# **Oil and Gas Update: Legal Developments in 2020 Affecting the Oil and Gas Exploration and Production Industry**

2021

**Reporter**

58 RMMLF Journal 147

**Length:** 26180 words

**Author:** Mark D. Christiansen, Editor [[1]](#footnote-2)1

Edinger Leonard & Blakley PLLC, Oklahoma City, Oklahoma

**Text**

The state reports presented below include key legal developments in most of the more-active states in the areas of ***oil*** and gas exploration, development, and production.

I. ALASKA

A. *Legislative Developments*

Given the Alaska State Legislature's adjournment due to the COVID-19 pandemic, no substantive ***oil*** and gas legislation was passed.

B. *Judicial Developments*

In *Forrer v. State*,   [[2]](#footnote-3)2the Alaska Supreme Court rejected as unconstitutional the proposal to use bonding to pay Alaska's ***oil*** and gas tax credit obligations. The court found the plan, which was approved by the legislature in 2018, to be "unconstitutional in its entirety,"   [[3]](#footnote-4)3as the Alaska Constitution forbids the state from taking on debt for those credits. The bill approved the creation of a state corporation that would be empowered to sell up to $ 1 billion in bonds to pay off remaining tax credit obligations. The legislature previously voted to end the tax credit program geared toward small producers and developers, saying that the program had become unaffordable.

The court ruled that subject-to-appropriation bonds are "contrary to the plain text of the Alaska Constitution and the framers' intent."   [[4]](#footnote-5)4In a unanimous decision, the court held, "this financing scheme--even if unforeseeable in the mid-twentieth century--is the kind of constitutional 'debt' that the framers sought to prohibit under article IX, section 8 of the Alaska Constitution."   [[5]](#footnote-6)5The court further held, "[i]f the State intends to utilize financing schemes similar to [the bonding bill] in the future, it must first seek approval from the people--if not through a bond referendum then through a constitutional amendment."   [[6]](#footnote-7)6The ruling means that the State must come up with another way to pay $ 743 million, the bill left unpaid from now-defunct subsidy programs for ***oil*** and gas drilling and exploration. The Governor's office has advised that the Departments of Revenue and Law have begun a review to understand the impacts of the decision.

*ConocoPhillips Alaska, Inc. v. State of Alaska, Department of Natural Resources*   [[7]](#footnote-8)7involved the appeal of a final administrative order issued by the Commissioner of the DNR. ConocoPhillips and Anadarko (Appellants or Lessees) appealed a DNR decision applying DNR regulation 11 AAC 83.235 to redetermine volume allocations for Appellants' Net Profit Share Leases and to reopen decades-old reports in order to apply a higher interest rate to the redeterminations and set the interest accrual date as the date of the original reports, rather than the redetermination date. Appellants argued that the application of the DNR regulation was impermissibly retroactive and violated the parties' leases, as well as the contracts clauses of the

Alaska and United States Constitutions.   [[8]](#footnote-9)8The superior court agreed. The court applied Alaska's presumption against retroactive legislation, as established in Alaska case law and Alaska's version of the Administrative Procedure Act (APA),   [[9]](#footnote-10)9and ruled that, by seeking to ignore the six-year limitation period established by 11 AAC 83.245(e)-(f), the parties' 27-year-long relationship, and the effect that DNR's interpretation would have on the Lessees, the decision advocating the application of the 2014 regulation was impermissibly retroactive as applied to the 1984 Leases.   [[10]](#footnote-11)10The court also held that DNR's application of 11 AAC 83.235 and AS 38.05.135(d) violated the Contracts Clauses of the federal and state Constitutions. Given the impermissible nature of DNR's proposed application, the court reversed the DNR decision.   [[11]](#footnote-12)11The DNR chose to not appeal the court's ruling.

In *Native Village of Nuiqsut v. BLM*,   [[12]](#footnote-13)12the plaintiffs sought the invalidation of the Bureau of Land Management's (BLM) approval of the 2018-2019 winter exploration activity undertaken by ConocoPhillips in the National Petroleum Reserve-Alaska (NPR-A), which is located on Alaska's North Slope and consists of 23.6 million acres. The court denied plaintiffs' requested relief. The court rejected the plaintiffs' five claims centered on violations of the National Environmental Policy Act (NEPA),   [[13]](#footnote-14)13the APA,   [[14]](#footnote-15)14and the Alaska National Interest Lands Conservation Act (ANILCA),   [[15]](#footnote-16)15finding that the BLM and other relevant defendants fully considered the impacts to caribou and subsistence, the cumulative impacts of the exploration activity, and the alternatives under NEPA and ANILCA. Consequently, the court upheld the 2018 environmental assessment (EA) and record of decision (ROD) authorizing ConocoPhillips' 2018-2019 winter exploration in the NPR-A and denied plaintiffs' requests for declaratory relief and vacatur of the 2018 EA and the ROD.   [[16]](#footnote-17)16Plaintiffs appealed the ruling on March 9, 2020.   [[17]](#footnote-18)17

In *National Audubon Society v. Bernhardt*,   [[18]](#footnote-19)18plaintiffs filed suit against defendants, alleging, in part, that the August 17, 2020, ROD for ***oil*** and gas leasing in the Arctic National Wildlife Refuge (ANWR) Coastal Plain   [[19]](#footnote-20)19and final environmental impact statement (EIS) violates NEPA, ANILCA, the APA, the Endangered Species Act, and the National Wildlife Refuge System Administration Act. Plaintiffs have asked the court to declare that defendants have violated the above laws and that defendants' actions are arbitrary, capricious, and not in accordance with relevant law and procedure. Plaintiffs have further asked the court to set aside defendants' final EIS, as well as any actions taken by the defendants in reliance on the final EIS.   [[20]](#footnote-21)20The matter is currently stayed until defendants issue the ROD for the National Petroleum Reserve-Alaska Integrated Activity Plan Final Environmental Impact Statement.   [[21]](#footnote-22)21

In *Center for Biological Diversity v. Bernhardt*,   [[22]](#footnote-23)22the court overturned approval for Hilcorp's Liberty Project, an offshore drilling prospect located east of Deadhorse, Alaska. The court sided with plaintiffs,   [[23]](#footnote-24)23finding that agency review of the project was inadequate.   [[24]](#footnote-25)24Specifically, the court held that the Bureau of Ocean Energy Management (BOEM) should have quantified the well's greenhouse gas emissions, including the impact of the ***oil*** it produced and sent overseas. The court also faulted the U.S. Fish & Wildlife Service for not estimating the non-lethal impact drilling would have on polar bears. The court vacated BOEM's approval, concluding that the agency acted arbitrarily and capriciously, and remanded the matter to the agency for further proceedings.

*C. Administrative Developments*

On December 3, 2020, the Trump administration announced that it would auction off drilling rights in ANWR on January 6, 2021. According to documents accompanying the sale notice, BLM plans to offer ostensibly all of the available 1.6 million acres of the coastal plain in 32 separate tracts ranging from approximately 34,000 acres to nearly 60,000 acres each. The leases will come with a 10-year term, and minimum bids will start at $ 25 per acre.

II. ARKANSAS

A. *Legislative Developments*

There were no 2020 Arkansas legislative developments. The Arkansas General Assembly meets in general session biannually, in odd numbered years.

*B. Judicial Developments*

*Hurd v. Arkansas* ***Oil*** *& Gas Commission*   [[25]](#footnote-26)25was a judicial review of an integration   [[26]](#footnote-27)26order of Arkansas' ***oil*** and gas regulatory agency. Appellants, Killam and Hurd family members, owned fee mineral interests within a 640-acre drilling unit previously established by Commission rule. They had leased those interests   [[27]](#footnote-28)27but the leases contained Pugh clauses that caused them to expire at the end of their primary terms as to formations below the deepest production. SWN Production, the unit operator, proposed additional deeper drilling, and when it was unable to persuade the Hurd family to lease the deeper formations, it sought the integration of those interests. In its order of integration the Commission gave unleased mineral owners an array of options as to the unleased zones: (1) lease their interests for a $ 100 per net acre bonus and a 1/8 royalty; (2) lease their interests for no bonus and a 1/7 royalty; (3) participate as working interest owners in the drilling of the deeper wells; and (4) be carried as a non-consent owner and be paid a 1/8 royalty pending recovery of 400% of drilling and completion costs. That royalty would convert to a working interest if and when the 400% payout occurred.

During the time that the integration application was pending, the Hurd and Killam family members executed leases to family-owned entities, Hurd Enterprises and Killam ***Oil*** Co. Each such lease provided for a 25% royalty. The two family companies then elected the non-consent option and contended that the participants in the proposed wells would be obligated to pay their family member/lessors the 25% royalty.

The unit operator then obtained an amended integration order reducing the percentage that the non-consenting family companies could recover from the participants to 1/7, which was the maximum royalty contained within the Commission's earlier order.

The Hurd and Killam family members and their companies timely sought judicial review of that latter order. After an affirmance of the order by the circuit court, they appealed to the Arkansas Supreme Court, which also affirmed, in a four-to-three decision. The majority's opinion relied upon a statutory provision   [[28]](#footnote-29)28providing that integration orders "shall be upon terms and conditions that are just and reasonable," thus holding that the Commission did not abuse its discretion when it determined that the 25% royalty in the leases to family-owned entities was unreasonable under the circumstances.

*Shale Royalty, LLC v. MMGJ Arkansas, LLC*   [[29]](#footnote-30)29involves a legal question that is apparently unique to operations governed by the AAPL Form 610-1982 Operating Agreement. Article III.B of that form treats overriding royalty interests burdening a party as "subsequently created interests," which are the sole obligation of that party and are not transferred to the participating parties when the burdened party declines to participate in an operation pursuant to Article VI.B.2.b. That provision is common to all modern Form 610 agreements, but unlike the 1989 and 2005 forms, the 1982 form contains an exception to "subsequently created interests" for a burden that was disclosed in writing to all parties prior to the execution of this agreement by all parties.

Shale Royalty's predecessor in interest had assigned leasehold interests to MMGJ's predecessor, reserving overriding royalties. It assigned those overriding interests to Shale Royalty. Both assignments preexisted the operating agreement's execution as did their recordation in the county's real property records. When MMGJ became a non-consenting party under the JOA's Article VI.B.2.b, Shale Royalty contended that Flywheel Energy, the unit operator and a participating party, became obligated to pay its overriding royalties. The legal question presented is whether the prior recording of the assignments satisfied the requirement of the "disclosed in writing to all parties" exception to the definition of subsequently created interests.

In a July 23, 2020, summary judgment order, the district court held that the written disclosure required by Article III.D was more than the mere constructive notice accomplished by recordation. Rather, the court opined that the methods for disclosure existing under Article III.D are designed to provide clear communication regarding existing burdens. Imputed or constructive notice is not sufficient. Since the court's order was not dispositive of all claims in the case, it is not yet appealable.

*C. Administrative Developments*

In response to a precipitous decline in crude ***oil*** prices during the COVID-19 pandemic the Arkansas ***Oil*** and Gas Commission issued Emergency Order No. 024A-2-2020-05, made permanent by Order No. 058-2-2020-06, prohibiting the producing for sale of ***oil*** from any well that can reasonably be marketed only as "Below-Cost Production." "Below-Cost Production" is defined in the order as production sold at a price less than "Production Costs," defined as allowable direct costs under the COPAS attachment to the Commission-approved operating agreement plus 10% of the posted price of Lion ***Oil*** Trading and Transportation.   [[30]](#footnote-31)30

III. CALIFORNIA

*A. Legislative Developments*

As part of the ongoing legislative response to the catastrophic 2015 Refugio pipeline rupture and ***oil*** spill in Santa Barbara County, California, the California State Assembly enacted Assembly Bill 3214,   [[31]](#footnote-32)31which doubled specified maximum and minimum financial penalties for specified violations, including failing to notify specified state and federal agencies of the discharge of ***oil*** and the discharging of ***oil*** into waters of the state, and authorized fines of up to $ 1,000 per gallon spilled in excess of 1,000 gallons of ***oil***.

*B. Judicial Developments*

***Kern*** County, the biggest ***oil*** producing county in California, approved an innovative land use planning ordinance in 2015, to streamline the permitting process for ***oil*** and gas exploration, development, and production activities, and the County certified an environmental impact report (EIR) as compliant with the California Environmental Quality Act (CEQA).   [[32]](#footnote-33)32The ordinance had been developed in the conjunction with California ***oil*** producers and the California Division of ***Oil***, Gas, and Geothermal Resources (DOGGR)   [[33]](#footnote-34)33so that DOGGR and other state agencies could rely on the County's EIR in their own separate permit application reviews. In that way, the regulatory permit processes for new wells and facilities could be considered to be ministerial and thereby exempt from further review under CEQA. However, part of the County's CEQA determination was held to be insufficient in King & Gardiner Farms, LLC v. County of ***Kern***,   [[34]](#footnote-35)34and the County's certification of the EIR and approval of the ordinance was set aside. The court directed the County to suspend the operation of the ordinance pending CEQA compliance through a revision of the EIR. However, the court also held that permits issued by the County prior to March 26, 2020, would remain in effect and that responsible agencies, such as DOGGR, would be able to rely on the permits issued by County on or *before* March 26, 2020, without conducting their own independent environmental assessment.   [[35]](#footnote-36)35Projects initiated after that date would potentially require the agencies to conduct their own separate CEQA assessment and determination.

In Association of Irritated Residents v. California Department of Conservation,   [[36]](#footnote-37)36the court held in an unpublished opinion that the issuance of drilling permits by the California Geologic Energy Management Division (CalGEM) pursuant to its field rules was a ministerial act exempt from review under CEQA.

