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I. Introduction

This Article summarizes and discusses important developments in Wyoming's oil and gas law between August 1, 2016, and July 31, 2017. During this period there were cases of note which dealt with application of overriding royalties to subsequent state leases, the circumstances rendering a tax deed void or voidable, and the application of the Wyoming Oilfield

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Anti-Indemnity Act. The Wyoming legislature passed bills into law amending the Storage Tank Act and the application of the tax lien on taxpayers delinquent on ad valorem production taxes. Also, the Wyoming Oil and Gas Conservation Commission (“WOGCC”) issued new policies concerning the submission of applications for permit to drill and the process to protest applications for permit to drill.

II. Legislative and Regulatory Developments

A. Legislative Developments

1. Revision of Wyoming Storage Tank Act of 2007

House Bill 0002 revised and added provisions to the Wyoming Storage Tank Act of 2007; most significantly, any underground or aboveground storage tank that has been temporarily out of use for more than twelve months must be permanently closed not later than twelve months after the date on which the tank is placed in temporarily out of use status, or July 1, 2018, whichever is later.¹ Requirements related to underground piping for tanks and monitoring of such piping and tanks were added: any double wall underground piping or tank installed after December 1, 2005 with interstitial monitoring, shall remain interstitially monitored for the life of the piping or tank,² and if existing single wall underground piping connected to an underground storage tank system fails due to corrosion or fails and has been recalled, the entire run of single wall piping shall be replaced with double wall piping with interstitial monitoring.³

2. Parties Subject to Lien Relating to Ad Valorem Tax on Mineral Production

House Bill 0220 clarified who is subject to the statutory lien on the mineral interests of a delinquent taxpayer of the ad valorem tax on mineral production. The definition of “delinquent taxpayer” was amended to exclude an owner of a royalty interest, overriding royalty or other interest carved out of the mineral estate, if the operator of the mineral property, who is legally responsible for remitting ad valorem taxes on mineral production, withholds a portion of the royalty, overriding royalty or other interest for

1. WYO. STAT. ANN. § 35-11-1432 (West 2017); H. Enrolled Act 26, 2017 Leg. 64th General Sess. (Wyo. 2017).

2. WYO. STAT. ANN. § 35-11-1429(f) (West 2017); H. Enrolled Act 26, 2017 Leg. 64th General Sess. (Wyo. 2017).

3. WYO. STAT. ANN. § 35-11-1429(d) (West 2017); H. Enrolled Act 26, 2017 Leg. 64th General Sess. (Wyo. 2017).

the purpose of remitting ad valorem taxes on behalf of the owner.⁴ The bill also further clarified that the tax lien that attaches to interests of delinquent ad valorem taxpayers does not attach to the interest of an owner described above.⁵ Previously, it was unclear if the tax lien could extend to the interests of royalty owners who rely on oil and gas operators to pay the ad valorem taxes on production on behalf of such royalty owners, which is the common oil and gas operational structure.

B. Regulatory Developments

1. Policy for Spacing Unit Draft Orders and Related APDs

Effective November 1, 2016, the WOGCC issued, via memorandum, a new policy on the process for approvals of applications for permit to drill (“APDs”) within pending spacing units.⁶ Under the new policy, any APD within a pending spacing unit will not be approved until the draft order for such spacing unit has been received by the WOGCC.⁷ If the draft order is not received within ninety days of the APD hearing, the APD will be denied.⁸ In addition, any APD submitted for renewal without a corresponding spacing unit draft order will be denied.⁹

2. Protest Policy for APDs

By memorandum dated July 11, 2017, the WOGCC revised its process for hearing protests of APDs, with such process to commence with the August 2017 WOGCC hearings.¹⁰ The WOGCC had found that too many protested APDs were being continued until the protested matter was resolved by the parties, which created too large a burden on WOGCC staff, as each individual APD is considered a separate application (repeated continuances build up the total number of active APDs that need attention by WOGCC staff).¹¹ Under the new policy, each protested APD will initially be placed into the active monthly hearing docket.¹² If a continuance

4. WYO. STAT. ANN. § 39-13-108(d)(vi)(O) (West 2017); H. Enrolled Act 74, 2017 Leg. 64th General Sess. (Wyo. 2017).

5. WYO. STAT. ANN. § 39-13-108(d)(vi)(B) (West 2017); H. Enrolled Act 74, 2017 Leg. 64th General Sess. (Wyo. 2017).

6. WOGCC New Policy for Draft Orders and APD’s, eff. Nov. 1, 2016.

7. *Id.*

8. *Id.*

9. *Id.*

10. WOGCC Protest Policy for Application’s [sic] for Permit to Drill, July 11, 2017.

11. *Id.*

12. *Id.*

is filed, the APD is then moved to the inactive docket until the matter is either (1) resolved by the parties (and the protest is withdrawn), or (2) set before the WOGCC at the request of either party.¹³ WOGCC staff will file a request to dismiss the protest if there is no action by the parties within six months of filing.¹⁴

