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WYOMING

Walter F. Eggers, III, and Deanna (Sami) Falzone[†]

I. BACKGROUND

Wyoming currently ranks eighth nationally in both crude oil and natural gas production. In 2018, Wyoming produced 87.9 million barrels of crude oil, up from 75.7 million barrels in 2017. Wyoming produced 1.81 billion MCF (thousand cubic feet) of natural gas, increasing from 1.80 billion MCF produced in 2017.¹

II. LEGISLATION

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1. *Wyoming's Oil & Gas Facts*, WYO. ST. GEOLOGICAL SURV. (2018), <https://www.wsgs.wyo.gov/energy/oil-gas-facts> [<https://perma.cc/MB6Y-7C3V>] (last visited Oct. 6, 2019).

Wyoming's 2019 General Legislative Session convened on January 8, 2019 and adjourned on February 28, 2019.² Wyoming legislators introduced several bills related to the oil and gas industry.

A. *Ad Valorem Tax Exemption—Energy Production Inventory Exemption*

The legislature granted an exemption for equipment temporarily stored in Wyoming prior to its first installation as energy production equipment. The exemption only applies if the party who purchased the equipment paid Wyoming sales or use tax for the equipment at the county's tax rate where the equipment is being stored. "Energy production equipment" is defined as:

any specialized equipment designed specifically for use in the production of energy from natural gas, coal, oil, wind, solar, hydro or nuclear sources but shall not include any equipment used to store or transport energy products, mobile energy product equipment, standard building materials, construction equipment or other equipment or materials that will not be directly used in the production of energy.³

B. *Ad Valorem/Gross Products Taxes - Mineral Production Tax Lien Priority*

The legislature strengthened Wyoming's tax lien laws on mineral production for ad valorem/gross products tax purposes. Wyoming counties collect the ad valorem/gross products tax. The revisions to the lien statute require that for oil, gas, and other mineral production on or after January 1, 2021, the county's lien is "perpetual" and "attaches and is perfected immediately upon production of the

2. *Prior Session Calendars*, WYO. LEGIS. SERVS. OFF., <https://www.wyoleg.gov/Session/2019/Archive> [<https://perma.cc/Z729-Z3JG>] (last visited Oct. 6, 2019).

3. This bill was vetoed by the Governor of Wyoming, and therefore there is no Session Law for the bill. It can be found at *HB0120 – Energy Production Inventory Exemption*, WYO. LEGIS. SERVS. OFF., <https://www.wyoleg.gov/Legislation/2019/HB0120> [<https://perma.cc/3SAV-5FNN>] (last visited Oct. 13, 2019).

mineral subject to all prior existing liens.” Prior to this amendment to the lien statute, a county was required to file, attach, and perfect the lien through a filing process.⁴

C. Wyoming Energy Authority

The legislature created the Wyoming Energy Authority by merging the existing Wyoming Infrastructure Authority (“WIA”) and the Wyoming Pipeline Authority (“WPA”). The WIA worked to expand Wyoming’s economy through transmission projects and improvements. The WPA promoted pipeline systems to encourage production, transportation, distribution, and the delivery of oil and gas. The new Wyoming Energy Authority will have many of the same goals and duties as the WIA and WPA.⁵ The legislation requires the executive director of the WIA to prepare a reorganization plan and to submit the plan to the legislature’s Joint Minerals, Business and Economic Development Interim Committee by May 14, 2019.⁶

III. ADMINISTRATIVE RULEMAKING

As of the date of publication of this chapter, the WOGCC has proposed revisions to its rules governing Applications for Permits to Drill wells (“APDs”). The proposed rule would substantially change the process for protesting APDs by listing criteria that must be proven in support of a protest and in a defense of an APD. The intent of the proposed rule is to reduce the volume of APD protests and contested cases.⁷

IV. CASE LAW

4. Act of July 1, 2019, ch. 187, sec. 1, § 39-13-108(d)(vi), 2019 Wyo. Sess. Laws 531, 531–33 (to be codified at WYO. STAT. ANN. § 39-13-108(d)(vi)).

5. Act of Feb. 15, 2019, ch. 34, 2019 Wyo. Sess. Laws 107, 107–123 (to be codified at WYO. STAT. ANN. §§ 37-5-501 through 37-5-509, 37-5-601 through 37-5-607).

6. *Id.* at § 1(d).

7. . See Mark Watson, *Proposed APD Rule Explanation*, WYO. OIL & GAS CONSERVATION COMM’N (July 30, 2019), <https://docs.google.com/a/wyo.gov/viewer?a=v&pid=sites&srcid=d3lvLmdvdxvaWwtYW5kLWdhc3xneDo2NDFiMGU4N2Y0YWE3MzAx> [https://perma.cc/5FX7-CT5A].