The court in Venoco, LLC v. Plains Pipeline, L.P.   [[37]](#footnote-38)37affirmed the dismissal of an offshore platform operator's claim against a public utility ***oil*** pipeline company for lost profits arising from the catastrophic 2015 Refugio pipeline rupture and ***oil*** spill in Santa Barbra County, based on a "public utility duty" exception under California law barring damages for interruption of service. However, a California Court of Appeals subsequently declined to follow the opinion in *Venoco* and reached a different conclusion in State Lands Commission v. Plains Pipeline, L.P.   [[38]](#footnote-39)38The court instead allowed the California State Lands Commission, one of Venoco's lessors, to proceed with its complaint against Plains Pipeline for property damage and lost royalties arising from the same rupture and spill on the ground that the public utility exemption did not apply since the pipeline does not deliver essential municipal services to members of the general public. The court also held that the Commission was a direct beneficiary of the transportation agreement between Plains and Venoco. The dissent noted that the holding created an anomalous result whereby the state and its insurer could sue the pipeline for indirect damages, even though their losses are derivative of the direct loss to Venoco, while Venoco was barred from recovery of its direct damages.

The 2018 recission by the BLM   [[39]](#footnote-40)39of a large portion of its 2016 "Waste Prevention Rule"   [[40]](#footnote-41)40was vacated by a California federal district court in *State of California v. Bernhardt*   [[41]](#footnote-42)41on the basis of findings that BLM failed to comply with the federal APA   [[42]](#footnote-43)42and NEPA.

*C. Administrative Developments*

Governor Newsom issued Executive Order N-79-20 on September 23, 2020,   [[43]](#footnote-44)43intended to address climate change concerns by phasing out the sale of new gasoline-powered cars and trucks by 2035, and directing state agencies to take actions toward that goal, including "working to end the issuance of new hydraulic fracturing permits by 2024." The executive order also directed CalGEM to propose a significantly strengthened, stringent, science-based health and safety draft rule that protects communities and workers from the impacts of ***oil*** extraction activities by December 31, 2020, and to strictly enforce bonding requirements and other regulations to ensure ***oil*** extraction operators are responsible for the proper closure and remediation of their sites.

As a result of the 2019 amendment of Section 3002 of the California Public Resources Code,   [[44]](#footnote-45)44the regulatory agency responsible for regulating California ***oil*** and gas exploration and production operations, DOGGR, was renamed the California Geologic Energy Management Division (CalGEM).   [[45]](#footnote-46)45

The State ***Oil*** and Gas Supervisor, who is responsible for managing CalGEM, issued a number of notices to operators in 2020 that could have a significant impact on production operations in California. A substantial portion of California heavy ***oil*** production is produced through cyclic steam injection. In some cases, steam is injected underground at high pressure to break rock formations and allow ***oil*** production. On January 7, 2020, the Supervisor issued Notice to Operators NTO 2020-02,   [[46]](#footnote-47)46which imposed a moratorium on new approvals by CalGEM of projects using cyclic-steam injection above fracture pressure pending a review of the practice in consultation with experts from the Lawrence Livermore National Laboratory. The notice informed operators that CalGEM will not approve the use of new cyclic-steam projects involving injection above fracture pressure until CalGEM, in consultation with Lawrence Livermore, determines that such projects can be implemented safely.

The Supervisor issued Notice to Operators NTO 2020-09, which requires all project plans data submitted for all underground injection control (UIC) water disposal projects to be approved and stamped by a licensed *civil* engineer.   [[47]](#footnote-48)47This requirement will impose a burden on operators that have typically had a petroleum engineer or an in-house engineer, who may not be licensed in California, sign their UIC permit applications.

IV. COLORADO

*A. Judicial Developments*

On September 14, 2020, the Colorado Supreme Court announced its decision in *Bill Barrett Corp. v. Lembke*, finding that when a special district expands its boundaries, it need not obtain consent from the lessee of a severed mineral estate.   [[48]](#footnote-49)48Furthermore, a mineral leasehold is subject to special district taxation. In this case, mineral lessees brought an action against the owners of a special metropolitan district arguing that the lessee's lack of consent to inclusion in the special district should prevent the imposition of *ad valorem* taxation of ***oil*** and gas produced by the lessees at wellheads located on the property.

Under the provision of the Colorado Special District Act in question, "the boundaries of a special district may be altered by the inclusion of additional real property by the fee owner or owners of one hundred percent of any real property capable of being served with facilities of the special district . . . ."   [[49]](#footnote-50)49The Colorado Court of Appeals ruled that the mineral lessees were not "fee owners" of the severed mineral estate for purposes of the Act because the lessee's interest was temporary.   [[50]](#footnote-51)50It also ruled the mineral interest holders did not own "real property capable of being served with facilities of the special district," and therefore their consent to the inclusion of the minerals within the special district was not required.   [[51]](#footnote-52)51The Colorado Supreme Court upheld the appeals court's decision but did not rely on the meaning of "fee owner" or the capability of being served by the special district. Rather, it found that the plain language of the Act concerns the expansion of the "surface area" of a special district. The title of the relevant section, "Inclusion of Territory," makes it clear that the General Assembly intended to "create procedures for inclusion of *territory* in a special district."   [[52]](#footnote-53)52The court's interpretation of the word "territory" excluded a mineral lessee's interest. The court also concluded that "all taxable property" is subject to *ad valorem* taxation within the special district.   [[53]](#footnote-54)53

*B. Administrative Developments*

On November 23, 2020, the Colorado ***Oil*** and Gas Conservation Commission (COGCC) completed its Mission Change rulemaking, implementing its new legislative mandate in Senate Bill 19-181 (SB 181), a 2019 law. SB 181 changed the COGCC's mission from fostering ***oil*** and gas development to "regulat[ing] ***oil*** and gas operations in a reasonable manner to protect and minimize adverse impacts to public health, safety, welfare, the environment, and wildlife resources," without regard to cost-effectiveness or technical feasibility.   [[54]](#footnote-55)54Nearly 100 parties participated in the four-month rulemaking, including industry, local governments, and environmental organizations. The rulemakings also implemented SB 181 requirements for alternative location analyses, cumulative impacts analyses, and mitigation of impacts to wildlife resources. This article, while not comprehensive, summarizes the most significant rules adopted by the COGCC, which became effective January 15, 2021.

1. State vs. Local Authority

SB 181 grants local governments authority to regulate the surface impacts of ***oil*** and gas operations.   [[55]](#footnote-56)55The rules adopted by the COGCC, however, require operators to comply with both local government regulations and "stricter" state requirements.   [[56]](#footnote-57)56The COGCC rejected certain parties' arguments to interpret SB 181 to mean complete deference to local government land use decisions when such decisions are protective of public health, safety, welfare, the environment, and wildlife. Numerous rules encourage and establish procedures for coordinating with governmental entities that share authority over surface impacts. This coordination includes a formal consultation process with the relevant local government prior to an operator's state permit application, and an option for local governments to participate as "referral agencies" on matters of local concern.   [[57]](#footnote-58)57

2. Increased Setbacks

The COGCC imposed a 2,000-foot setback from Residential Building Units and High Occupancy Building Units, measured from the working pad surface.   [[58]](#footnote-59)58Industry and certain local governments advocated for reduced setbacks, which resulted in compromise language allowing for exceptions to the rule. The COGCC may grant exceptions when it finds after a hearing that the operation will provide "substantially equivalent protections" for public health, safety, welfare, the environment, and wildlife resources. This standard relies on numerous factors including use of best management practices, preferred control technologies, and conditions of approval, consideration of the geology and topography of the proposed location, the proximity to receptors, and the anticipated size, duration, and intensity of all phases of operations.   [[59]](#footnote-60)59

3. Permitting Process

As part of a new permitting process, operators must undergo an Alternative Location Analysis (ALA) if a proposed location is less than 2,000 feet from a Residential Building Unit, High Occupancy Building Unit, School Facility, or Childcare Center; within 1,500 feet of a Designated Outside Activity Area; within specific distances of certain water resources or habitat; or within 2,000 feet of specified buildings in Disproportionately Impacted Communities. Each of these terms is defined in the rules. Operators must also submit quantitative and qualitative data for the COGCC's Cumulative Impacts Data Evaluation Repository and information regarding air, public health, water, terrestrial and aquatic wildlife resources and ecosystems, soil, and public welfare.   [[60]](#footnote-61)60

A new Comprehensive Area Plan (CAP) process is intended to incentivize landscape-level planning.   [[61]](#footnote-62)61An approved CAP conveys the exclusive right to develop for six years, with the option to extend, and associated drilling and location permits expire with the CAP. For development within the CAP, operators will not need to complete separate cumulative impacts evaluations or complete ALAs for locations that have preliminary siting approval and will enjoy expedited review of associated permit applications.

4. Rules of Practice and Procedure

Standing to challenge COGCC action requires parties to demonstrate that they are adversely affected by a potential operation and may sustain an "injury-in-fact" that is not common to the general public. However, the new rules also give surface owners and residents located within 2,000 feet of a proposed working pad surface automatic standing.   [[62]](#footnote-63)62Additionally, "any person" may request the COGCC hold a local public hearing to gather feedback from the local community.   [[63]](#footnote-64)63The COGCC removed the Director's authority to grant variance requests, instead requiring that all variances be heard and approved by the COGCC.   [[64]](#footnote-65)64

5. Venting and Flaring

The COGCC established new requirements for emissions during drilling operations, completion operations, and production. Operators must either commit to connecting to a gathering system by the commencement of operations or submit a gas capture plan.   [[65]](#footnote-66)65If an operator does not connect to a gathering line or otherwise put gas to beneficial use, the Director may require the operator to shut in the well until the operator complies.

6. Protection of Wildlife Resources

The COGCC designated certain areas of the state as High Priority Habitat (HPH) within which operators will not conduct any new ground disturbance or well work, including access road and pad construction, drilling and completion activities, and flowline utility corridor clearing and installation activities.   [[66]](#footnote-67)66The HPH replaced the prior Restricted Occupancy Area and Sensitive Wildlife Habitat rules. HPH covers vastly more acreage than these prior designations and imposes stricter requirements.

V. KANSAS

*A. Legislative Developments*

In January 2020, the Governor signed an executive reorganization order to move the state's Energy Office out of the Kansas Corporation Commission and make it an independent agency. Proponents argued the state needed an independent agency to develop a comprehensive plan for the state's energy needs. Critics saw it as a political move with the potential to increase bureaucracy. Under the Kansas Constitution, the state Senate and House of Representatives can pass resolutions vetoing executive reorganization orders.   [[67]](#footnote-68)67The House chose to do so in April and passed House Resolution No. 6031 Disapproving Executive Reorganization Order No. 46--nullifying the executive order.

*B. Judicial Developments*

2020 was an active year for ***oil*** and gas in the Kansas Court of Appeals. Starting in April, the court issued a decision in the *Matter of River Rock Energy Co.* tax appeal.   [[68]](#footnote-69)68River Rock Energy appealed a Kansas Board of Tax Appeals' order using minimum lease values to value its gas wells and related equipment for tax year 2016. The operator had acquired the wells through a bankruptcy sale. After the sale, River Rock learned the relevant counties appraised the wells using the minimum lease value, which creates an assessed value higher than the actual gross working interest value. The operator challenged the Board's decision on a number of grounds, including: (1) the BOTA erred in upholding the Counties' valuation of certain wells based on the minimum lease values set forth in the Kansas ***Oil*** and Gas Appraisal Guide; (2) BOTA's decision led to an arbitrary and erroneous valuation of its wells; (3) BOTA's characterization of the effect of the minimum lease value was contrary to the evidence in the record; (4) BOTA's valuation of the equipment used in the wells was legally and factually erroneous; and (5) BOTA erred in refusing to grant an abatement of the filing fee and declining to docket and decide the appeals of 1,945 of River Rock's 2,150 wells.

The court found for River Rock on almost every ground, holding that the Board's decision to affirm the minimum lease value appraisals was arbitrary. Finally, the court sided with River Rock on the filing fee question as the total amount would have equaled over 60% of the total taxes owned--making the filing fees an unconstitutional tax and revenue-generating measure.

Next in June, the court of appeals issued back-to-back decisions in *Thoroughbred Associates, L.L.C. v. Kansas City Royalty Co.*,   [[69]](#footnote-70)69and *Cooper Clark Foundation v. Oxy USA Inc.*   [[70]](#footnote-71)70 *Thoroughbred* is part of an ongoing unitization case. In 1997, Thoroughbred drilled a prolific gas well near Coldwater, Kansas. To protect the well from competition, Thoroughbred acquired leases surrounding the property. Oxy USA owned a 1/3 mineral interest in one of the surrounding tracts. Oxy agreed to lease the interest in a lease, which would have allowed Thoroughbred to unitize the lease if certain conditions were met.

The next year, Thoroughbred increased its drilling in the area and recorded a Declaration of Unitization and an Affidavit of Commencement of Operations--both of which included the Oxy tract. Oxy then sold its interest to KC Royalty. From 1998 to 2001, Thoroughbred paid the lessor royalties from the division order for the unit. When relations soured in 2002, Thoroughbred asked the district court to declare that the Lease conditions precluded unitization and require KC Royalty repay all royalties it had received for unit production.

Returning to the most recent development in the case, the district court determined that the plaintiffs were included in the Unit by modification, waiver, or equitable estoppel. In this appeal, Thoroughbred argued the evidence suggested a mutual mistake and not modification. The court looked to the Declaration of Unitization, the Affidavit of Commencement of Operations, and Thoroughbred's Title Opinion as evidence that the operator intended to include the lease in the Unit and as such modified the lease to remove any conditions to unitization.

Second, the court found that even if Thoroughbred's actions were not enough to modify the contract, Oxy and KC Royalty could waive the conditions to unitization. Thoroughbred argued that because KC Royalty and Oxy had previously rejected unitization, they could not waive the conditions in this deal. The court decided that Oxy's acceptance of royalty payments after the Declaration suggested it had actually waived the conditions.

Finally, the court found that Thoroughbred delayed six months to assert its rights after discovery. During that time, Thoroughbred continued to send the parties royalty checks. As such, KC Royalty could rely on estoppel to protect their interests.

Turning to the other June 2020 case, the *Cooper Clark* court took another look at the marketability rule. Starting a few years ago in the *Fawcett v.* ***Oil*** *Producers, Inc. of Kansas* litigation,   [[71]](#footnote-72)71operators and royalty owners have waged war over when gas becomes marketable for the purposes of royalty calculations. *Fawcett* held that raw gas may be considered a marketable product (without further processing or treatment) where the lessee sells the gas at the wellhead in a condition acceptable to the purchaser in a good faith transaction. Last year in *Hitch Enterprises, Inc. v. Oxy USA Inc.*,   [[72]](#footnote-73)72royalty owners challenged an arrangement where the defendant lessee sold a considerable amount of its gas to its affiliate company, which subsequently sold those products further downstream to third parties. They argued it showed evidence of bad faith.

