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I. Introduction

This article provides an annual survey of the law summarizing developments in the area of oil and gas for the State of Montana. Oil and gas in the State of Montana make up a relatively small portion of the state’s profile; Montana currently ranks thirteenth in crude oil production and twentieth in natural gas production in the United States.¹

II. Legislative and Regulatory Developments

A. State Legislative Developments

1. MCA 15-36-303

The amendments made to MCA 15-36-303 provides tax incentives for new wells and updated wells, as the legislature has noted that new technology has recently caused increases in production.² Additionally, the phrase “by recompletion of an existing horizontal drain hole” was added into the section in various places to expand the definition of a horizontal well.³ The bill was signed on May 22, 2023, and becomes effective on January 1, 2024.

2. MCA 15-36-304

This amendment revises the tax rates for stripper oil production by simplifying the tax for stripper wells.⁴ More specifically, it revises the description of pipeline carrier for property tax purposes, clarifying which pipelines are locally assessed and which are centrally assessed.⁵ It became effective on April 24, 2023, and it applies retroactively to property tax years after 12/31/2022.⁶

1. *See Montana State Profile and Energy Estimates*, U.S. Energy Information Administration, <https://www.eia.gov/state/?sid=MT> (last accessed on August 31, 2023).
 2. H.B. 469, 68th Gen. Assemb., Reg. Sess. (Mont. 2023) (enacted).
 3. *Id.*
 4. H.B. 485, 68th Gen. Assemb., Reg. Sess. (Mont. 2023) (enacted).
 5. S.B. 81, 68th Gen. Assemb., Reg. Sess. (Mont. 2023) (enacted).
 6. *Id.*

3. MCA 75-1-201

The amendment to MCA 75-1-201 was made pursuant to S.B. 557, which revised the Montana Environmental Policy Act (“MEPA”) to limit legal challenges against projects impacting the environment.⁷ The goal was to help industries, including the oil and gas industry, from having projects stalled or stopped due to lawsuits. The legislation deters lawsuits by implementing three major requirements for challenging parties: (1) payment of a bond to cover lost revenue in the event that the challenged project is halted; (2) challenger must be a previous commenter on an agency’s review and may only challenge the project on the same basis provided in their comment; and (3) challenger must first seek a preliminary injunction.⁸ This bill passed largely along party lines and was signed and effective on May 19, 2023.

4. MCA 82-11-111 & 85-2-510

This amendment clarified that the Board of Oil and Gas Conservation (“BOGC”) has authority over produced waters in oil and gas operations. H.B. 928 amended section 82-11-111 to authorize a hearings fee and provide rulemaking authority to the BOGC, and the same bill amended section 85-2-510 to clarify that BOGC regulates certain water from oil and gas operations.⁹ This legislation does not change any environmental regulation, just merely provides clarification that the BOGC is the body responsible for enforcing existing statutes regarding produced waters. It was signed and effective May 18, 2023.

5. MCA 75-11-403

This amendment was intended to make Montana consistent with federal law in terms of requirements for determining whether a petroleum release site could receive and expend federal brownfields funding by removing the “relatively low risk” requirement from the Montana Petroleum Brownfields Revitalization Act.¹⁰ This will also have the effect of making the applicable funding more widely available in Montana. It was signed and effective on March 16, 2023.

7. S.B. 557, 68th Gen. Assemb., Reg. Sess. (Mont. 2023) (enacted).

8. *Id.*

9. H.B. 928, 68th Gen. Assemb., Reg. Sess. (Mont. 2023) (enacted).

10. H.B. 54, 68th Gen. Assemb., Reg. Sess. (Mont. 2023) (enacted).

6. MCA 69-3-207

S.B. 32 revises MCA 69-3-207 to conform the natural gas pipeline safety penalties with federal fine laws.¹¹ In doing so, it raised the maximum fine to \$239,142 per penalty per day, and a maximum fine for any related series of violations \$2,391,412. It was signed May 4, 2023 and effective on July 1, 2023.

7. MCA 82-11-202

This amendment added clarifying language to MCA 82-11-202 providing that an owner is presumed to have refused to pay the owner's share of costs if it fails to pay or agree in writing to promptly pay their attributable share to a pooling unit and share costs after notice of (1) an acknowledgement by the owner or (2) certified mail to the owner.¹² It also provides that the notice must allow 30 days to elect to pay costs, and set forth the location of the well. It notably removes the requirement of 30 day notice be tied to the spud date, just requiring 30 days for the owner to decide to elect to participate. It was signed May 4, 2023.

B. State Regulatory Developments

1. ARM 36.22.307

In September 2022, the BOGC amended the Montana Administrative Register.¹³ These amendments were to 36.22.307 and 36.22.1243 of Montana's administrative rules, removing Form 9-Monthly Gas Report and Form 10-Gasoline or Other Extraction Plant from the BOGC's required forms, and removing references to those forms, because they served no regulatory purpose.¹⁴

III. Judicial Developments

A. Montana Supreme Court

There were no significant judicial developments from the Montana Supreme Court regarding oil and gas.¹⁵

11. S.B. 32, 68th Gen. Assemb., Reg. Sess. (Mont. 2023) (enacted).

12. H.B. 289, 68th Gen. Assemb., Reg. Sess. (Mont. 2023) (enacted).

13. 17 M.A.R. 1747 (proposed June 24, 2022).

14. See MONT. ADMIN. R. §§ 36.22.307 (2023) and 36.22.1243 (2023).

15. A Montana Supreme Court case, *Lustre Oil Company LLC v. Anadarko Minerals, Inc.*, 411 Mont. 349 (2023), addressed expansion of sovereign immunity to companies

B. Federal Court

There were no significant judicial developments from the Montana federal courts regarding oil and gas.

associated with Tribes or Tribal land, and it is fully discussed in the Sovereign Immunity section of this Journal.