A. *BTU Western Resources, Inc. v. Berenergy Corporation*

As reported in 2018, in a dispute over the priority of rights between overlapping coal and oil and gas developers in Wyoming's Powder River Basin, the Wyoming Supreme Court determined the United States Bureau of Land Management ("BLM") was a necessary party to proceedings addressing competing federal leases.⁸ The Supreme Court remanded the case to the district court to determine whether BLM could be joined as a party. If BLM could not be joined, the Court required dismissal of the case.⁹

Following the Court's ruling in *Berenergy I*, the oil and gas lessee filed a Petition for Rehearing with the Supreme Court, alleging a private oil and gas lease was not addressed in the opinion. The oil and gas lessee alleged the private lease overlapped the federal coal leases held by the coal lessee.¹⁰ The Supreme Court denied the Petition for Rehearing, finding the private lease was not part of the appeal. The Court allowed the district court to address the private lease if the district court found the issue relevant.¹¹

On remand, the district court held it did not have jurisdiction "as to the lands underlying the [private] lease absent the presence of the BLM."¹² However, the district court found under law of the case principles that the "accommodation doctrine" applied to direct the order and operation of development, even as to the development of the private lease.¹³ The coal lessee appealed the district court's ruling on remand. Specifically, the coal lessee contended the district court could have resolved the private lease issue without the BLM's participation.¹⁴

Ultimately, the Supreme Court affirmed in part and reversed in part the district court's decision and held: (1) BLM was not a necessary or indispensable party to the private lease dispute; (2) the district court may fully resolve that dispute without the participation

8. *Berenergy Corp. v. BTU W. Res., Inc.*, 2018 WY 2, ¶ 42, 408 P.3d 396, 404 (Wyo. 2018) ("*Berenergy I*").

9. *Id.* ¶ 43, 408 P.3d at 405.

10. *BTU W. Res., Inc. v. Berenergy Corp.*, 2019 WY 57, ¶¶ 2, 6, 442 P.3d 50, 52-53 (Wyo. 2019) ("*Berenergy II*").

11. *Id.* at ¶ 2, 442 P.3d at 52.

12. *Id.* at ¶¶ 3 & 10, 442 P.3d at 52-53.

13. *Id.* at ¶ 10, 442 P.3d at 53-54.

14. *Id.* at ¶ 11, 442 P.3d at 54.

of BLM; and (3) the accommodation doctrine applied to the private lease dispute.¹⁵

B. Finley Resources, Inc. v. EP Energy E&P Company, L.P.

Two parties entered into a Purchase and Sale Agreement (“PSA”) in December 2007 for the sale of oil and gas leases in the southern portion of Wyoming’s Powder River Basin.¹⁶ The plaintiff/purchaser alleged the PSA required the defendant/seller to assign all of its interests under the leases to the plaintiff, without limitations as to the depths and formations addressed by the leases. The plaintiff made several requests for the assignments, but eventually the defendant responded that it retained certain deep rights under the leases.¹⁷

The plaintiff filed a lawsuit in district court seeking and alleging: (1) quiet title; (2) declaratory judgment; (3) breach of contract by the defendant; (4) breach of implied covenant of good faith and fair dealing by the defendant; and (5) adverse possession. The defendant filed a motion to dismiss based on the PSA’s choice-of-law and forum-selection clauses. Following the “Governing Law” provision of the PSA, the district court applied Texas law and granted the defendant’s motion to dismiss on the grounds that the claims fell under the PSA’s Texas forum-selection clause.¹⁸

The plaintiff appealed the district court’s decision to the Wyoming Supreme Court. The Supreme Court affirmed the district court’s dismissal. The Court ruled that all of the plaintiff’s claims arose from the PSA, and the forum-selection clause required suit in Texas.¹⁹

C. In the Matter of the Appeal of QEP Energy Resources, Inc.

A taxpayer appealed final decisions of the Wyoming Departments of Revenue and Audit (“Departments”) to the Wyoming

15. *Id.* at ¶ 36, 442 P.3d at 60.

16. *Finley Res., Inc. v. EP Energy E&P Co., L.P.*, 2019 WY 65, ¶ 3, 443 P.3d 838, 841 (Wyo. 2019).

17. *Id.* at ¶¶ 3-4, 443 P.3d at 841.

18. *Id.* at ¶¶ 4, 6, 443 P.3d at 841-842.

19. *Id.* at ¶¶ 25-26, 445 P.3d at 847.

State Board of Equalization (“State Board”) following a sales and use tax audit for 2015–2017. The Departments had determined the taxpayer was liable for excise taxes on services and materials used at oil and gas well sites. The Department of Revenue also imposed penalties in addition to the excise taxes assessed for the audited tax years.²⁰

On appeal to the State Board, the taxpayer contended it was not subject to excise taxes on services performed by vendor/service companies at well sites. Specifically, the taxpayer argued: (1) the Departments improperly attempted to impose a use tax on the services and materials; (2) the current sales tax imposition statute imposed the tax on the vendor/service provider, as opposed to the operator; and (3) penalties imposed by the Department of Revenue should be invalidated.²¹

The State Board agreed with the taxpayer that the use tax did not apply but determined the Departments were authorized to impose the sales tax against the operator under Wyoming’s “Special K” sales tax on services and materials used at well sites.²² The State Board also affirmed the penalties imposed by the Department of Revenue.²³

20. Findings of Fact, Conclusions of Law, Decision, and Order at ¶ 3, In the Matter of the Appeal of QEP Energy Resources, Inc. Wyo. State Bd. of Equalization (No. 2018-47), http://taxappeals.state.wy.us/images/docket_no_201847.PDF [<https://perma.cc/SL77-PS8Z>].

21. *Id.*

22. *Id.* at ¶¶ 9–11, (quoting WYO. STAT. ANN. § 39-15-103(a)(i)(K) (2017)).

23. *Id.* at ¶¶ 24–26.