*Cooper Clark* examined the *Hitch* decision in light of *Fawcett*. In *Cooper Clark*, lessors brought a class action against a natural gas operator for subtracted royalties from processing expenses. The operator used small sales for irrigation and house gas as evidence that some of the disputed gas was marketable at a different production stage. Following this, the defendant argued the class lacked commonality. The court agreed with *Hitch* that *Fawcett* preserved *Sternberger*'s marketability rule. But it balked at allowing small sales for house gas as definitive evidence for marketability and found that the marketability was a common question for all class participants. The court declined to elaborate any further and approved the case to go forward--once again leaving the issue of marketability unsettled.

Finally, the court of appeals rounded out this discussion of marketability by issuing a final decision in *L. Ruth Fawcett Trust v.* ***Oil*** *Producers, Inc. of Kansas*.   [[73]](#footnote-74)73This round of *Fawcett* was an attempt by the royalty owners to challenge the result of the earlier *Fawcett* decision. The royalty owners questioned whether sales at the wellhead could ever be good faith transactions. The court responded that in this one specific case, the Kansas Supreme Court explicitly resolved the issue of good faith in its earlier decision.

Turning to the federal courts, the U.S. Court of Appeals for the Tenth Circuit issued a decision affirming a dismissal involving the lesser prairie-chicken. In *Kansas Natural Resources Coalition v. U.S. Department of the Interior*,   [[74]](#footnote-75)74the plaintiffs alleged that the Department of the Interior (DOI) violated the Congressional Review Act by not submitting the Policy for Evaluation of Conservation Efforts When Making Listing Decisions (the "PECE Rule") to Congress. The lesser prairie-chicken has been the focus of regulatory concern for energy producers and environmental interest groups. The PECE Rule provides guidelines for when the agency can avoid Endangered Species Act listing decisions with measures such as formal conservation plans. In 2014, the U.S. Fish & Wildlife Service (FWS) announced it was listing the prairie-chicken as threatened. A year later, a court vacated the listing because FWS failed to properly apply the PECE Rule. In this case, the plaintiffs argued that the PECE Rule gave legitimacy to a Kansas conservation plan for the lesser prairie-chicken. By DOI failing to submit the PECE Rule to Congress, the plaintiffs struggled to convince residents to participate in the program. The Tenth Circuit ultimately found that DOI had violated the Congressional Review Act, but the coalition lacked Article III standing requirements to challenge the agency's decision. As such, the court dismissed the action for lack of subject matter jurisdiction.

VI. LOUISIANA

*A. Legislative Developments*

The Louisiana State Legislature enacted Act 76 to amend La. Rev. Stat. § 31:212.21 et seq., effective August 1, 2020. Prior to this amendment, these Mineral Code articles provided an owner of a "mineral production payment" or "an owner other than mineral lessor" with the potential right to recover double damages and attorneys' fees if the lessee failed to properly pay the amounts owed and if written notice of such failure was properly provided to the lessee. This amendment changes the language from "mineral production payment" to "the owner of a production payment created out of a mineral lessee's interest." The remaining portion of the statute remains unchanged. The legislation essentially codifies the court's result in *Adams v. Chesapeake Operating, Inc.*,   [[75]](#footnote-76)75wherein the U.S. Court of Appeals for the Fifth Circuit affirmed the U.S. District Court for the Western District of Louisiana's decision that held an unleased mineral owner is not the owner of a "production payment" and is therefore not entitled to the remedy set forth in the foregoing statutory regime.

Looking forward, the presence of ***oil*** and gas will now be considered in determining fair market value of an ***oil*** or gas well for ad valorem taxes. During the November 3, 2020, election, a majority of Louisiana voters approved Louisiana Constitutional Amendment 2, also known as the "Include ***Oil*** and Gas Value in Tax Assessment of Wells Amendment." Before being placed on the ballot, a representative introduced the constitutional amendment as House Bill 360. Both houses of the Louisiana State Legislature unanimously passed the measure. This amendment permits the presence or production of ***oil*** or gas to be included in the methodology used to determine the fair market value of an ***oil*** or gas well for the purpose of property assessment. Pursuant to article 13, section 1 of the Louisiana Constitution, this change will be effective 20 days following the governor's proclamation of the adoption of the amendment.

*B. Judicial Developments*

In a year where the industry saw a sharp decline in ***oil*** prices amid the COVID-19 pandemic, the Louisiana Second Circuit Court of Appeal provided guidance to mineral rights owners on what is required to maintain a mineral servitude. In *Cannisnia Plantation, LLC v. Cecil Blount Farms, LLC*,   [[76]](#footnote-77)76the court faced the issue of whether a mineral servitude owner conducted good faith operations sufficient to interrupt the prescription of non-use of a mineral servitude. In *Cannisnia*, the mineral servitude owner drilled a dry hole approximately three months before the servitude was set to expire for non-use. The landowner claimed the well was drilled by the mineral servitude owner solely to interrupt prescription and was therefore not drilled in good faith. The trial court ruled in favor of the mineral servitude owner and concluded that the well was drilled in good faith. On appeal, the Second Circuit examined whether the mineral servitude owner satisfied the requirements of Mineral Code article 29   [[77]](#footnote-78)77and looked to the factors considered by the court in *Indigo Minerals, LLC v. Pardee Minerals, LLC*   [[78]](#footnote-79)78to determine whether the mineral servitude owner acted in good faith. The controlling element for the court was whether the operations were "commenced with reasonable expectation of discovering and producing minerals in paying quantities" at the location and depth chosen. Upon reviewing the testimony of the geologists and drilling contractor associated with the well, along with the testimony of the mineral servitude owner, and applying the *Indigo* factors, the court concluded that the trial court did not manifestly err in finding the good faith standard of Mineral Code article 29 satisfied and affirmed the trial court's ruling. This opinion serves as a reminder that the good faith analysis is "inextricably connected with, although not wholly decisive of, the factual situation presented" and mineral servitude owners should remain vigilant as to the continuing validity of the mineral rights.

With respect to rights under expired leases, the Louisiana Third Circuit Court of Appeal confirmed that it "is impossible to transfer rights to an assignee under an expired mineral lease." In *Litel Explorations, L.L.C. v. Aegis Development Co.*,   [[79]](#footnote-80)79the court affirmed dismissal of claims where ***oil***, gas, and mineral leases had expired prior to plaintiff's acquisition of the property pursuant to the subsequent purchaser doctrine. Pursuant to the subsequent purchaser doctrine, the right to sue for property damage is a personal right that belongs to the landowner who owned the property at the time the damage occurred, unless such personal right has been explicitly and expressly assigned or subrogated to the subsequent purchaser of the land. *Litel* was a "legacy" lawsuit involving landowners who claimed that property they acquired had been contaminated as a result of historical ***oil*** and gas operations. Some of those operations occurred prior to the plaintiff's acquisition of the subject property. Defendants filed motions for partial summary judgment on the issues of lease termination and plaintiff's right to enforce obligations under the various expired leases. The trial court granted these motions. On application for supervisory writs, the Louisiana Third Circuit rejected plaintiff's argument that even though all ***oil***, gas, and mineral leases at issue terminated prior to its taking ownership of the property, as a surface owner who did not possess mineral rights, it still had the right to seek restoration under the personal servitude articles of the Louisiana Civil Code. Instead, the court agreed with both the Defendants and the trial court holding that the subsequent purchaser doctrine applies to mineral leases. The court recognized prior Third Circuit cases holding that it is impossible to transfer rights to an assignee under an expired mineral lease such as the ones at issue in the writ application.

Another development in the area of legacy environmental lawsuits occurred in *State v. Louisiana Land & Exploration Co.*   [[80]](#footnote-81)80The Louisiana Third Circuit issued an opinion involving issues of prescription and breach of contract claims in the context of Act 312 and "legacy lawsuits" that ***oil*** and gas companies must remain cognizant of going forward. Vermilion Parish School Board (VPSB) filed a petition for alleged damage to the Sixteenth Section lands on its own behalf and on behalf of the state. This case boasts a lengthy procedural history, but the opinion at issue came after a jury found Unocal responsible for "environmental damage" as defined under Act 312. The jury also found Unocal strictly liable to the plaintiffs, awarding $ 1.5 million in private damages. Unocal appealed, asserting that VPSB did not have authority to sue on behalf of the state and that VPSB's claims were prescribed. VPSB also appealed, arguing primarily that the verdict was inconsistent insofar as the jury found environmental damage, but no breach of contract.

The court first addressed Unocal's contention that VPSB lacked authority to sue on behalf of the state and reasoned that VPSB was acting in furtherance of its duty to function as the state in the state's capacity as trustee of Sixteenth Section lands. As such, the court determined that VPSB has the right to bring any action to protect said lands. The court then addressed Unocal's assertion that VPSB's claims were prescribed because its strict liability claim was filed more than one year after it knew of the claim. As an initial matter, the court found that the lands at issue are private, corporeal, and immovable. The court further said that the relationship between the lands, the state, and the school boards is one of trust for the benefit of public use. Therefore, the court concluded that the lands fall within the public trust doctrine. As a result of these findings, the court concluded that VPSB's claim was immune from prescription under article 12, section 13 of the Louisiana Constitution.

Ultimately, the Third Circuit affirmed VPSB's authority to sue on behalf of the state, rejected a prescription defense on the basis of prescription immunity under the Louisiana Constitution, and concluded that a finding of "environmental damage" as defined under Act 312 is sufficient to trigger a breach of contract claim. This decision has significant implications not only for cases involving Sixteenth Section lands, but also on the interplay between limited admissions, "environmental damage," and lease claims in the context of legacy lawsuits and Act 312.

In the realm of royalty litigation, the U.S. Court of Appeals for the Fifth Circuit addressed what constitutes sufficient notice under Article 137 of the Mineral Code. In *Louisiana* ***Oil*** *& Gas Interests, L.L.C. v. Shell Trading U.S. Co.*,   [[81]](#footnote-82)81plaintiff filed a complaint against defendants, Shell and Gulfport, alleging a claim for failure to pay mineral royalties under Mineral Code art. 137 et seq. In response, defendants filed motions to dismiss for failure to state a claim because (1) Shell timely paid all royalties to the lessor of record, and (2) neither plaintiff nor its managing member gave Shell the statutorily required notice under Article 137 of any failure to make timely and proper payment of royalties. Specifically, Shell asserted that plaintiff's correspondence informing Shell of an ownership change was insufficient notice under Article 137 because the letter included no indication of any failure by Shell to make royalty payments. Shell further argued that plaintiff's correspondence to Shell requesting reissuance of the checks acknowledged that Shell had already paid royalties due and, thus, was also insufficient notice because the correspondence gave no indication of Shell's failure to pay royalties. Gulfport argued in its Rule 12(b)(6) motion that none of the alleged notices were sent to Gulfport, but only to Shell; therefore, it received no notice as required by Article 137. Gulfport alternatively asserted the same arguments as Shell, i.e., that none of Plaintiff's written correspondence satisfied Article 137's notice requirement. The district court adopted the magistrate judge's report recommending that Defendants' Rule 12(b)(6) motions to dismiss be granted and plaintiff appealed. On appeal, the Fifth Circuit relied on a Louisiana appellate court's reasoning in *Ross v. EnerVest Operating, L.L.C.*,   [[82]](#footnote-83)82and concluded that plaintiff's written communications did not notify Shell that it failed to make payment timely or properly. Therefore, plaintiff's written correspondence failed to satisfy Article 137.

VII. NEW MEXICO

*A. Judicial Developments*

The New Mexico Court of Appeals issued an opinion that is important to ***oil*** and gas law practitioners on bona fide purchaser (BFP) issues.   [[83]](#footnote-84)83The case involves a convoluted fact situation and important issues regarding due process, notice, standing, and probate matters that are beyond the scope of this update. After decedent died in 1988, her nephew Griffin attempted to locate a cousin (Alderman) who he knew had a copy of decedent's will. Alderman apparently went to some lengths to avoid being found and Griffin ceased his search in 1990. In 2007, Griffin filed a determination of heirship proceeding in which he alleged that he was decedent's only heir and that she left no will. After Griffin published notice and summons, the court entered judgment declaring Griffin the sole heir and owner of some minerals. Griffin sold the minerals to Premier who, prior to acquisition, commissioned a title opinion that noted that, in the absence of fraud or violation of procedural due process, Griffin had good title based on the 2007 judgment.   [[84]](#footnote-85)84Alderman filed an action in 2012 attacking the 2007 judgment and to probate decedent's will and Premier joined seeking to quiet its title.   [[85]](#footnote-86)85The court affirmed the ruling that the 2007 judgment was void as Griffin did not undertake the necessary due diligence as he knew there was another heir, knew that there at least had been a will, did not let the trial court know of either, and did not undertake a search in conjunction with the 2007 action so that the judgment was void for lack of due process.   [[86]](#footnote-87)86However, despite the title opinion and declaring the 2007 judgment void, the court ruled that Premier was a BFP as it had no actual or constructive notice of the facts rendering the judgment void or any other adverse claim.   [[87]](#footnote-88)87

In an unpublished opinion, the New Mexico Court of Appeals affirmed the horizontal drilling rules promulgated by the New Mexico ***Oil*** Conservation Commission in 2018 over the objections of Jalapeno Corporation (Jalapeno).   [[88]](#footnote-89)88Jalapeno primarily urged that the rules violated the Commission's statutory duty to fix spacing units as areas that can be efficiently drained by one well. The court correctly pointed out that the statute in question provides that the Commission "may establish a *proration unit* for each pool, such being the area that can be efficiently and economically drained and developed by one well."   [[89]](#footnote-90)89Relying on a prior supreme court decision, the court ruled that the new rules related to the creation of spacing units, which are distinct from proration units.   [[90]](#footnote-91)90

