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ONE J

Oil and Gas, Natural Resources, and Energy Journal

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NEW MEXICO

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I. Introduction

As the oil and gas industry recovered from the effects of the COVID-19 pandemic, New Mexico's oil and gas production surged. For the first time in nine years, New Mexico's oil production surpassed that of North Dakota, making it the second ranked state in terms of daily production, behind only Texas. Meanwhile, state legislators and regulators remained focused on protecting the environment and transitioning from carbon-based energy to renewable energy resources.

II. Legislative and Regulatory Developments

A. State Legislative Developments

Creation of the Sustainable Economy Task Force

Senate Bill 112 creates the Sustainable Economy Task Force and the Sustainable Economy Advisory Council; both are administratively attached to the economic development department.[1] The task force must "develop a strategic plan in fiscal year 2022 to transition the state economy away from reliance on natural resource extraction,"[2] which accounts for nearly one-third of the state's budget.[3] The advisory council advises the task force on developing and achieving its goals.[4] The strategic plan, which must be developed and updated annually by the sustainable economy task force, which shall:

> (1) provide policies to promote:
>
> > (a) adding new jobs statewide to replace jobs that rely on the extraction or development of natural resources;
> >
> > (b) diversifying the state's tax base to replace the revenue generated from the natural resource extraction sector, including policies promoting (1) economic development, (2) state investments, (3) infrastructure development, and

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1. S.B. 112, 55th Leg., 1st Sess. (N.M. 2021).
2. *Id.*
3. Daniel J. Chacón, *New Mexico projects $350 million increase in state revenue*, SANTA FE NEW MEXICAN, (June 10, 2021), https://www.santafenewmexican.com/news/local_news/new-mexico-projects-350-million-increase-in-state-revenue/article_e65682d8-c938-11eb-a4e9-c34fb0127e3f.html.
4. S.B. 112, 55th Leg., 1st Sess. (N.M. 2021).

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(4) determining alternative funding sources for education and hospitals; and

(c) long-term economic growth;

(2) address recommendations provided in current and future economic studies and development efforts, including those from state agencies, institutions of high learning, national laboratories, and business incubators;

(3) be developed in consultation with the communities affected by the plan, including Indian nations, tribes and pueblos located wholly or partly in New Mexico, local governments, and local communities; and

(4) include a plan to implement the recommendations of the study titled the "New Mexico Clean Energy Workforce Development Study." This study was commissioned by the workforce solutions department (published in June 2020). The goals are to expand the development of jobs with family-sustaining wages and benefits, include opportunities for advancement and safe working conditions in industries engaged in sustainable economic development of New Mexico workers, and prioritize disproportionately affected communities.[5]

Amending Stringency of Environmental Regulations

Before the passing of Senate Bill 8, state law precluded New Mexico from enacting environmental requirements that are "more stringent" than federal laws.[6] After Governor Michelle Lujan Grisham signed into law Senate Bill 8, the New Mexico Air Quality Control Act and the New Mexico Hazardous Waste Act were amended to allow for the promulgation of rules "at least as stringent as that required under federal law."[7]

Enaction of the Environmental Database Act

The purpose of House Bill 51 is to create a central database that pooled into one location information already available online from seven New Mexico agencies: the Energy, Minerals and Natural Resources Department, the Environment Department, the State Land Office, the Department of Health, the Department of Game and Fish, the Public Regulation

5. *Id.*
6. S.B. 8, 55th Leg., 1st Sess. (N.M. 2021).
7. *Id.*

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Commission and the Historic Preservation Division within the Department of Cultural Affairs.[8] The Environmental Database Act includes the type of data that each agency would provide for the database and will be available for public use no later than July 1, 2022.[9]

Notable Legislation Not Enacted

The legislature failed to pass two energy-related bills. Senate Bill 149 would have placed a four-year moratorium on new permits for hydraulic fracturing.[10] The bill was narrowly passed by the Senate Conservation Committee by a 5-4 vote, but the bill was not passed.[11] Senator Antoinette Sedillo Lopez, sponsored the bill, and had introduced similar bills that died in committee during the legislative sessions in 2019 and 2020.[12]

Senator Antoinette Sedillo Lopez also introduced Senate Bill 86, which would amend the New Mexico Produced Water Act to prohibit certain uses of fresh water in oil and gas operations, and provide penalties for the spill or release of oil, gas or produced water.[13] This bill also stalled in the Senate Judiciary Committee and was not passed.[14]

