http://minerals.nv.gov/uploadedFiles/mineralsnvgov/content/Programs/Oil_and_Gas/Oil_and_Gas_Regulations-Final_Announcement.pdf.

new regulations in 2014.⁶ Notably, the new regulations brought increased costs to the NDOM, including staff travel when a hydraulic well is drilled.⁷ Therefore, the legislature passed Senate Bill 44 in 2015, which increased the statutory cap for the drilling of oil and gas wells in order to cover the costs associated with compliance with the new regulations. Previously, the statutory limit for an oil and gas drilling permit was \$200, and now the permitting caps are \$2,000 for an oil or gas well that is not intended to be hydraulically fractured,⁸ and \$5,000 for an oil or gas well that is intended to be hydraulically fractured.⁹ For a request to change the terms of an existing permit to drill and operate an oil or gas well, the charge is \$400.¹⁰

Additionally, the NAC was revised to establish the permitting fees as \$1,000 for a conventional well on public or private land,¹¹ \$3,500 for a hydraulic fracturing well on federally owned land,¹² and \$4,500 for a hydraulic fracturing well on private or state-owned land.¹³

B. R081-15: Revisions to Provisions Related to Permitting, Confidentiality and Plugging of Wells

With the exception of adding hydraulic fracturing regulations in 2014, the oil and gas code of Nevada “had not been reviewed and updated since 2000.”¹⁴ This led the NDOM to draft regulations in order to be “consistent with current industry and regulatory practices, to clarify provisions within the regulations and eliminate obsolete language.”¹⁵ Below are highlights of the revised regulations:

6. *Adopted Regulation of the Commission on Mineral Resources LCB File No. R056-15 Informational Statement*, NEV. COMM’N ON MINERAL RES., DIV. MINERALS, <http://minerals.nv.gov/uploadedFiles/mineralsnvgov/content/About/R056-15A.pdf>.

7. *Id.*

8. NEV. REV. STAT. § 522.050(3)(a) (2015).

9. *Id.* at § 522.050(3)(b).

10. *Id.* at § 522.050(3)(c).

11. NEV. ADMIN. CODE § 522.212(1)(a).

12. *Id.* at § 522.212(1)(b).

13. *Id.* at § 522.212(1)(c).

14. *Adopted Regulation of the Commission on Mineral Resources LCB File No. R081-15 Informational Statement*, NEV. COMM’N ON MINERAL RES., DIV. MINERALS, <http://minerals.nv.gov/uploadedFiles/mineralsnvgov/content/About/R081-15A.pdf>.

15. *Id.*

1. Permitting

Previously, permits to drill or deepen a well for oil or gas expired 24 months after the date of issue, but under the revised regulations the NDOM now may grant an extension of this deadline.¹⁶

The regulations clarified that permits to dispose of salt water and brackish water must be obtained from the Nevada Division of Environmental Protection, but that the actual disposal wells are permitted by the NDOM.¹⁷

2. Confidentiality

Well logs of an exploratory well were previously kept confidential by the NDOM for 6 months after receipt of the logs, but the new regulations allow for confidentiality for 1 year after drilling operations are completed.¹⁸

3. Plugging of Wells

For wells in which production casing has been run but which has not been operated for one year, and for wells in which no production casing has been run and for which drilling operations have ceased for thirty days, the regulations now state that a well must be “permanently” plugged, when previously the regulations stated that the well must be “immediately” plugged.¹⁹ Additionally, the new regulations allow for more flexibility for extensions to this rule, changing from 6 months to “not more than 1 year.”²⁰

III. Judicial Developments

Although the case was not decided during the examination period of this update, it is worth noting that *Western Exploration LLC, et al., v. United States Department of the Interior, et al.*, was filed in the United States District Court for the District of Nevada, challenging the protection granted by the Bureau of Land Management (“BLM”) and the United States Forest Service (“USFS”) of the greater sage-grouse species and their habitat.²¹

16. NEV. ADMIN. CODE § 522.220.

17. *Id.* at § 522.380.

18. *Id.* at § 522.540.

19. *Id.* at § 522.430(1).

20. *Id.* at § 522.430(2).