III. Judicial Developments

A. Applicability of Overriding Royalty on Prior State Lease to Subsequent State Lease: Questar Exploration & Production Company v. Rocky Mountain Resources, LLC

Rocky Mountain Resources, LLC was a successor-in-interest to a party that had reserved an overriding royalty unto himself on two State of Wyoming leases known as the “505 and 529 Leases.”¹⁵ Each state lease contained language that grants and reservations granted therein would extend to any “renewal lease, substitute lease or new lease issued in lieu thereof with full effect.”¹⁶ Questar Exploration and Production Company is the successor-in-interest to the parties who were the lessees under the 505 and 529 Leases.

The 505 and 529 Leases later expired. The state land board decided to combine the acreage formerly under the 505 and 529 Leases into a single lease, and put the acreage up for lease through the public drawing system, as was required by the state land board regulations at the time.¹⁷ An individual won the drawing for the new lease, and he later assigned the lease to a Questar subsidiary. Rocky Mountain Resources later sued Questar for failure to make overriding royalty payments on production from the new state lease, and the district court found Questar liable, on the basis that the new state lease was issued as a renewal lease, substitute lease, or new lease issued in lieu of the 505 and 529 Leases.¹⁸

On appeal, the Supreme Court of Wyoming noted that Rocky Mountain Resources did not contend that the new state lease was a renewal lease of the 505 and 529 Leases, and therefore the court need only consider whether

13. *Id.*

14. *Id.*

15. *Questar Expl. & Prod. Co. v. Rocky Mountain Res., LLC*, 2017 WY 10, ¶ 4, 388 P.3d 523, 526 (Wyo. 2017).

16. *Id.*

17. *Id.* at ¶ 34, 388 P.3d at 531.

18. *Id.* at ¶ 23, 388 P.3d at 529.

the new state lease was a substitute lease, or a new lease issued in lieu of the 505 and 529 Leases.¹⁹

The court noted that the undisputed facts show the new state lease was an entirely new lease, issued on different terms, to an entirely different lessee.²⁰ That new lessee was under no obligation to sell the new lease back to the lessees of the 505 and 529 Leases; although, he eventually did sell the new lease to an assignee of those parties.²¹ On the basis of the undisputed facts, the court found the new lease not to be a “new lease issued in lieu of the original leases.” The court also found the new lease not to be a “substitute” for the original leases, based on the plain meaning of the term “substitute.”²² Therefore, the overriding royalty reserved on the 505 and 529 Leases did not extend to the new state lease, and the district court erred in finding Questar liable for unpaid royalty on such new lease.²³

B. Whether an Improper Tax Assessment Rendered the Resulting Tax Deed Void or Merely Voidable: Anadarko Land Corporation v. Family Tree Corporation

Family Tree Corporation and Anadarko Land Corporation were successors-in-interest to competing interests in title to certain lands in Laramie County, Wyoming. Family Tree’s chain of title originated from a tax sale in 1912,²⁴ while Anadarko’s chain of title originated with Union Pacific Railroad Company,²⁵ the party whose failure to pay a 1911 tax assessment on the interest resulted in the 1912 tax sale of the lands.

A subsequent quiet title action decided in favor of Family Tree caused Anadarko to appeal the decision, and Anadarko presented one issue on appeal: whether the district court erroneously quieted title to Family Tree based on a tax sale that was void *ab initio*.²⁶

The Supreme Court of Wyoming framed the issue as whether the tax sale and resulting tax deed were void *ab initio* or merely voidable.²⁷ Citing precedent, the court stated that if void *ab initio*, the deed is ineffective to

19. *Id.* at ¶ 37, 388 P.3d at 532.

20. *Id.* at ¶ 38, 388 P.3d at 532.

21. *Id.* at ¶ 35, 388 P.3d at 531-32.

22. *Id.* at ¶ 37, 388 P.3d at 532.

23. *Id.* at ¶ 39, 388 P.3d at 532.

24. *Anadarko Land Corp. v. Family Tree Corp.*, 2017 WY 24, ¶ 8, 389 P.3d 1218, 1220 (Wyo. 2017).

25. *Id.* at ¶ 7, 389 P.3d at 1220.