B. State Regulatory Developments

Gas Capture Rule

In March, the Oil Conservation Commission voted unanimously to adopt natural gas waste reduction rules, which require oil and gas operators "to capture 98 percent of their natural gas waste by the end of 2026."[15] The Energy, Minerals and Natural Resources Department worked on these rules over the past two years, which are described as "one of the strongest gas capture requirements in the nation."[16] According to the Department, the "unique" approach "requires extensive reporting of natural gas loss from oil and gas production and midstream operations, prohibits routine venting and

8. H.B. 51, 55th Leg., 1st Sess. (N.M. 2021).
9. *Id.*
10. S.B. 149, 55th Leg., 1st Sess. (N.M. 2021).
11. *Id.*, and see *Bill History*, https://legiscan.com/NM/bill/SB149/2021.
12. *See* S.B. 459, 54th Leg., 1st Sess. (N.M. 2019); S.B. 104, 54th Leg., 2d Sess. (N.M. 2020).
13. S.B. 86, 55th Leg., 1st Sess. (N.M. 2021).
14. *Id.*, and see *Bill History*, https://legiscan.com/NM/bill/SB86/2021.
15. N.M. Energy, Minerals and Nat. Res. Dep't, *Oil Conservation Commission Approves EMNRD's Final Natural Gas Waste Reduction Rules* (March 25, 2021), https://www.emnrd.nm.gov/officeofsecretary/wp-content/uploads/sites/2/OCDMethaneRuleReleaseMarch252021.pdf (last visited Aug. 31, 2021).
16. *Id.*

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flaring, requires attainment of an increasing gas capture target, and allows the state to deny drilling permits if gas capture targets are not achieved, while encouraging innovation in the industry, a key issue brought up during public outreach."[17]

III. Judicial Developments

A. Federal Court Cases

Operator Required to Compensate ONRR for Carbon Dioxide not Sold at Arm's-Length

Plaintiff Oxy USA, Inc., appealed a decision of the Office of Natural Resources Revenue ("ONRR") that ordered Plaintiff to pay an additional $1,820,652.66 in royalty payments on federal gas leases in Northern New Mexico.[18] At issue was the method used to value carbon dioxide that was not sold in arm's-length transactions, but used in its oil production in the Permian basin.[19] Plaintiff paid royalties on the Unit Average that the unit operator provided to the lessees monthly, using a "netback approach," to deduct transportation costs.[20] The ONRR ruled that the Unit Average was not viable because of the lack of arm's-length sales with significant volume in the Unit, and that the formula developed in the Smithson arbitration, which considers oil prices in valuing carbon dioxide, was appropriate to apply.[21] Plaintiff argued that the decision: (i) failed to apply applicable regulations; (ii) imposed a different valuation method without showing that the prior valuation method was improper; (iii) used new valuation methods that are "inapposite, unprincipled, and disparate"; (iv) failed to justify rejection of deductions from royalties for transportation costs; and (v) did not adhere to federal auditing standards.[22]

The District Court upheld the decision of the ONRR. First, the Court held that the ONRR's decision valuing Plaintiff's non-arm's length transactions was reasonable, finding that the Director extensively analyzed

17. *Id.*
18. *Oxy USA, Inc. v. U.S. Dept. of the Interior*, 508 F. Supp. 3d 1033, at 1036 (D.N.M. 2020).
19. *Id.*
20. *Id*. at 1038.
21. *Id*.
22. *Id.* at 1036-1037.

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the relevant factors in a thirty-eight-page decision.[23] Next, the Court found that the ONRR properly considered the terms of the lease to the extent the lease terms conflicted with the applicable federal regulations, and that under the lease, "the Secretary [of the Interior] retained the right to establish a minimum value for federal CO_2 production in the unit."[24] The Court also found that the ONRR established a reasonable minimum value for the royalties by considering these factors identified in the lease: "(1) the highest price paid for a part or a majority of production of like-quality in the same field, (2) the price Hess received for the carbon dioxide gas, (3) posted prices, and (4) other relevant matters."[25]