The U.S. District Court for the District of New Mexico rejected environmental challenges to three BLM lease sales in southeastern New Mexico.   [[91]](#footnote-92)91The court made a detailed review of the BLM's environmental assessments of the environmental impacts of the lease sales and anticipated future development ruling that those assessments were sufficient and not arbitrary or capricious.   [[92]](#footnote-93)92Specifically, the court ruled that BLM was required neither to use the social cost of carbon protocol in assessing the lease sales nor to explain why it did not use that protocol.   [[93]](#footnote-94)93The court also ruled that the BLM was not required by NEPA to issue environmental impact statements as the sales did not rise to the level of a "major Federal action" so that the BLM's environmental assessments were sufficient.   [[94]](#footnote-95)94

The District of New Mexico also ruled that, in the face of statutory silence, the Interior Board of Indian Appeals (IBIA) could rely on common law to determine that a majority of the remaindermen needed to approve the renewal of a pipeline right-of-way across an Indian allotment for there to be approval of that renewal.   [[95]](#footnote-96)95The court also ruled that this ruling could be applied to the pipeline operator retroactively.   [[96]](#footnote-97)96However, because the issue was raised by the IBIA *sua sponte*, it was arbitrary and capricious as its ruling was "based on a legal issue that was one of first impression and which none of the parties raised or were permitted to brief prior to the IBIA's decision."   [[97]](#footnote-98)97

*B. Regulatory Developments*

On January 16, 2020, the New Mexico ***Oil*** Conservation Commission adopted a rule allowing the New Mexico ***Oil*** Conservation Division administrative civil penalties for violations of New Mexico's ***Oil*** and Gas Act.   [[98]](#footnote-99)98The rule provides for enforcement of statutes, rule, orders, or permits by issuance of a temporary cessation order, issuance of a notice of violation, or commencement of a civil action.   [[99]](#footnote-100)99Civil penalties are allowed up to $ 2,500 per day for a violation unless there is "a risk either to the health or safety of the public or of causing significant environmental harm," in which case the penalty can be in the amount of $ 10,000 per day.   [[100]](#footnote-101)100The Division may not impose civil penalties exceeding $ 200,000.   [[101]](#footnote-102)101The rule includes detailed provisions for the procedure for challenging a civil penalty at the Division level.   [[102]](#footnote-103)102Appeals can be taken to the Commission and, thereafter, to district court.   [[103]](#footnote-104)103

Effective October 13, 2020, the Commission adopted rule changes   [[104]](#footnote-105)104regarding produced water in response to the Produced Water Act enacted by the New Mexico Legislature in 2019   [[105]](#footnote-106)105and the Division's new authority "to regulate the disposition, handling, transport, storage, recycling, treatment and disposal of produced water during, or for reuse in, the exploration, drilling, production, treatment or refinement of ***oil*** or gas."   [[106]](#footnote-107)106The Commission defined "produced water" as "a fluid that is an incidental byproduct from drilling for or the production of ***oil*** and gas."   [[107]](#footnote-108)107The rules aim to "encourage the recycling or re-use of produced water in a manner that protects the public health, the environment and fresh water resources . . . ."   [[108]](#footnote-109)108No permit or other form of registration is required for "the re-use of produced water for drilling, completion, production, pressure maintenance, secondary recovery or enhanced recovery of ***oil*** or natural gas or plugging of wells . . . ."   [[109]](#footnote-110)109Any other use of produced water must be approved by either the Division or, if used on the surface, by the Water Quality Control Commission.   [[110]](#footnote-111)110Even if no permit is required, there are reporting requirements for volumes of water used in operations in terms of produced water and three categories of water "other than produced water" based on the milligrams per liter of total dissolved solids (mg/l TDS): water that has 10,000 or more mg/l TDS; water that has more than 1,000 mg/l TDS but less than 10,000 mg/l TDS; and water that has 1,000 mg/l TDS or less.   [[111]](#footnote-112)111

VIII. OHIO

*A. Judicial Developments*

In a long-awaited decision, the Supreme Court of Ohio held in *West v. Bode*   [[112]](#footnote-113)112that the Ohio Marketable Title Act, Ohio Rev. Code § 5301.47 et seq. (OMTA) operates to extinguish severed mineral interests despite the later enactment of the Ohio Dormant Mineral Act, Ohio Rev. Code § 5301.56 (ODMA). The court found no irreconcilable conflict between the OMTA and the ODMA, even though the latter act comprises a single subsection of the larger OMTA. Thus, the court found, courts must apply each statute as the General Assembly wrote it--"as independent, alternative statutory mechanisms that may be used to reunite severed mineral interests with the surface property subject to those interests."   [[113]](#footnote-114)113The court explained that differences between the statutes cause them to operate differently (e.g., the laws have separate time periods to trigger the termination of a severed mineral interest) and achieve different results--extinguishment by operation of law and without further action of the surface owner under the OMTA versus a statutory abandonment process under the ODMA that requires notice to the severed mineral owner and an opportunity to contest the abandonment. The OMTA and the ODMA "afford independent procedures, either of which may be used to effect the termination of a severed mineral interest, depending on the circumstances of the case and the time that has elapsed," the court concluded.   [[114]](#footnote-115)114

Ohio's appellate courts also ruled on a slate of mineral ownership disputes this year. *Fonzi v. Brown*   [[115]](#footnote-116)115addressed the level of diligence that the ODMA requires a surface owner to use when identifying holders of a severed mineral interest that the surface owner seeks to abandon. There, a mineral reservation deed covering lands in Monroe County, Ohio, specified that the grantors lived in Washington County, Pennsylvania. But the surface owner only conducted a public-records search for severed mineral interest holders to serve with his ODMA abandonment notice in Monroe County (where the minerals were located), as well as a brief internet search. When that search did not reveal the names of the current severed mineral interest holders, the surface owner published an abandonment notice in the local newspaper. The court held that the surface owner failed to exercise reasonable due diligence, thereby defeating his attempt to use the ODMA. The court rejected his argument that the ODMA never requires a surface owner to search public records outside the county where the minerals are located. The court instead found that it was " *per se* unreasonable" for the surface owner to avoid searching the Washington County, Pennsylvania, as the reservation deed gave him actual knowledge that the reserving parties resided there. The Supreme Court of Ohio has agreed to hear *Fonzi*.   [[116]](#footnote-117)116

*Crum v. Yoder*   [[117]](#footnote-118)117also involved the issue of reasonable diligence under the ODMA but reached a different conclusion. There, Ernie and Louise Morris conveyed their property to their children through a deed that reserved the ***oil*** and gas. The children later conveyed the property to the Kuhns, repeating the reservation from the prior deed. The Kuhns, in term, conveyed the property to the Yoders, who pursued an ODMA abandonment to reunite the minerals and surface estates. The Yoders searched for Ernie and Louise Morris in the local county records as well as another neighboring county, but were unable to find their address, and thus published notice of the abandonment in the newspaper. The Morris heirs challenged the attempted abandonment, claiming, among things, that the abandonment notice was invalid because the Yoders failed to use due diligence to locate their addresses. They argued that an internet research effort would have readily revealed their addresses.

The court of appeals disagreed, finding that "the information available on the internet is not always reliable" and "changes continually," and "the availability of information may vary depending on the search engine used, the exact search terms employed, the use of quotation marks, and even the searcher's geographic location and past search history."   [[118]](#footnote-119)118Thus, "recreation of a general internet search conducted years in the past is difficult," while searching the official public records "does not engender the same difficulties."   [[119]](#footnote-120)119The court held that the Yoders' search of the official public records was reasonable under the circumstances.

*Hartline v. Atkinson*   [[120]](#footnote-121)120also involved a challenge to a surface owner's ODMA abandonment notice. There, the surface owners included a notice of abandonment as part of a complaint for declaratory judgment and quiet title. The court observed that the notice was "sandwiched between the body of the complaint and the exhibits" and was "not a separate document."   [[121]](#footnote-122)121That caused confusion as the responding party may have believed that merely answering the complaint would also serve to respond to the abandonment notice. The notice was thus ineffective. In a companion decision,   [[122]](#footnote-123)122the court held that the OMTA did not extinguish a different reservation covering the same property. While the surface owner had a valid root of title, wills for successors of the reserving owners were filed in the local probate court and these wills were statutory "title transactions" that preserved the interest.

In *McClellan v. McGary*,   [[123]](#footnote-124)123the court also considered the surface owners' claim that the OMTA extinguished a mineral reservation. Under the OMTA, a marketable record title "operates to extinguish such interests and claims, existing prior to the effective date of the root of title."   [[124]](#footnote-125)124The court thus focused its analysis on determining whether the surface-owner plaintiffs had a sufficient root of title, i.e.,

that conveyance or other title transaction in the chain of title of a person, purporting to create the interest claimed by the person, upon which he relies as a basis for the marketability of his title, and which was the most recent to be recorded as of a date forty years prior to the time when marketability is being determined.   [[125]](#footnote-126)125

The court found that they did. Although the purported root deed contained a prior deed reference to the original severance, the deed accounts for the interest in which Appellees claimed record marketable title (the minerals) and is not the severance deed.

Prior to 1925, Ohio law required a deed reservation to use words of inheritance for the grantor to retain a fee simple, or else the retained estate would extend only to the grantor's life. *Peppertree Farms v. Thonen*   [[126]](#footnote-127)126considered whether pre-1925 deeds retaining ***oil*** and gas rights were reservations subject to the words of inheritance rule, or instead were exceptions from the grant for which words of inheritance were not required. One deed provided that the grantor "'excepts and reserves one-half of the royalty of the ***oil*** and gas under the above described real estate.'"   [[127]](#footnote-128)127The other provided that "'all the ***oil*** and gas underlying the above described premises is hereby reserved,' unto H.J. Jones and 'is not made a part of this transfer.'"   [[128]](#footnote-129)128The court found that based on an earlier decision, the language used in the instrument and surrounding circumstances creates reservations that required words of inheritance. Both reservations explicitly indicated the grantors were reserving interests unto themselves, not merely excepting them from the grant.

Lease and royalty disputes also remained prominent litigation topics in 2020. In *Tewanger v. Stonebridge Operating Co.*,   [[129]](#footnote-130)129for example, the court refused to find that a 15-year statute of limitations barred a claim that the lease terminated for lack of paying quantities production. The court instead determined that the 21-year statute of limitations for the recovery of real property applied to a declaratory judgment claim that a lease expired under its habendum clause. The court found that the lease terminated under its habendum clause because of a complete lack of production over a four-year period.

*In Henceroth v. Chesapeake Exploration, L.L.C.*,   [[130]](#footnote-131)130the U.S. Court of Appeals for the Sixth Circuit found that the lessee properly considered post-production costs when calculating the landowners' royalties. The lessee, Chesapeake Exploration (Chesapeake), produced ***oil*** and gas from the plaintiff-landowners' property that it sold at the wellhead to its affiliate, Chesapeake Marketing (Marketing). Marketing then prepared the products for sale downstream. Once downstream, Marketing sold the finished products to third parties at prices that reflected the added value of these post-production services. Marketing paid Chesapeake based on the prices it received from these third parties less Marketing's post-production costs. Chesapeake, in turn, paid the landowners on the amounts it received from Marketing. The landowners sued, alleging Chesapeake underpaid their royalties when it failed to pay on the downstream prices that Marketing realized on its sale to third-party purchasers. The court found for Chesapeake. The leases provided that Chesapeake would pay royalties on gas and ***oil*** "produced and marketed from the Leasehold."   [[131]](#footnote-132)131Thus, "the first sale price is the proper royalty base," the court found.   [[132]](#footnote-133)132Chesapeake produced the raw products from the ground and immediately sold, i.e., "marketed," the products to Marketing. This all happened at the property (i.e., "from the Leasehold"), and not downstream. As a result, Chesapeake properly paid royalties to the landowners, calculated on its sales to Marketing.

In *Gateway Royalty, L.L.C. v. Chesapeake Exploration*,   [[133]](#footnote-134)133a state appeals court cited *Henceroth* as it found, on largely the same facts, that Chesapeake properly calculated royalties on the wellhead sales that it received from its affiliate marketing company. The lease stated that "for the gas marketed and used off the premises . . . , [the royalty shall be] the sum of one-eighth (1/8) of such gas so marketed and used at the price paid to Lessee . . . less any charges for transportation, compression and/or dehydration to deliver the gas for sale."   [[134]](#footnote-135)134"According to Merriam-Webster's online dictionary, to 'market' is 'to expose for sale in a market' or to 'sell,'" the court found.   [[135]](#footnote-136)135Thus, "when [Chesapeake] sold the gas and NGLs to [Marketing at the wellhead], it 'marketed' the product."   [[136]](#footnote-137)136Chesapeake therefore satisfied the royalty clause by paying royalties on the amount that it received on its sales to Marketing at the wellhead.

In *Zehentbauer Family Land LP v. Chesapeake Exploration, LLC*,   [[137]](#footnote-138)137the plaintiff-lessors also challenged Chesapeake's practice of deducting post-production costs from their royalty payments. The court found that Chesapeake satisfied the lease terms, which provided that royalties would be "computed at the wellhead."   [[138]](#footnote-139)138The court held that where "royalties are to be valued based on the wellhead value of the ***oil***, gas, and NGLs . . . the deduction of post-production costs are authorized."   [[139]](#footnote-140)139

In *Lutz v. Chesapeake Appalachia, L.L.C.*,   [[140]](#footnote-141)140the Sixth Circuit ruled in a royalty dispute that the landowner-plaintiffs were not entitled to have Ohio's four-year ***oil*** and gas royalty statute of limitation tolled against Chesapeake under a fraudulent concealment theory. Several of the landowners admitted in discovery that they had not read their royalty check stubs, while others admitted to only reading the net amount listed on the check stub. Based on these admissions, the court found the landowners failed to establish that they relied on any purported misrepresentation in their royalty check stubs. The court also found that the figures in the landowners' royalty check stubs had no detrimental effect on their behavior. "All told, it was not the stubs that 'kept [the landowners] from timely bringing suit.' It was their own conduct."   [[141]](#footnote-142)141The landowners countered there was nothing in the royalty check stubs to suggest to a reasonable person that wrongdoing was afoot. The court disagreed, pointing to the availability of public information about gas prices and production and the fact that the landowners undertook no investigation to confirm the information in their royalty checks.