21. *W. Expl. LLC v. United States DOI*, No. 3:15-cv-00491 (D. Nev. filed Sept. 23, 2015).

In September 2015, the BLM and USFS created a federal land use plan to withdraw approximately ten million acres of public and National Forest System lands to protect the greater sage-grouse “from adverse effects of locatable mineral exploration and mining” for “up to two years.”²² The plan protects approximately 2,797,399 acres in Elko, Humboldt, and Washoe Counties in Nevada.²³

The plaintiffs in the case are comprised of fourteen parties, being nine counties in Nevada, four mining or ranching corporations, and the state. According to the first amended complaint for declaratory and injunctive relief, the plaintiffs allege violations of the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1701 et seq.; the National Forest Management Act of 1976, 16 U.S.C. §§ 1601 et seq.; the National Environmental Policy Act of 1969, 42 U.S.C. § 4231 et seq.; the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. § 601 et seq.; the Administrative Procedure Act; the 1872 Mining Law, 20 U.S.C. §§ 21a et seq., as amended; and the United States Constitution.²⁴ The plaintiffs are requesting that the court “enjoin Defendants from taking any action to interfere with continued access to all Nevada lands that were open for mineral entry or other public use prior to any segregation resulting from withdrawals,” including “segregating lands from operation of the General Mining Law, or otherwise prohibiting multiple-use of such lands.”²⁵

This case has garnered media and political attention, including from the governor of Nevada, Brian Sandoval. In a letter to the Bureau of Land Management dated January 15, 2016, Sandoval stated that Nevada has developed maps that “propose better boundaries that take into account existing mining operations and exploration activities that are crucial to the economy of Nevada and the nation.”²⁶ In a letter to the Department of the

22. Notice of Proposed Withdrawal; Sagebrush Focal Areas; Idaho, Montana, Nevada, Oregon, Utah, and Wyoming and Notice of Intent to Prepare an Environmental Impact Statement, 80 Fed. Reg. 57,635 (Sept. 24, 2015), *amended by* 80 Fed. Reg. 63,583 (Oct. 20, 2015).

23. *Id.* at 57,636.

24. First Amended Complaint for Declaratory & Injunctive Relief at 3, *W. Expl. LLC v. United States DOI*, No. 3:15-cv-00491 (D. Nev. filed Sept. 23, 2015), *available at* http://ag.nv.gov/uploadedFiles/agnv.gov/Content/News/PR/PR_Docs/2015/2015-10-22_NVvsDeptOfInterior_AM_Complaint.pdf.

25. *Id.*

26. Letter from Brian Sandoval, Governor, State of Nevada, to Neil Kornze, Director, Bureau of Land Management (January 15, 2016), *available at* <http://minerals.nv.gov/uploadedFiles/mineralsnv.gov/content/home/features/Final%20Transmittal%20Letter%201.15.16%20Signed-reduced-combined.pdf>.

Interior dated June 3, 2016, Sandoval further claimed “[w]ithout a modification” to the proposed withdrawal, “Nevada’s small mining and exploration companies will not survive the two year segregation.”²⁷

Once decided, this case will likely have a significant impact on future drilling operations. According to the Western Energy Alliance, an oil and gas industry organization, “Nevada activity tends to be more exploratory and less certain than full production areas like the Bakken in North Dakota or the mature Permian Basin, so it is indeed more vulnerable to the vicissitudes of the market.”²⁸ If the decision in *Western Exploration* proves to be a further hurdle for operators in the state, the impact could be long lasting for energy production in Nevada.

27. Letter from Brian Sandoval, Governor, State of Nevada, to Sally Jewell, Secretary of the Interior, Department of the Interior (June 3, 2016), available at <http://minerals.nv.gov/uploadedFiles/mineralsnv.gov/content/home/features/Jewell%20Letter%20on%20Withdrawal%20Signed%20MERGED.pdf>.

28. Brian Scheid, *Without Incentives, Industry Sees Regulation Hindering US Oil Production*, PLATTS (Mar. 14, 2016), <http://www.platts.com/latest-news/oil/houston/without-incentives-industry-sees-regulation-hindering-21093118> (last visited Aug. 29, 2016).