The Court then found that the Defendants appropriately considered and rejected the Unit Average valuation method. Plaintiff argued that the Director's decision failed to explain why the Unit Average was improper, but the Court rejected this argument, finding that the "Director's decision extensively explained why the Unit Average was not satisfactory and why it was using a new valuation method."[26] The Director explained that using of carbon dioxide in non-arm's length transactions heavily skewed the Unit Average. The Court also rejected Plaintiff's argument that Defendants erred by deducting transportation costs. In doing so, the Court found that "the Director's Decision and Government's response cogently explain that the costs are not deductible because they are necessary to place the carbon dioxide in marketable condition."[27] Plaintiff was precluded from deducting transportation costs for compression and dehydration because those activities placed Plaintiff's carbon dioxide in the condition necessary to enter the enhanced oil recovery pipelines.[28]

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23. *Id.* at 1041 ("the Director extensively analyzed the relevant factors, considered the data and evidence relevant to Plaintiff's federal leases, considered the relevant market, and explained why prior valuation methods were inappropriate").

24. *Id.* at 1041.

25. *Id.* at 1042 (other relevant matters included considering various purchase contracts, the Unit Average, relevant settlement agreements, and arbitration decisions).

26. *Id.* at 1044.

27. *Id.* at 1046 (noting that while generally, "ONRR allows a lessee that transports its natural gas off lease to deduct the 'reasonable, actual costs' of transporting the gas from the lease or unit to a point off the lease or unit, subject to certain limitations. . . . ONRR regulations also provide that a reasonable minimum value will not include any costs that a lessee must incur to place gas in marketable condition) (citing, 30 C.F.R. § 206.156(a), 30 C.F.R. § 206.152(i), and *Mesa Operating Ltd. Partnership v. Dept. of the Interior*, 931 F.2d 318 (5th Cir. 1991)).

28. *Id.* at 1047.

Bankruptcy Court Holds that Deed to Correct Legal Description did not Alter Mineral Ownership Despite "Surface Estate Only" Language

In 1996, Manuela Franco and Epolito Franco ("the Francos") conveyed 122.48 acres in Lea County their son, Hipolito, making no exception or reservation of the mineral rights (the "1996 Deed").[29] Epolito died in 1997, and a dispute over the ownership of the minerals arose among his heirs. Manuela, and the Franco's daughter, Celia Houghland, stated in a deposition that "the Francos had an unwritten agreement with Hipolito that the 1996 Deed did not convey any mineral rights in and under the Property . . . or else that Hipolito would reconvey the Disputed Minerals to the Francos at some point in the future."[30] Hipolito's wife, Carla, denied that Hipolito ever agreed to convey the minerals to the Francos, and asserted that Epolito's estate was the owner of the minerals.[31]

In 1998, Hipolito and Carla were approved for a loan, secured by a mortgage on the surface of the property. The bank ordered a title policy and survey to insure the mortgage, and the survey discovered an error in one of the calls in the 1996 Deed.[32] The legal description in the title commitment contained the corrected legal description and prefaced the metes and bounds description with the words, "The Surface Estate Only Of", because the mortgage encumbered the surface only.[33] The title commitment also required a correction deed of the 1996 Deed, presumably to correct the legal description. On August 7, 1998, Manuela signed a corrective deed to Hipolito (the "1998 Deed"), which stated, "This deed given to correct legal description on [the 1996 deed.]" The legal description in the 1998 Deed was identical to the description in the title commitment, including the "surface estate only language."[34]

Houghland argued that the main purpose of the 1998 Deed was to make clear that Hipolito did not own, and had never owned the minerals. Conversely, Carla argued that the "surface estate only" language appeared in the 1998 Deed because the title company used same legal description in the title commitment, deed, and mortgage.[35]The court found Carla's argument persuasive because Hipolito did not sign the 1998 Deed, and

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29. *In re Franco*, 2020 WL 7330064, at *1 (Bankr. N.M. 2020).
30. *Id.*
31. *Id.*
32. *Id.* at *1-2.
33. *Id.* at *2.
34. *Id.*
35. *Id.*

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because the "surface estate only" language in the 1998 Deed was a mistake caused by copying the title commitment legal description. Relying on well-established property law principles, the court first held that the 1996 Deed conveyed the minerals to Hipolito.[36] Next, the court held that the 1998 Deed did not alter the original conveyance in the 1996, stating, "a grantor cannot 'use a correction deed to unilaterally terminate or revoke an interest conveyed by the original deed.'"[37] The court also concluded that Hipolito's knowledge of Manuela's adverse claim did not divest him of title to the minerals.[38] Finally, the court rejected Houghland's estoppel argument because "Hipolito cannot lose his record title to the Disputed Minerals by failing to respond to legally ineffective claims."[39] Nor did Houghland meet the elements of estoppel because Manuela knew of the 1996 Deed, which she signed and later corrected.[40]