A conflict between ***oil*** and gas lease rights and restrictive covenants imposed through a state environment program was the subject of *Siltstone Services, LLC v. Guernsey County Community Development Corp.*   [[142]](#footnote-143)142There, the Guernsey County Community Development Corporation (CDC) received a grant from the state's Clean Ohio Fund Green Space Conservation Program administered by the Ohio Public Works Commission (OPWC). The grant funded the CDC's purchase of land along a creek to protect the land from encroachment by developers and preserve its natural beauty. As part of the grant approval, OPWC required restrictions to be recorded with the purchase deeds, which prohibited development of the land "in any manner that conflicts with the use of the Premises as a green space park area" and also restricted CDC's ability to transfer the property without OPWC's prior consent.   [[143]](#footnote-144)143A few years after receiving the land, CDC signed an ***oil*** and gas lease, entered into a water and surface use agreement with another ***oil*** and gas company, and permitted a third company to use a private road on the land to access an adjoining property for commercial purposes.

Litigation followed and OPWC asserted that CDC's contracts with the ***oil*** and gas companies violated the deed restrictions. Reversing the trial court's judgment for CDC, the appeals court held that CDC's dealings violated the deed restrictions. Leasing the property for ***oil*** and gas development "allows the lessee reasonable access to the surface, defeating the purpose of a 'green space park area.'"   [[144]](#footnote-145)144Likewise, the water and surface use agreement violated the use restriction because CDC gave the ***oil*** and gas company the right to disturb the surface, and the parties' agreement required CDC to ban the public from using the land during the course of ***oil*** and gas operations. The contracts with all three companies contravened the transfer restriction. The court therefore found OPWC was entitled to injunctive relief and compensatory damages flowing from CDC's violation of its deed restrictions.

IX. OKLAHOMA

*A. Judicial Developments*

*White Star Petroleum, LLC v. MUFG Union Bank, N.A.*,   [[145]](#footnote-146)145presented questions of state law certified to the Oklahoma Supreme Court by the U.S. Bankruptcy Court for the Western District of Oklahoma to aid in that court's resolution of adversary proceedings. The court first addressed whether funds held in trust pursuant to 42 O.S. § 144.2 for payment of lienable claims created by 42 O.S. § 144 are limited to joint-interest billing payments received by operators for services rendered by the lienholders. The court found that "[n]othing in the text or history of 42 O.S. § 144.2 limits the types of revenue which should be held in trust for payment of lienable claims."   [[146]](#footnote-147)146The court found no basis for White Star's assertion that the applicability of § 144.2(A) should be limited to obligations between third-party vendors and operators, stating that it would not imply limitations in the text of a statute that were not clearly expressed.

On a separate question, White Star argued that the liens held by nonoperating working interest owners under the ***Oil*** and Gas Owners' Lien Act of 2010   [[147]](#footnote-148)147were superior to those held by mechanics and material lien claimants. However, the court found that, based on the text and legislative history of the Act, "the M&M lien claimants are in parity to operators and non-operating working interest owners pursuant to [the Act], and they [were] entitled to the same super-priority as White Star and its affiliated non-operating working interest owners."   [[148]](#footnote-149)148

*Peters v. EOG Resources, Inc.*,   [[149]](#footnote-150)149involved an ***oil*** and gas lease that Peters entered into with T.S. Dudley Land Company, Inc. (TSDI) under which TSDI was the lessee. The lease included an option to extend for two years in consideration of a bonus payment. The ***oil*** and gas lease did not include any express terms setting out how or where the bonus payment should be delivered. TSDI assigned the subject lease to EOG in June 2016; however, the record does not address when or if EOG notified lessor Peters that it had acquired the lease. On or before March 1, 2018, EOG mailed a check for the bonus payment to Peters at the address shown for Peters in the lease. The check was returned as undeliverable on or about March 15, 2018. The court's opinion describes other facts at length.

Peters sued to quiet title and for a determination that EOG had no right, title or interest in the minerals subject to the lease. Peters contended that the lease automatically terminated when the bonus payment was not delivered to Peters before the end of the primary term of the lease. The trial court granted Peters' motion for summary judgment. EOG appealed. The Oklahoma Court of Appeals issued a 19-page opinion addressing the complex issues. It found that a dispute of fact remained on whether the equitable rule of forfeiture applied to protect EOG from termination of the lease. Additionally, the court found that the trial court's determination of whether the equitable rule against forfeiture should apply required additional evidence and would be more properly resolved in a proceeding that allowed the trial court to weigh the evidence, reasonable inferences, and credibility of witnesses presented, if any. It reversed the trial court's judgment in favor of Peters and remanded the case for further proceedings.

The lawsuit in *Bollenbach v. Spess* ***Oil*** *Co.*,   [[150]](#footnote-151)150reached the appellate court through Spess ***Oil***'s appeal of the district court's denial of Spess's motion for new trial in an action to quiet title and to cancel Spess's interest in certain ***oil*** and gas leases. This summary of the 20-page opinion of the appellate court will note only certain aspects of the lengthy opinion. The plaintiffs asserted that the well had ceased to produce in paying quantities, resulting in the termination of certain ***oil*** and gas leases.

In the lengthy decision of the court of appeals, certain of the key rulings were as follows:

1.  The court found that the habendum clauses contained in the subject ***oil*** and gas leases provided that the leases would continue in effect beyond their primary terms as long as ***oil*** and/or gas was produced, which, under Oklahoma law, means production in paying quantities. The court further noted that the term "produced" means "capable" of producing in paying quantities.

2.  The subject leases contained cessation of production clauses providing that, if after the expiration of the primary term, the well was incapable of producing, the lease would terminate unless Spess resumed operations for drilling a well within 120 days from the cessation.

3.  After additional detailed analysis, the court stated that "[i]n short, Spess did not successfully dispute Plaintiffs' undisputed material facts that the well ceased production in paying quantities for a protracted period in 2015 and 2016. The requirement of continued production in the Habendum Clause was not satisfied, and the Cessation Clause was therefore triggered."   [[151]](#footnote-152)151

4.  The court of appeals found that "[i]t is undisputed the well ceased production for more than 120 days, and that production did not resume. . . the well was active, but not produce in paying quantities for more than 120 days."   [[152]](#footnote-153)152The court observed that Spess "supplied no acceptable evidentiary support to the contrary, and presented nothing to support an equitable argument that the Subject Leases should be deemed capable of production, or should not terminate."   [[153]](#footnote-154)153

In *Roggow, First Successor Trustee v. Teders*,   [[154]](#footnote-155)154the appellants (plaintiffs below) appealed from the trial court's order quieting title to certain mineral interests and an ***oil*** and gas lease in the appellees (defendants below). The issue on appeal was whether the trial court erred in holding that the temporary cessation of production doctrine resulted in the termination of the plaintiffs' term mineral interests in certain lands. The mineral interest at issue was reserved by deed for a period of 20 years and as long thereafter as minerals were *produced*. The court of appeals found that it was undisputed the only producing well on the property ceased to continuously produce, for multiple periods, during the secondary term. The plaintiffs' term mineral interest therefore expired and the interest reverted to the defendants. Because the defendants were entitled to judgment as a matter of law, the judgment of the trial court was affirmed.

The case of *Corbett v. Anadarko E&P Co.*   [[155]](#footnote-156)155presented the ***oil*** and gas lessor Corbetts' appeal of the district court's rulings in favor of defendant Anadarko in the Corbetts' suit for (a) reformation of an ***oil*** and gas lease covering Pennsylvania   [[156]](#footnote-157)156lands, (b) denial of a claim for unjust enrichment, and (c) denial of a claim that the ***oil*** and gas lease at issue was unconscionable. Certain of the lengthy disputes that led to this litigation were described in the court's opinion. In 2006, the mineral owner-Corbetts began discussions with a leasing agent for Anadarko concerning the proposed granting of an ***oil*** and gas lease covering the Corbetts' property. Two tracts of land were involved. The "Overton Tract" was jointly owned by the plaintiffs, Kim and Kevin Corbett. The "Herrick Tract" was owned only by the plaintiff Kevin Corbett. The two tracts were located approximately 20 miles apart.

The court's opinion describes certain details of the negotiations, drafting, and revisions to the proposed ***oil*** and gas lease, including the fact that the *one* ***oil*** and gas lease was ultimately drafted to cover *both* of the two distinct tracts of land referred to above. Testimony presented at the trial between the Corbetts and Anadarko (with summary judgment having been entered earlier in favor of the other three defendants) established that it was common practice in Pennsylvania, and not unlawful, to lease noncontiguous tracts in a single ***oil*** and gas lease. The Corbetts also alleged that they questioned the approach of having the two distinct tracts covered by a single lease, and that they were assured that Anadarko would split the tracts and account for each tract separately. However, Anadarko's leasing agent denied those allegations and stated that she did not have authority to make any such representations. On June 6, 2006, the Corbetts executed the ***oil*** and gas lease with Anadarko. The court of appeals described in detail additional aspects of the factual history of the underlying dispute that exceed the space available for this summary.

At the nonjury trial (which occurred over the objection of the Corbetts) as to Anadarko, the trial court denied the Corbetts' claims for reformation and unjust enrichment, and found that the ***oil*** and gas lease was enforceable and was *not* unconscionable. The Corbetts appealed.

The court of appeals concluded that the trial court did not err in denying the Corbetts reformation of the ***oil*** and gas lease. The appellate court further found that the denial of reformation effectively confirmed the validity of the lease. The court found that a claim for unjust enrichment may arise only when a transaction of the parties not otherwise governed by an express agreement confers a benefit on the defendant to the plaintiff's detriment, without any corresponding exchange of value. The court of appeals found that the trial court correctly ruled that, given a valid written contract, there was no claim for unjust enrichment under Pennsylvania law. Finally, the court concluded that the trial court did not err in declining to find the ***oil*** and gas lease unconscionable. The court of appeals found that the "Corbetts' original petition claims are barred by applicable Statutes of Limitations. The facts of the case clearly show that Corbetts knew of their claim or had sufficient notice that they had a claim against Anadarko more than five years prior to filing their lawsuit yet continued to accept payments from Anadarko."   [[157]](#footnote-158)157

The court of appeals affirmed the judgment of the trial court.

*Devon Energy Production Co. v. Wyckoff*   [[158]](#footnote-159)158presented Devon's appeal of the trial court's judgment granting the Wyckoff defendants' motion to dismiss Devon's suit for failure to state a claim on which relief could be granted under 12 O.S. § 2012(B)(6). Devon alleged that the defendants' attorney "approached Devon about entering into leases with his two clients regarding lease holdings that had recently been released"   [[159]](#footnote-160)159by another company. Devon paid almost $ 1.6 million for the two leases. The court found that Devon was to assume responsibility for a title search   [[160]](#footnote-161)160and noted that the new lease did not provide any warranty of title by the defendants. However, a 1956 lease covering multiple sections, including the mineral acres Devon understood it was acquiring under the new lease, was still held by production from one or more wells. As a result, the Wyckoff and Griffith Trust defendants had no mineral acres available for lease at the time they entered into the new leases with Devon. The defendants argued that, since they did not warrant title, the defendants should be permitted to keep the lease payments made by Devon.

In the present lawsuit, Devon asserted claims for breach of implied covenant of quiet enjoyment, actual and/or constructive fraud, rescission, and unjust enrichment. The court reviewed Devon's appeal under a *de novo* standard of review. After reviewing certain prior decisions relevant to the issues before the court, the appellate court concluded that the district court's decision should be reversed in light of Devon's allegation of fraud. It cited findings in a prior case that "the doctrine of *caveat emptor* would 'not shield a seller from purporting to sell that which he does not have.'"   [[161]](#footnote-162)161Here, Devon alleged that the defendants knew or should have known the net mineral acres were not available for lease because they were covered by the 1956 lease that continued to be held in force and effect by production.

The court found that, on the record before it, the court could not determine whether any fraud was perpetrated: "In light of the uniquely fact specific fraud claim presented here, [d]efendants did not meet"   [[162]](#footnote-163)162their burden before the district court to show the legal insufficiency of the petition. The Court of Civil Appeals reversed the district court's order granting the defendants' motion to dismiss Devon's petition for allegedly failing to state a claim upon which relief could be granted. The cause was remanded to the district court for further proceedings.

The case of *State of Okla. ex rel. Commissioners of the Land Office v. Stephens & Johnson Operating Co.*   [[163]](#footnote-164)163presented an appeal by the operator of the lower court's denial of its application for attorney fees under Oklahoma's Surface Damages Act (SDA).   [[164]](#footnote-165)164When the operator and surface owner were unable to reach an agreement regarding the amount of surface damages incurred by the surface owner in connection with drilling operations on *four* ***oil*** and gas wells drilled and completed, the surface owner initiated proceedings under the SDA. The trial court appointed three appraisers to assess the damages. Two of the three agreed to a majority report setting damages at $ 450,000. The minority appraiser assessed damages in the much-lower amount of $ 120,515. The operator, dissatisfied with the majority report, demanded a jury trial.