26. *Id.* at ¶ 2, 389 P.3d at 1219.

27. *Id.* at ¶ 16, 389 P.3d at 1223.

transfer title and ineffective to set a statute of limitations running, and therefore Anadarko could not be time barred from bringing a challenge.²⁸ However, if the tax sale and resulting tax deed were merely voidable, the deed did transfer title and also cause the statute of limitations to start running (in this matter, a six-year statute of limitations was applicable).²⁹

Anadarko argued that any constitutional defect in a tax assessment renders the resulting tax deed void, while Family Tree argued that only a tax deed with a defect on the face of the deed would render that deed void.³⁰ The court disagreed with both parties' arguments.

Taking from precedent, the court stated that the only type of defect in a tax assessment that can render the subsequent tax sale and related tax deed void is a jurisdictional defect.³¹ The court went to state that it would only find a jurisdictional defect in a tax assessment if there was a total lack of jurisdiction, meaning "there was no arguable basis for jurisdiction and the tax assessment was a clear usurpation of power."³²

The court examined the specific tax assessment in question, and while the court found the tax assessment erroneous in some respects (the error was "in the when and how of the assessment"), there was not a total want of jurisdiction.³³

The court therefore concluded that the resulting tax deed was voidable, not void, and the applicable statute of limitations did apply to Anadarko's challenge to the validity of the tax deed. Since Anadarko did not challenge the validity within the six-year statute of limitations, its challenge was time barred.³⁴

C. Applicability of Contract's Indemnification Provision to First Party Claim by Contract Party against Contract Counterparty: Kaiser-Francis Oil Company v. Noble Casing Inc.

Kaiser-Francis Oil Company operated a well in Laramie County, Wyoming and engaged Noble Casing Inc., as well as another contractor, to perform hydraulic fracturing operations on the well.³⁵ Kaiser-Francis and

28. *Id.*

29. *Id.* at ¶ 18, 389 P.3d at 1224.

30. *Id.* at ¶ 19, 389 P.3d at 1224.

31. *Id.* at ¶ 30, 389 P.3d at 1227.

32. *Id.* at ¶ 37, 389 P.3d at 1229.

33. *Id.* at ¶ 43, 389 P.3d at 1230.

34. *Id.* at ¶ 47, 389 P.3d at 1231.

35. *Kaiser-Francis Oil Co. v. Noble Casing Inc.*, No. 2:16-CV-00309, 2017 WL 1947506, *1 (D. Wyo. May 10, 2017).

Noble Casing entered into a master service agreement (“MSA”),³⁶ which included provisions for indemnification, assumption of liability, and release of liability between the contract parties. During the hydraulic fracturing operations, a leak was detected in the casing which required the fracturing operations to cease, and Kaiser-Francis later sued Noble Casing and the other contractor for damages.³⁷ Noble Casing asserted a counterclaim against Kaiser-Francis, alleging that the MSA provided for indemnification of Noble Casing by Kaiser-Francis for liabilities arising from Noble Casing’s own actions.³⁸

Noble Casing argued that certain MSA provisions providing that Kaiser-Francis assumed all liability for damage to its property, and releasing Noble Casing from damages to Kaiser-Francis’s property, were distinct from the indemnification language of the contract.³⁹ Noble Casing argued that since such provisions were distinct, they could operate separately from the indemnification language but in effect offer indemnification to Noble Casing for its own negligence.⁴⁰ The court disagreed with Noble Casing’s arguments.

The court noted that Wyoming’s Oilfield Anti-Indemnity Act applied to the case at hand and noted that the Act prohibits agreements that relieve an indemnitee from liability for its own negligence.⁴¹ The court then noted that the term *indemnity* encompasses the terms assumption of liability and release, so that such terms cannot avoid application of the Wyoming Oilfield Anti-Indemnity Act.⁴²

The court also noted that to require Kaiser-Francis to indemnify Noble Casing for Kaiser-Francis’s own claim against Noble Casing would render portions of the MSA meaningless, which is counter to established principles of contract law.⁴³

The court held that the indemnification Noble Casing was seeking was void and unenforceable pursuant to the Wyoming Oilfield Anti-Indemnity Act, and therefore the court dismissed Noble Casing’s counterclaim against

36. *Id.*

37. *Id.* at *1-2.

38. *Id.* at *1.

39. *Id.* at *3.

40. *Id.*

41. *Id.*

42. *Id.*

43. *Id.*

Kaiser-Francis and denied Noble Casing's cross-motion for summary judgment.⁴⁴

44. *Id.* at *5.