Operator Settles Class Action for Underpayment of Royalties

In September 2013, Plaintiffs filed a class action suit against Defendant Energen Resources ("Energen") related to the underpayment of oil and gas royalties.[41] During the litigation two of the four plaintiff trusts were dismissed, along with several claims. These five claims survived:

> (1) The Tatum Living Trust's claim of underpaid royalties on gas used as fuel (the "fuel gas claim"); (2) The Tatum Living Trust's claim of improper deduction from royalties of the Trust's proportionate share of tax under the New Mexico Natural Gas Processors' Tax (the "NGPT claim"); (3) The Tatum Living Trust's fuel gas claim of failure to pay royalties on drip condensate (the "drip condensate claim"); (4) The Neely-Robertson Trust's claim for additional royalties on natural gas used as fuel (the "fuel gas claim"); and (5) The Neely-Robertson

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36. *Id*. at *4, citing, *Sachs v. Bd. of Trustees of Town of Cebolleta Land Grant*, 557 P.2d 209, 218 (N.M. 1976) ("unless minerals are specifically excluded, they pass with the estate"); and *Eastin v. Dial*, 288 S.W.3d 491, 500 (Tex. App. 2009) ("Reservations of minerals are effective only if made in clear language.").

37. *Id.* at *5, quoting, 26A C.J.S. Deeds § 40.

38. *Id.* at *6, citing, *Mosley v. Magnolia Petroleum Co*., 114 P.2d 740, 752 (N.M. 1941) ("The owner of property is justified in relying upon his title; and he is under no obligation to proceed against all persons who may assert a hostile title[.]").

39. *Id.*, citing, *Dye v. Crary*, 85 P. 1038, 1040-41 (N.M. 1906) (an owner does not lose title through equitable estoppel by failing to attack a void and invalid sale of his property).

40. *Id.*

41. *Anderson Living Trust v. Energen Res.*, 2021 WL 1686491, at *1 (D.N.M. 2021).

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> Trust's claim for statutory interest on payments held in suspense under the New Mexico Oil and Gas Proceeds Payments Act (the "NM Oil and Gas Proceeds Payment Act claim").[42]

On December 5, 2019, the class for the Tatum Living Trust's Colorado fuel gas claim was certified, and on April 5, 2021, the Tatum Living Trust and Energen jointly filed a Motion under Fed. R. Civ. P. 23(e), requesting that the Court approve their proposed settlement for $5,600,000.00.[43] The Court noted that the other four claims settled, but the classes for those claims were not certified, and therefore not subject to Fed. R. Civ. P. 23. The Court then approved the proposed settlement for the fuel gas claim, finding it fair, reasonable, and adequate under Fed. R. Civ. P. 23(e).[44]

B. State Court Cases

Appellate Court Holds that Probate Courts have the Power to Determine Real Property Ownership

Here, the ownership of minerals in Eddy County, which originally derived from the joint will and testament of Herbert and Marie Welch. The Welches claimed title based on devises to their predecessors in interest, Joe H. Welch (Herbert's brother) and Grace Welch Phelan (Herbert's sister).[45] Ralph S. Griffin ("Griffin"), Marie's Nephew, claimed title to the minerals through a 2007 heirship proceeding, and Premier Oil & Gas, Inc. ("Premier") claimed ownership through a series of transactions that resulted in Premier's ultimate ownership of the Minerals after they were sold by Griffin.[46]

On February 6, 1984, Herbert and Marie Welch executed a joint last will and testament, in which Herbert devised to Marie "all of [his] property of every kind, both real and personal, wherever the same be found or located."[47] However, the will also provided "[t]hat the survivor shall divide our estate, which is community property, in the following manner, to-wit; the community interest of HERBERT WELCH shall be equally divided