The jury returned a verdict awarding damages in favor of the surface owner for $ 206,192.97. Neither the operator nor the surface owner appealed. The operator then filed an application to recover attorney fees and costs in the amount of $ 359,458.71. The trial court denied the operator's request, so the operator appealed. The Oklahoma Court of Appeals affirmed the denial of fees and costs. Both the trial court and the court of appeals found that the SDA did not provide for an award of fees and costs under the facts of this case. The court found that the SDA provides for costs and attorney fees to be assessed only when the party demanding a jury trial fails to obtain a verdict more favorable than the appraisers' assessment. On certiorari review, the Oklahoma Supreme Court found in part as follows:

Under the plain terms of the Act, only the non-jury demanding party may recover its fees and costs and only when the jury-demanding party failed to obtain a more favorable verdict than the appraiser's award. The terms of § 318.5(F) are equally applicable in their treatment of the demanding party, regardless of whether a surface owner or an operator demands the jury trial. This is not a prevailing party provision. Because Operator was the jury-demanding party and received a more favorable verdict, it is not entitled to fees herein under the plain terms of the SDA.   [[165]](#footnote-166)165

The court concluded that

Operator demanded the jury trial herein and the jury returned a verdict for less than the amount of the appraisers' award, a more favorable result to Operator. The cases awarding fees and costs to surface owners under § 318.5(F) of the SDA have no application in this case because that provision is limited to situations where the jury demanding party fails to obtain a verdict more favorable than the appraisers' award.   [[166]](#footnote-167)166

The opinion of the court of appeals was withdrawn, and the judgment of the trial court was affirmed. The higher court found that cases awarding fees and costs to surface owners under section 318.5(F) of the SDA have no application in this case because that provision is limited to situations where the jury-demanding party *fails* to obtain a verdict more favorable than the appraisers' award.   [[167]](#footnote-168)167

In *Natural Gas Pipeline Co. of America LLC v. Foster OK Resources LP*,   [[168]](#footnote-169)168NGPL pursued easements for access to operate and maintain two interstate natural gas pipelines and to clear title issues involving the pipelines. Foster disputed NGPL's attempted exercise of eminent domain and asserted that NGPL's taking did not meet the legal standard of necessity. The district court appointed three Commissioners to determine the just compensation owed to Foster due to NGPL's taking of the several easements. After the Commissioners filed their report, Foster filed exceptions to the report. The district court, after conducting a hearing, overruled Foster's exceptions. Foster appealed. The Oklahoma Supreme Court retained the appeal, so there was no earlier ruling by an intermediate appellate court.

In a lengthy opinion, the court held that (1) NGPL did not contract away its right of eminent domain by entering into earlier easement agreements with Foster; (2) the fact that NGPL had another means of access to its pipelines was insufficient to show that NGPL's taking was fraudulent, in bad faith, or an abuse of discretion; (3) NGPL's condemnation of Foster's property was for a public use and met the legal standard of necessity; and (4) arguments relating to the necessity of surveying Foster's property in computing the just compensation due Foster were premature and could not be determined before the anticipated jury trial on that issue. The court affirmed the district court's ruling denying Foster's Exceptions to Report of Commissioners.

*B. Administrative Developments*

Documents filed in the rulemakings referred to below can be viewed on the Oklahoma Corporation Commission's website.   [[169]](#footnote-170)169

1. ***Oil*** and Gas Conservation Rules

Amendments to Title 165, Chapter 10 of the Oklahoma Administrative Code (OAC), which comprises the Commission's ***Oil*** *& Gas Conservation Rules*, were addressed in Cause RM No. 202000002. Following is a brief summary of certain key amendments that became effective on October 1, 2020.

OAC 165:10-1-2 was amended regarding definitions; OAC 165:10-1-4 to update the list of effective dates for OAC 165:10 rulemakings; OAC 165:10-1-6 to delete a reference to the Natural Gas Policy Act of 1978 and to add a reference to a schedule of fines; OAC 165:10-1-7 to update the list of ***Oil*** & Gas Conservation Division (OGCD) prescribed forms, to delete form(s) and to add new form(s); OAC 165:10-1-10 concerning operator agreements; OAC 165:10-1-15 with respect to transfer of operatorship of ***oil*** and gas wells; OAC 165:10-3-1 regarding permits to drill wells; OAC 165:10-3-2 concerning notification of spudding of new wells; OAC 165:10-3-3 with respect to ruptures, breaks or openings in well casing strings; OAC 165:10-3-4 regarding casing and cementing of wells; OAC 165:10-3-10 concerning hydraulic fracturing operations and submission of information with respect to chemicals used in hydraulic fracturing operations; OAC 165:10-3-16 regarding operations in hydrogen sulfide areas; OAC 165:10-3-17 concerning well site and surface facilities, and OAC 165:10-3-28 with respect to horizontal drilling.

In addition, OAC 165:10-5-2 was amended regarding the process for obtaining approval of proposed underground injection wells within a specified distance of public water supply wells; OAC 165:10-5-5 concerning applications for approval of underground injection wells; OAC 165:10-5-6 with respect to testing and monitoring requirements for underground injection wells; OAC 165:10-5-7 regarding monitoring and reporting requirements for underground injection wells; OAC 165:10-5-9 concerning duration of underground injection well orders or permits; OAC 165:10-5-10 with respect to transfer of authority to operate underground injection wells; OAC 165:10-7-2 regarding administration and enforcement of the ***Oil*** & Gas Conservation rules; OAC 165:10-7-5 concerning reporting of nonpermitted discharges of deleterious substances; OAC 165:10-7-7 to strike references to complaint citations pertaining to alleged violations of Commission orders or the ***Oil*** & Gas Conservation rules, and OAC 165:10-7-9 was revoked regarding complaint citations because such complaint citations are no longer used.

In addition, OAC 165:10-7-16 was amended concerning use of noncommercial pits; OAC 165:10-7-19 with respect to land application of water-based fluids from earthen pits, tanks, and pipeline construction; OAC 165:10-7-20 regarding noncommercial disposal or enhanced recovery injection well pits used for temporary storage of saltwater; OAC 165:10-7-26 concerning land application of contaminated soils and petroleum hydrocarbon based drill cuttings; OAC 165:10-7-33 with respect to truck wash pits; OAC 165:10-8-5 regarding submission of operator agreements for recycling/reclaiming facilities; OAC 165:10-9-1 concerning operation of commercial pits; OAC 165:10-9-2 with respect to commercial soil farming; OAC 165:10-9-3 regarding commercial disposal well surface facilities; OAC 165:10-9-4 concerning commercial recycling facilities; OAC 165:10-11-9 with respect to temporary exemption from well plugging requirements; OAC 165:10-17-7 regarding alternate shut-in pressure requirements for gas wells; OAC 165:10-17-16 was revoked concerning filing of Form 1007A annual unallocated natural gas well surveys; Appendix E was revoked, and a new Appendix E was reenacted to implement a schedule of fines, and Appendix F was revoked.

2. Rules of Practice

Amendments to Title 165, Chapter 5 of the Oklahoma Administrative Code, which comprises the Commission's *Rules of Practice*, were addressed in Cause RM No. 202000003. Following is a brief summary of certain key amendments that became effective on October 1, 2020.

OAC 165:5-1-4 regarding telephonic communication service was amended to add the words "division" and "telephone and/or videoconference"; OAC 165:5-1-5 to change "email" to "electronic mail" to be consistent throughout the Chapter, to clarify responsibility concerning the filing of confidential information, and to provide instructions for submitting personal identifier information to the Commission; OAC 165:5-1-9 regarding videoconference participation, to provide guidance for hearings conducted by telephone or videoconference, and to require that the witness affidavit be filed within three business days following the hearing; OAC 165:5-3-1 to clarify that the gas gathering base application requires a $ 200.00 filing fee, to remove an unnecessary provision, and to provide that reproduction of documents will be in accordance with 51 O.S. § 24A.5; OAC 165:5-3-2 to specify that reproduction of documents will be in accordance with 51 O.S. § 24A.5; OAC 165:5-5-1 to require notices of inquiry be filed on the General Docket, clarify the types of causes filed on the Consumer Services Docket, remove the ***Oil*** and Gas Citation Docket, and specify that ***oil*** and gas related Enforcement Dockets are included in the ***oil*** and gas dockets.

In addition, OAC 165:5-7-1 regarding general application and notice requirements was amended to remove a reference to ***Oil*** and Gas Conservation Division causes filed pursuant to OAC 165:5-7-27, to require an electronic mail address, and with respect to notices of hearing, to remove the requirement of the Secretary's signature, and to instead require the typewritten name of each current Commissioner, followed by the signature of the person filing the application; OAC 165:5-7-6, OAC 165:5-7-9, and OAC 165:5-7-10 regarding drilling and spacing unit establishment or modification, well location exception and increased well density applications, respectively, to include requirements for exhibits and orders to ensure consistency, accuracy, and completeness.

In addition, OAC 165:5-7-9 was amended to address applications and notices of hearing for exceptions to the minimum distance requirements specified by OAC 165:10-3-28(c)(2) and (c)(3) for completion intervals of ***oil*** and gas horizontal wells; OAC 165:5-7-27 to strike language and to refer to OAC 165:10-5-5 regarding applications for approval of injection wells and disposal wells; and OAC 165:5-7-29 regarding requests for exceptions to underground injection well requirements; OAC 165:5-9-4 regarding intervention and parties of record to add the U.S. Department of Defense and/or the Federal Executive Agencies as persons authorized to become parties of record without needing to file a motion for intervention; and OAC 165:5-13-3 was amended regarding formats for exhibits, including requiring that exhibits be identified by docket type and cause number on the first page of each exhibit prior to submission to the Commission, and that all pages of each exhibit shall have continuous pagination, and to allow notices to parties of record to be provided via electronic mail.

In addition, OAC 165:5-15-1 was amended to clarify the Commission's process for sending orders to applicants; OAC 165:5-19-1 regarding contempt procedures to, among other things, allow for service on the registered agent as listed with the Oklahoma Secretary of State, to establish the effectiveness of service of a citation by certified mailing, and to require that the Commission shall determine that jurisdiction and service are proper before hearing objections and defenses to the merits of a complaint; and OAC 165:5-25-2 to provide a process for filing confidential applications relating to IFTA/IRP causes.

X. PENNSYLVANIA

A. *Judicial Developments*

In *Briggs v. Southwestern Energy Production Co.*, the Pennsylvania Supreme Court determined that in the absence of physical invasion, the rule of capture applies to hydraulic fracturing in Pennsylvania and producers "who use hydraulic fracturing may rely on pressure differentials to drain ***oil*** and gas from under another's property . . . ."   [[170]](#footnote-171)170The court opined that the superior court erred to the extent it assumed in rendering its decision that: (1) hydraulic fracturing prohibited the operation of the rule of capture, or (2) where hydraulic fracturing is used, a "physical invasion is a necessary precondition in all cases for drainage to occur from underneath another property."   [[171]](#footnote-172)171The court reversed and ordered that the superior court evaluate on remand whether the plaintiffs' complaint sufficiently alleged a physical invasion and, thus, a trespass. On remand, the superior court reinstated the trial court's order granting summary judgment in favor of Southwestern.   [[172]](#footnote-173)172The court observed that the plaintiffs' complaint "does not specifically allege that Southwestern engaged in horizontal drilling that extended onto their property, or that Southwestern propelled fracturing fluids and proppants across the property line."   [[173]](#footnote-174)173

In *Barton v. Graham*, the court affirmed Armstrong County's grant of summary judgment in a case involving the legal effect of delay rental payments.   [[174]](#footnote-175)174At issue was a 1964 lease that provided for a primary term of 15 years, "and so long thereafter as ***oil*** or gas can be produced in paying quantities."   [[175]](#footnote-176)175The lease further provided that a delay rental of $ 54.00 was to be paid "yearly until drilling operations are begun."   [[176]](#footnote-177)176One well was drilled on the property, but it had not produced any gas since June 1993 and was currently disconnected from any tanks or commercial distribution systems for the sale of gas. The lessees only tendered delay rental payments of $ 54.00 per year for the past six years, but the landowners did not cash any of the checks for these payments. The superior court held that the primary term of the lease ended when production ceased and the landowners refused the delay rental payments. The court reasoned that the *Hite* decision was controlling. In *Hite*, the court held that once a primary lease term expires, the "'mere payment of delay rentals alone' does not preserve a lessee's drilling rights."   [[177]](#footnote-178)177Further, "even if a party were to accept delay rental payments after the expiration of the primary term as implied extensions of the lease, such extensions cease when a party refuses to accept further delay rental payments."   [[178]](#footnote-179)178Accordingly, the *Barton* court affirmed summary judgment in favor of the landowners because pursuant to the lease terms and the *Hite* holding, the primary term of the lease ended when production ceased and the delay rental payments were refused. The superior court subsequently denied request for reargument.

In *Wilson v. Snyder Bros., Inc.*, the court affirmed that disputed ***oil*** and gas leases remained in effect after ratification of the leases.   [[179]](#footnote-180)179The landowners entered into two lease agreements with the lessees for property. The leases contained identical language providing the lessee with the right to drill within 180 days of the date the lease terms began and the right to extend the lease period by making annual delay rental payments if drilling did not begin during that primary term. Drilling did not begin until 2010 after the expiration of the primary term, so from 2003 to 2010, the landowners were timely paid delay rental payments. The landowner accepted these payments. In 2010, the parties entered into amended agreements, ratifying that both leases remained "in full force and effect."   [[180]](#footnote-181)180Subsequently, the landowners filed suit alleging that the leases were not valid and had terminated because drilling operations did not commence until years after the primary term had elapsed. The court found that the original leases remained in effect as a matter of law from the time they were entered until the date of their ratification in the amended agreements. The court reasoned that the landowners ratified the original leases beyond the primary term and did not dispute the validity of the amended leases until years after drilling had started. The court held that the landowners waived any claim they may have had to dispute the validity of the leases based on non-production from 2003 until 2010 "[a]s a purely contractual matter."   [[181]](#footnote-182)181Therefore, the Superior Court affirmed the trial court's decision that the leases remained in effect.

In *Hordis v. Cabot* ***Oil*** *& Gas Corp.*, the court analyzed Pennsylvania law to determine whether a claim for breach of a lease's implied duty of good faith and fair dealing can stand alone as a cognizable claim.   [[182]](#footnote-183)182The Pennsylvania Supreme Court has not addressed this issue, so this decision provides clarity on the disagreement among the intermediate Pennsylvania appellate courts on the viability of such claims. In the plaintiffs' complaint, Count 1 was for breach of contract, alleging that the defendant breached its duties arising under the lease and violated the lease's express terms concerning acreage limitations, unitization, compliance with Commonwealth regulations, and lessor consent. Count 2 was for breach of the implied duty of good faith and fair dealing, alleging that the defendant engaged in bad faith pooling and unitization of the property, failed to engage in good faith efforts to fully develop units, provided the plaintiffs with inaccurate and incomplete information to induce them to consent to multi-unit wells, and failed to provide proper notification, *inter alia*. The court held that most of the allegations supporting Count 2 were either duplicative or derivative of those underlying Count 1. More importantly, the court also held that Count 2 (breach of the duty of good faith and fair dealing) does not state a cognizable claim under Pennsylvania law. The court reasoned that while the implied duty of good faith and fair dealing applies to all contracts in Pennsylvania, a contract claim for breach of that duty "exists only in very narrow circumstances."   [[183]](#footnote-184)183The court explained that in this case, as in most cases, "the duty attaches to the express terms of the contract, and it provides a lens through which to assess the parties' reasonable expectations regarding those terms, but it supplies no further obligations beyond those expressly articulated in the contract."   [[184]](#footnote-185)184Accordingly, a breach of the implied duty of good faith and fair dealing in this lease dispute cannot independently support a cause of action sounding in contract. In other words, a separate and distinct claim for breach of the implied duty of good faith and fair dealing is not viable in this case given the allegations made in the complaint.