42. *Id*.
43. *Id.*
44. *Id*. at *2-3.
45. *Last Will and Testament of Welch v. Welch*, 2020 WL 6111010, at *1 (N.M. Ct. App. 2020) (Collectively, "The Welches" consists of Barbara Grace Parker, the granddaughter of Grace Welch Phelan, and James Wesley Welch and Joe Michael Welch, the sons of Joe H. Welch).
46. *Id.*
47. *Id.*

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between Joe H. Welch, his brother, and Grace Welch Phelan, his sister[.]"[48] After the death of Herbert, the probate court entered a final decree, finding that Marie was the sole beneficiary of Herbert's estate, and ordered all of Herbert's property distributed to Marie.[49]

Then in 1980, Marie executed a Will which contained theses relevant provisions:

> ITEM 6. If owned by me at my death, I give, devise and bequeath my undivided one-fourth (1/4) interest in mineral rights that I received from my deceased husband to Joe H. Welch of Carlsbad, New Mexico; however, if he should predecease me then I hereby give, devise and bequeath that share to the issue of his body per stirpes.
>
> ITEM 7. If owned by me at my death, I give, devise and bequeath all mineral rights owned by me in my own name on properties in Montana and New Mexico in equal shares to Ralph S. Griffin of Carlsbad, New Mexico and Samuel G. Alderman of Jacksonville, Florida.[50]

Marie died on December 27, 1988, and no one attempted to probate her Will within three years of her death. On January 16, 2007, Griffin petitioned for determination of Marie's heirship in New Mexico, and on March 30, 2007, the district court found that Marie died intestate, and that Griffin was her sole heir.[51] Later, in 2012, Alderman petitioned for probate of the 1980 Will, seeking to obtain title to a portion of the minerals. The district court admitted the 1980 Will to probate, and Griffin appealed, arguing that the probate of the 1980 Will was "barred by the statute of limitations, res judicata, collateral estoppel, and laches."[52] The court of appeals then remanded the case to the district court to "analyze the applicability of NMSA 1978, Sections 45-3-108 (2011) and 45-3-412 (1995) to Alderman's attempt to probate the 1980 Will."[53] The district court ruled for Griffin and Premier, finding that "Griffin was the sole heir of Marie, that Marie died intestate, that Premier is a bona fide purchaser of the Minerals, and that the Welches claims are barred by the provisions of the

48. *Id.*
49. *Id.* at *2.
50. *Id.*
51. *Id.* at *3.
52. *Id.*
53. *Id.*

probate code, by statutes of limitation, and by various equitable doctrines."[54]

On appeal, the Welches first argued that the 1974 Will vested their predecessors in title with future interest in the minerals. The court disagreed because there was a binding final adjudication of rights under the 1974 Will, and the final decree awarded all of Herbert's estate to Marie.[55] In their argument, the Welches contended that the probate court made no determination as to heirship or title; or, that the probate court had no jurisdiction over issues of title. The court disagreed, holding that the probate code in 1975, and the constitution of New Mexico, "permitted probate courts to determine title in proceedings involving administration of estates, whether by heirship or by devise through a will."[56]

The Welches also argued that the 2007 heirship proceeding was void for lack of jurisdiction because Griffin's published notice was defective, and they never received notice.[57] The court noted that the probate code "require[s] parties to exercise reasonable diligence to ascertain the identities and addresses of interested persons and serve them with notice."[58] The court first held that the Welches were "interested persons entitled to notice" due to the devises in the 1980 Will in favor of the Welches' predecessor in interest.[59] Yet, the fact that the Welches were interested persons did not necessarily entitle them to notice beyond notice by publication because, "Section 45-1-401(A)(3) specifically authorizes notice by publication for any persons whose identity is not known and cannot be ascertained with reasonable diligence."[60] The court then held that Griffin's notice by publication was statutorily defective because he served the Welches by publication without first exercising reasonable diligence.[61] Because Griffin failed to exercise reasonable diligence, the judgment was void for lack of

54. *Id.*

55. *Id.* at *4.

56. *Id,* citing NMSA 1953 § 31-12-12 (1925), and N.M. Const. Art. VI, § 23 ("[T]he probate courts of New Mexico . . . shall also have jurisdiction to determine heirship with respect to real property in all proceedings for the administration of decedents' estates").

57. *Id.*at *6.

58. *Id.,* citing NMSA 1978 § 45-3-403(B) (2011).

59. *Id.* at *7.