In *Walls v. Repsol* ***Oil*** *& Gas USA, LLC*, the Middle District of Pennsylvania determined that ***oil*** and gas leases that Repsol entered into with three Pennsylvania landowners permitted the construction of pipelines across their properties and did not restrict the pipelines to the transport of gas extracted from their properties.   [[185]](#footnote-186)185In particular, the court observed that the plain language of the lease granted "the right . . . of laying pipe lines."   [[186]](#footnote-187)186The court rejected the landowners' argument that the right to construct and operate a pipeline across the property was limited to those "necessary, incident to or convenient for the operation of [their properties] alone and conjointly with neighboring lands."   [[187]](#footnote-188)187Instead, the court noted, basic principles of lease construction dictate that the language cited by the landowners only applies to those rights not specifically enumerated in the lease, i.e., "all other rights," and that had the parties intended for all rights to be so limited, "there would be no reason to enumerate any rights at all."   [[188]](#footnote-189)188

The Pennsylvania Superior Court's 2019 decision in *SLT Holdings, LLC v. Mitch-Well Energy, Inc.* was appealed and the Pennsylvania Supreme Court has granted allocatur.   [[189]](#footnote-190)189The superior court held that the leases at issue had been abandoned as the record established that no shut-in payments were paid to the appellees under the leases at issue and ***oil*** and gas was not produced in paying quantities for over 25 years.   [[190]](#footnote-191)190On appeal, the supreme court will determine:

Did the Superior Court err in the grant of summary judgement against Petitioner on Counts I, II, and V of its amended complaint in equity on a "drill or pay ***oil*** and gas lease" where a well on each parcel was drilled by Petitioner and pursuant to each lease the wells were productive, and no testimony was taken as to the Petitioner's good faith production decision pursuant to the Supreme Court decision in *T. W. Phillips Gas and* ***Oil*** *Co. v Jedlicka*, 615 Pa. 199, 42 A.3d 261 (2012)?   [[191]](#footnote-192)191

The supreme court directed the parties to address *Jacobs v. CNG Transmission Corp.*, 332 F. Supp. 2d 759 (W.D. Pa. 2004), *Aye v. Philadelphia Co.*, 44 A. 555 (Pa. 1899), and the doctrine of abandonment.   [[192]](#footnote-193)192This case remained pending at the time of this writing. The U.S. Court of Appeals for the Third Circuit issued a decision in 2019 in *In re PennEast Pipeline Co.*, an eminent domain action brought by PennEast pursuant to the NGA to allow it to acquire property interests necessary for a pipeline being built through Pennsylvania and New Jersey.   [[193]](#footnote-194)193The court ultimately barred PennEast's condemnation against New Jersey due to the state's Eleventh Amendment sovereign immunity, reasoning that because the federal government did not explicitly delegate the exemption from immunity in the NGA, New Jersey's immunity barred the condemnation action against it. PennEast has since filed a petition for a writ of certiorari to the Supreme Court, stating the question presented as: "Whether the NGA delegates to FERC certificate holders the authority to exercise the federal government's eminent domain power to condemn land in which a state claims an interest." The Supreme Court has invited the Solicitor General of the United States to file a brief expressing the view of the United States, but such brief has not yet been filed and the petition for writ of certiorari remained pending at the time of this writing.

*B. Administrative Developments*

In *Sunoco Pipeline L.P. v. Pennsylvania*, a judge of the Pennsylvania Environmental Hearing Board concluded that Sunoco was prematurely ordered to reroute a section of its Mariner East pipeline following a drilling mud spill in August 2020.   [[194]](#footnote-195)194The judge observed that in a previous agreement reached between Sunoco and the Pennsylvania Department of Environmental Protection (DEP), in the event of a mud spill of greater than 50 gallons, Sunoco was required to cease drilling but would be permitted to restart its work pending the submission and review of a report to the DEP detailing its plans to prevent and respond to any future spills. Following the August spill, however, the DEP simply ordered a reroute and it is unclear whether it reviewed the restart report submitted by Sunoco. The judge thus temporarily superseded the DEP's order mandating a reroute of the pipeline pending review of Sunoco's restart report.

XI. TEXAS

*A. Judicial Developments*

Texas courts issued opinions on a wide variety of energy related topics in 2020.

In *Yowell v. Granite Operating Co.*,   [[195]](#footnote-196)195the Texas Supreme Court held that an overriding royalty interest (ORRI) in a new lease violated the rule against perpetuities. The ORRI attached to any extensions, renewals or new leases executed with the lessee, but such ORRI was not certain to vest, if ever, within 21 years after the death of a life in being at the time of the conveyance. For the ORRI to vest, the 1986 lease needed to terminate, and a new lease with the original lessee needed to be signed. Neither of these was certain to ever occur, much less within the 21-year requirement. Although the ORRI violated the rule, the court did not invalidate it but applied Tex. Prop. Code § 5.043, which mandates that courts remedy conveyances that violate the rule against perpetuities to best give effect to the creator of the interest.

*Piranha Partners v. Neuhoff*   [[196]](#footnote-197)196provides a firm reminder of the importance of clarity in conveyance exhibits. In this case, the Supreme Court of Texas held that an assignment of ORRIs conveyed the seller's interest in all wells on an entire lease, rather than just the wellbore that existed on the lease when the assignment was signed. The court addressed an ambiguous granting clause that conveyed all of the assignor's right, title, and interest in and to properties described in Exhibit A, and then provided in relevant part:

P1. All ***oil*** and gas leases, mineral fee properties or other interests, INSOFAR AND ONLY INSOFAR AS set out in Exhibit A . . . whether said interest consists of leasehold interest, overriding royalty interest, or both . . . which [interest] shall include any working interest, leasehold rights, overriding royalty interests and reversionary rights held by [the assignor], as of the Effective Date.

P2. All presently existing contracts to the extent they are assignable and to the extent they affect the Leases, including agreements for the sale or purchase of ***oil***, gas and associated hydrocarbons, division orders, unit agreements, operating agreements, and all other contracts and agreements arising from, connected with, or attributable to the production therefrom.

The court reasoned Exhibit A's description did not identify the scope of the interest conveyed; it identified (1) the only well that was producing at the time of the assignment, (2) the land on which that well was located, and (3) the lease under which the ORRI existed. Eventually more wells were drilled on the land. In holding that the assignment conveyed an interest in all production under the lease, the court looked to the assignment's entirety including the grants in Paragraph 1 that limited the interest to Exhibit A's description but also included any ORRI the assignor then owned to the extent Exhibit A identified those interests and Exhibit A referenced the lease without limitation. Additionally, the court reasoned that by conveying existing contracts to the extent they affected "the Leases," Paragraph 2 indicated that the assignor conveyed the entire interest under the lease. Rejecting the assignor's argument that Exhibit A's references to the specific well and the area in which it was located limited the conveyance, the court concluded that that information simply identified the lease under which the ORRI existed.

In *WTX Fund, LLC v. Brown*,   [[197]](#footnote-198)197the court interpreted a 1951 mineral deed to determine if the grantors conveyed the entire mineral interest without reservation or reserved the royalty component of the mineral interest from the conveyance. On summary judgment, the trial court held the grantors conveyed the entire mineral interest, including the associated royalty interest. In reversing, the appeals court construed the deed as expressly excluding the grantors' royalty interest in its entirety from the conveyance. The differing interpretations arose because the deed listed the mineral interest separately and because of the deed's use of "shall not affect" and "benefits." The appeals court stated that "the 'shall not affect' clause [was] a clear and specific reservation . . . of a non-participatory royalty interest separate and apart from the conveyance of other interests."   [[198]](#footnote-199)198The appeals court rejected the argument that the use of the word "benefits" should be construed as conveying all the grantor's interest, including the royalty interest, and held that "benefits" was instead "being used throughout the [deed] as a catch-all term representative of the economic benefits of mineral leases, but [that those] benefits [stood] apart from the non-participatory royalty interest which was expressly reserved . . . by other language."   [[199]](#footnote-200)199

The courts also upheld the express terms in various grants. In *Atmos Energy Corp. v. Paul*,   [[200]](#footnote-201)200the court held that an unambiguous easement agreement granted Atmos Energy a multiple pipeline blanket easement. By its terms, the blanket easement allowed the easement owner to construct pipelines *anywhere* on the property as long as such action was reasonably necessary to enjoy the rights expressly granted by the easement and would not unreasonably burden the servient estate holder's use of the land. The easement agreement conveyed "the right of way and easement to construct, maintain and operate pipe lines and appurtenances thereto . . . over and through the following described lands."   [[201]](#footnote-202)201The court held that the right to multiple routes was embodied in the granting instrument itself by virtue of the fact that it was a multiple pipeline blanket easement.

In *Southwestern Electric Power Co. v. Lynch*,   [[202]](#footnote-203)202the court addressed a dispute between landowners and an electric company over the width of easements acquired from the landowners' predecessors-in-title. The electric company argued that the lower courts abused their discretion in defining the width of the easements as 30 feet. The court agreed, because the plain language of the easements did not include a fixed width, nor were the easements required to do so. Indeed, "[i]f the easement's terms are ascertainable and can be given legal effect, courts will not supplant the easement's express terms with additional terms nor consult extrinsic evidence to discern the easement's meaning."

The courts analyzed contracts running with the land and consents to assignment. In *Hamman v. Lyle (In re Houston Bluebonnet, L.L.C.)*,   [[203]](#footnote-204)203the court considered whether a net profits interest, created in an assignment executed in 1913, ran with the land. The court addressed five requirements--a covenant runs with the land when: (1) the covenant touches and concerns the land; (2) the covenant relates to a thing in existence or specifically binds the parties and their assigns; (3) the covenant is intended by the original parties to run with the land; (4) the successor to the burden has notice; and (5) privity of estate exists between the parties when the covenant is made. The Lyle defendants claimed that they were not bound by the 1913 Assignment because none of the instruments in the chain of title made reference to the 1913 Assignment. After considering the factors, the court ultimately determined that the defendants had constructive notice because the 1913 Assignment was a recorded instrument, and the defendants were charged with inquiry notice because the assignments from which the defendants derived their interest were subject to the 1913 Assignment. The court also determined that each of the other requirements for a covenant to run with the land were met. Thus, the court held that the defendants were bound by the plaintiffs' net profits interest reserved in the 1913 Assignment.

In *Mayo Foundation for Medical Education & Research v. BP America Production Co.*,   [[204]](#footnote-205)204the court addressed three issues regarding the consent-to-assignment provision in an ***oil*** and gas lease under Texas law, in the context of a motion for a preliminary injunction to prevent the lessee from assigning the lease. First, it upheld the validity of the consent to assign provision. Such provision expressly provided: "The rights and obligations of the Lessee hereunder are not assignable or transferable in any respect by it, except upon the written approval of Bank One Trust Company, N.A., as Agent, or any successor Agent, *which approval shall not be unreasonably withheld*."   [[205]](#footnote-206)205The court held that this provision created a promissory restraint that did not absolutely restrict assignment, and therefore validated the provision. The court then turned to the question of whether the lessor's failure to consent to an assignment was reasonable. The court explained that because there was no evidence of the assignee's insolvency or failure to make timely royalty payments and no malfeasance, malpractice, or malevolence was identified to undermine a reputation of honesty and reliability within the industry, the lessor's refusal to consent was not reasonable. Finally, the court held that the plaintiff would not suffer irreparable harm if the injunction was not granted, because the plaintiff could sue for economic damages.

The courts also settled many disputes as to rights, liabilities, and risk allocation. In *Evans Resources, L.P. v. Diamondback E&P, LLC*,   [[206]](#footnote-207)206the plaintiff surface owners (Owners) sued for contractually agreed surface damages under a Surface Agreement arising from a planned drilling pad that was never constructed. The agreement provided: "'[F]or each [drilling pad] constructed on the Land,' [lessee] was required to pay the Owners 'in advance' Location Damages of $ 500,000."   [[207]](#footnote-208)207Lessee surveyed the locations for the drilling pad, decided not to construct it, and refused to pay the damages to the Owners. The trial court held that damages were not due. The court of appeals affirmed. Finding the contract unambiguous, the court refused to examine the parties' extrinsic negotiations, which included the lessee's statements that it intended to pay the damages. The court contrasted other location damages provisions in the Surface Agreement (and in the corresponding mineral lease) and concluded that the "purpose requiring payment" was the "construction" of a drilling pad.   [[208]](#footnote-209)208Based on the plain meaning of "construct," the court held damages were not due until the lessee "moved the necessary parts or elements of the [drilling pad] onto the [land]."   [[209]](#footnote-210)209Similarly, the court held the plain meaning of "utilize" did not include surveying or marking the land in anticipation of construction. The court also stressed that, where multiple contractual interpretations are possible, contractual provisions should be read as covenants and not conditions precedent.

In *Samson Exploration, LLC v. Moak*,   [[210]](#footnote-211)210the court analyzed a dispute over whether land associated with mineral interests that were leased and included in a pooled unit remained in the unit after the leases terminated. The wells producing within the unit were not located on the lands subject to the terminated leases. The mineral owner under the terminated leases continued to seek his share of the allocation of production within the unit. The court determined that the unleased owner had no contractual relationship with the unit owners that would have given him the right to minerals produced. As the wells were not located on the unleased owner's land, he lacked any right to production as well.