60. *Id.*

61. *Id.* at *8, citing § 45-3-403(B) (providing that notice may be given by publication to all such "unknown persons and to all known persons whose addresses are unknown who have any interest in the matters being litigated" and Section 45-1-401 "if the address or identity of any person is not known and cannot be ascertained with reasonable diligence[.]").

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jurisdiction, and therefore, the 2007 heirship proceeding was subject to collateral attack, and was deemed void as to the Welches.[62]

Premier and Griffin argued that the three-year statute of limitations barred the 1980 Will from probate, but the Welches countered by arguing an exception to the limitations period applied.[63] The court ruled that the exception applied because if the Will had not been probated within the three years, then the right to confirm title to property devised in a Will existed beyond the three-year period.[64] For this reason, the court ruled that the 2007 heirship proceeding was void and permitted the Welches to probate the 1980 Will. However, the court also held that Premier was a bona fide purchaser because it "was unaware of the existence of any of Marie's wills and, given that no person had ever contested the 2007 Heirship Proceeding, was justified in relying upon the finality of the decree entered therein"; and therefore, Premier had a right to retain possession of the minerals under New Mexico law.[65]

Statutory Right of Redemption Held to be "Property" within the Meaning of the Uniform Probate Code

Prieur J. Leary, Jr. was the founder and sole member of Energy Royalties, LLC. After Mr. Leary died in Louisiana in 2013, Cradon Energy, LP, ("Cradon") obtained a default judgment against Energy Royalties in the state of Kansas, and domesticated its judgment in New Mexico to foreclose its judgment on oil and gas leases in Lea County.[66] Cradon was the winning bidder at the foreclosure sale, and the leases were conveyed by special master's deed, subject to the nine-month statutory redemption period.[67] During the redemption period, a Louisiana court granted the administratrix of Mr. Leary's Estate the authority to sell the Estate's interests in the New Mexico leases, and the administratrix later assigned the leases to TAL Permian.[68]

After obtaining the assignments from Leary's Estate, TAL Permian petitioned for redemption of the property in the New Mexico foreclosure

62. *Id.* at *10.

63. *Id.*

64. *Id.* at *11.

65. *Id*. at 13.

66. *Cradon Energy, LO v. Energy Royalties, LLC,* 2020 WL 6146459, at *1 (N.M. Ct. App. 2020).

67. *Id.*, citing NMSA 1978, § 39-5-18(A), (E) (2007) ("providing that the running of the redemption period starts on the date the district court enters the order confirming the special master's sale").

68. *Id.*

case, and Cradon moved to dismiss, arguing that "TAL Permian had shown no 'basis for its right other than indirectly, through a non-domesticated probate order, [purporting] to exercise jurisdiction over real property in the State of New Mexico.'"[69] Cradon based its argument on case law stating that "New Mexico requires filing of ancillary probate proceedings to validate conveyances of any interest in real property located in New Mexico by a foreign personal representative."[70] The district court granted Cradon's motion to dismiss, holding that the administratrix had the duty to initiate ancillary probate proceeding in New Mexico giving her authority to assign the redemption rights.[71]

On appeal, TAL Permian argued that the statutory right of redemption in real property is a personal privilege not subject to the requirements of Sections 45-4-201 to 207 of the Uniform Probate Code ("UPC"), and Cradon argued that "the assignments at issue are void because compliance with ancillary probate proceedings is a prerequisite to any conveyance affecting real property in New Mexico, including rights of redemption."[72] The court of appeals affirmed the district court's decision, finding that the statutory right of redemption is property within the context of the UPC,[73] and that "the UPC requires that a personal representative of a foreign estate establish his or her authority in New Mexico before exercising power over estate property located within this state."[74] The court also found that even if the right of redemption were a "personal privilege", it would still be property located in New Mexico as defined by the UPC, and therefore, compliance with the UPC is required before the right may be assigned.[75]

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69. *Id.* at *2.

70. *Id.* (citing, *Allen v. Amoco Prod. Co.*, 114 N.M. 18, 833 P.2d 1199 (N.M. Ct. App. 1992)).

71. *Id.*

72. *Id.*

73. *Id.* at *4 (quoting, NMSA 1978 § 45-1-201(A)(40)) ("the UPC broadly defines 'property' as 'anything that may be the subject of [ownership].'").

74. *Id.* at *4-5 (citing, NMSA 1978 § 45-4-204, 207).

75. *Id.* at *3.

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