*Pearl Resources LLC v. Charger Services, LLC*   [[211]](#footnote-212)211involved the question of who, as among well owners, their contractors, and subcontractors, is liable for fluid containment in an oilfield emergency. In this case, Pearl Operating (Pearl) had a turnkey drilling contract with PDS Drilling to drill a well in Pecos County, Texas. Pearl (the operator) and one of its affiliates both had working interests in the lease. The drilling contract provided that PDS could not hire any other company on Pearl's behalf and disclaimed the existence of any principal/agent relationship. PDS was an independent contractor with total control over the well site. PDS hired Bison Drilling to operate the rig. Shortly after drilling commenced, a wild well incident occurred, and contaminated freshwater began running throughout the well site and its surrounding area. Bison arranged for Charger Services LLC to begin work remediating the site. Charger sought payments from Pearl. When Pearl made no payment, Charger sued Pearl. In affirming the trial court's judgment against Pearl on Charger's quantum meruit claim, the court first held that no contract existed between Charger and PDS, which would have precluded recovery on Charger's quantum meruit claim. Bison Drilling, which arranged for Charger to perform the remedial work, had no authority to act as agent for PDS or Pearl in contracting with Charger. Nor was there any evidence of the terms of any purported contract between Charger and PDS. The court then explained the elements of Charger's quantum meruit claim. A plaintiff must prove that (1) valuable services were rendered or materials furnished, (2) the services or materials were provided for the defendant, (3) the services and materials were accepted by the defendant, (4) under circumstances in which the person sought to be charged was reasonably notified that the plaintiff was expected to be paid for those services or materials. The court observed that the evidence was legally and factually sufficient to support the trial court's finding that Charger satisfied all four elements. The court also noted that while industry custom is that well owners are required to pay for remedial costs incurred for emergency operations on a well, that custom did not alter the turnkey drilling contract, which only spoke to Pearl's liability to PDS, not Charger.

The courts denied arguments as to loosely formed contracts or partnerships. In *Copano Energy, LLC v. Bujnoch*,   [[212]](#footnote-213)212the court, applying the statute of frauds, refused to create an easement from a series of emails. In this case, the landowners alleged that the emails served as a contract where a single email did not provide both the essential terms of the contract and all parties' agreement to be bound by those terms. One set of emails contained many essential terms and another set of emails contained evidence of an agreement. However, the second set of emails did not contain evidence that the parties agreed to be bound by the *specific terms* stated in the first set of emails. Moreover, the future-tense phrasing of many of the emails further confirmed the lack of agreement. Under the statute of frauds, these issues could have been reconciled had there been another writing confirming the alleged agreement, but no such writing was proffered by the landowners. For these reasons, the emails were deemed to be only part of a "forward -looking request to negotiate a contract."

In another decision addressing whether a contract was formed on less than a written agreement, the Texas Supreme Court held in *Chalker Energy Partners III, LLC v. Le Norman Operating LLC*   [[213]](#footnote-214)213that an email exchange did not reflect the "meeting of minds" required for contract formation. Chalker Energy Partners III, LLC started a bidding process to sell ***oil*** and gas assets. Le Norman Operating LLC (LNO) entered into a confidentiality agreement with Chalker that contained a "no obligation" clause. Under the clause, both parties were free to negotiate terms of the sale "unless and until a definitive agreement [was] executed and delivered."   [[214]](#footnote-215)214After negotiating the terms of sale with LNO via email, Chalker accepted a bid to sell its assets to Jones Energy. LNO sued Chalker for breach of contract, contending that the email correspondence between Chalker and LNO constituted a valid contract. The court rejected LNO's argument and ruled that the "definitive agreement" referenced in the "no obligation" clause was a condition precedent to contra ct formation. Because the emails exchanged between Chalker and LNO were a "preliminary agreement," not a "definitive agreement," they did not qualify as a legally enforceable contract. Accordingly, the court held that there was "no evidence of an intentional relinquishment of the right to a definitive agreement secured by the No Obligation Clause."   [[215]](#footnote-216)215

In *Energy Transfer Partners, L.P. v. Enterprise Product Partners, L.P.*,   [[216]](#footnote-217)216the Texas Supreme Court held that Texas law permits parties to conclusively agree that no partnership--with its concomitant duty of loyalty-- will exist unless certain conditions are satisfied. Enterprise and Energy Transfer Partners (ETP) discussed converting a natural gas pipeline owned by ETP and leased by Enterprise into one that could move ***oil*** south from Cushing, Oklahoma. In three written agreements, the parties reiterated that both parties' board of directors would have to approve a formal contract before either party could proceed. The project was ultimately unsuccessful. The next month, Enbridge bought a pipeline from ConocoPhillips making Enbridge a co-owner with Enterprise. That pipeline's direction was subsequently reversed to move ***oil*** south from Cushing, and both companies have reaped the financial rewards. ETP sued claiming that Enterprise formed a partnership with ETP under Chapter 152 of the Texas Business Organizations Code through its conduct and had breached its statutory duty of loyalty. The court ruled against ETP stating that "parties can contract for conditions precedent to preclude the unintentional formation of a partnership under Chapter 15 2 and that, as a matter of law, they did so here."   [[217]](#footnote-218)217ETP would have needed to prove that performance of the condition precedent was waived or modified by the party to whom the obligation was due to prevail.

Finally, the courts provided guidance on tax credit options and other federal issues. In *Vitol, Inc. v. United States*,   [[218]](#footnote-219)218a Texas federal district court considered whether the term "liquefied petroleum gas" (LPG), as used in 26 U.S.C. § 6426(e), includes butane. Section 6426(e) contains an alternative fuel mixture tax credit. Section 6426's "alternative fuel" definition includes LPG, and "taxable fuel" includes gasoline. Plaintiff Vitol, Inc., a producer of a butane-gasoline mixture, wanted to claim the credit. The court held that butane is not included in the term "LPG" in § 64 26 and is thus not an alternative fuel for the purposes of the tax credit. First, the court reasoned that including butane within the definition of LPG is contrary to Congress's intent; because butane is present in most if not all gallons of gasoline sold in the United States, including it in the definition of LPG would incentivize production of traditional gasoline with an alternative fuel mixture credit. Second, including butane within the definition of LPG would create the nonsensical result of butane being both alternative and taxable. Third, the court afforded significant weight to an IR S Revenue Ruling counseling that butane is a taxable--and not an alternative--fuel within § 6426.

In *In re Ultra Petroleum Corp.*,   [[219]](#footnote-220)219the bankruptcy court addressed whether Ultra Resources, Inc. could reject an executory contract with Rockies Express Pipeline LLC for the transportation of Ultra's natural gas. The contract was approved by the Federal Energy Regulatory Commission (FERC), and it was undisputed that rejecting the contract was in the best interest of the debtor. Thus, the sole issue for the court was whether the court should deny the rejection on public policy reasons. Because there was no evidence that the rejection of the contract would cause any disruption to the supply of natural gas to other public utilities or consumers, and there was no evidence of other harm (material or not) to the public health, safety, or welfare, the court approved Ultra's rejection of the contract. The court rejected Rockies Express's argument that FERC, not the bankruptcy court, is the proper entity to determine if rejection of an executory contract is good public policy, noting that this is a question for Congress, not the court or FERC, to decide. The court also rejected Rockies Express's argument that FERC's anti-discrimination policy would allow Ultra to take advantage of rejection by becoming a "free rider" on the pipeline, noting that issue may be addressed to and by FERC.

In *In re Chesapeake Energy Corp.*,   [[220]](#footnote-221)220Chesapeake sought to reject a gas purchase agreement it had with ETC Texas Pipeline, Ltd under the provisions of the Bankruptcy Code that allow a debtor to reject an executory contract and disavow further performance of its obligations thereunder. ETC claimed that the gas purchase agreement could not be rejected because it contains covenants running with the land and thus cannot be considered an "executory contract." The bankruptcy court rejected ETC's argument that an agreement containing covenants running with the land cannot be an executory contract, holding that there is no authority prohibiting the mu tual existence of both concepts within a single document. Regardless, the bankruptcy court determined that the gas purchase agreement does not contain any covenants running with the land because (1) the sole remedy provided in the agreement "is inherently personal in nature and unrelated to any real property interest held by Chesapeake"; (2) the object of the agreement, produced gas, is personal property under Texas law, not real property; and (3) there is no vertical privity between Chesapeake and ETC.   [[221]](#footnote-222)221Accordingly, the bankruptcy court held that the gas purchase agreement is an executory contract subject to rejection under the Bankruptcy Code.

XII. WEST VIRGINIA

*A. Legislative Developments*

The 2020 West Virginia Legislature and the Governor approved HB 4090 (the ***Oil*** and Gas Abandoned Well Plugging Fund Act). As was noted in the 2019 Year in Review, a similar bill passed in the previous legislative session but was vetoed by the Governor for an unspecified "technical" problem that the legislature expressed an intent to rectify. The new law imposes a 5% severance tax on wells producing an average between 5 mcf and 60 mcf in a given tax year. The funds are redirected to the ***Oil*** and Gas Abandoned Well Plugging Fund to be managed by the Department of Environmental Protection. Notably, if the fund reaches $ 6 million by June 1, 2023 or thereafter, the tax on such wells is reduced to zero.

Other notable bills include SB 4091, which allows for expedited well permitting upon payment of an additional fee, and HB 4421, which created a tax credit for property tax paid on equipment that persons, or entities, storing or transporting natural gas can use against their personal and net corporate income.

*B. Judicial Developments*

In *Haught Family Trust v. Williamson*,   [[222]](#footnote-223)222the court interpreted a 1907 deed that reserved "one half of all the royalty of ***oil*** (which royalty shall not be less than the usual one-eighth), and one half of the proceeds of all gas which may be produced from said tract of land . . . ." The court maintained a position that is consistent with long-standing West Virginia precedent   [[223]](#footnote-224)223regarding ***oil*** and gas severances, particularly that the above-stated language reserves a one-half non-participating royalty interest.

In *EQT Production Co. v. Antero Resources Corp.*,   [[224]](#footnote-225)224the court affirmed a grant of partial summary judgment on Antero's claim for declaratory judgment that Antero's top lease took priority over the EQT base lease, as amended, covering the same property. The Lemasters executed an ***oil*** and gas lease to PetroEdge Energy, LLC, on December 13, 2011, covering 100% of the ***oil*** and gas within and underlying Tax Map 23, Parcel 20, in Ellsworth District, Tyler County (the base lease). E QT later acquired the base lease. A memorandum of the base lease was placed of record on January 12, 2012, reciting a primary term of five years, commencing December 13, 2011, and terminating on December 13, 2016, unless ***oil*** and gas was produced or capable of being produced during the primary term, or it was otherwise being operated to produce. EQT did not commence operations during the primary term, and the base lease did not include express language that would provide EQT the right of first refusal, right of renewal, or an automatic option to extend.

Prior to the expiration of the primary term of the base lease, the Lemasters executed a top lease with Antero dated June 24, 2016, but effective December 14, 2016, immediately after the expiration of the base lease. A memorandum of the top lease was recorded on August 30, 2016, providing that the Lemasters had

not agreed to extend, amend, modify, or renew the [base lease], or take any action which would result in such extension, amendment, modification, or renewal of the [base lease], and Lessor further covenants and agrees that Lessor shall not enter into any such agreement or take any such action at any time after the date Lessor executes this Lease.   [[225]](#footnote-226)225

The top lease also acknowledged the existence of the base lease and referenced the reversionary interest that would then vest in the lessors that in turn would allow for the top lease to become effective.

Nevertheless, the Lemasters and EQT executed an Amendment and Ratification of ***Oil*** and G as Lease dated September 24, 2016, and recorded December 12, 2016, wherein they agreed to extend the primary term of the base lease for an additional five years. Suit was subsequently filed by Antero against EQT and the Lemasters, asserting claims of breach of contract, intentional interference with contractual relationship, declaratory judgment, and slander of title. Relevant on appeal, Antero had asked the circuit court to declare: (1) the base lease amendment was ineffective and invalid as to Antero; (2) the Antero top lease was the only valid lease affecting the subject property; and (3) the base lease amendment was invalid or, in the alternative, subordinate to the Antero top lease. In utilizing the West Virginia recording act, W. Va. Code §§ 40-1-8 to -9, the circuit court found that the base lease and its amendment were subject to the Antero top lease, and that top lease was the valid and existing ***oil*** and gas lease covering the subject property.

On appeal, the court only addressed whether the circuit court erred by granting summary judgment in favor of Antero on its declaratory judgment claim, by concluding that the Antero top lease took priority. The court focused on the issue of priority when multiple leases exist on the same property by consulting the recording act, specifically that certain information must be contained in a memorandum of lease as recorded, including whether there is a right of extension or renewal, so as to provide notice and basic fairness to other potential good faith purchasers or "bona fide purchaser" (BFP). The court of appeals held that the circuit court did not err in declaring the Antero top lease superior, as Antero was a BFP under the terms of the top lease because it had no notice of the EQT base lease extending beyond its original term of December 13, 2016.

In *Ascent Resources - Marcellus, LLC v. Huffman*,   [[226]](#footnote-227)226the court affirmed a denial of summary judgment, and denial of a favorable declaratory judgment, requested by Ascent. This case pertained to a 94-acre tract of land in Tyler County, wherein Ascent owned a 50 % interest in the ***oil*** and gas estate, and became vested with the subsisting lease, being a 1980 lease wherein wells were drilled and producing.

Ascent sought a declaration that the lease contained an implied covenant to pool or unitize the lease with other minerals. Ascent wanted to drill modern, horizontal wellbores into the Marcellus shale formation, hydraulically fracture the shale, and produce ***oil*** and gas, stating that the only way to economically do so would be if the drilling units were large enough to accommodate a wellbore extending at least 2,500 feet horizontally. Ascent urged the circuit court to imply within the lease language those rights given in modern leases in which the language allows lessees to aggregate mineral interests to create units sufficient in size to support shale formation drilling. Ascent sought to add paragraphs to the lease that would allow for the purposes it sought.

By order filed March 5, 2019, the court found that the lease did not expressly grant pooling or unitization rights, and that nothing in the lease was unclear or unambiguous regarding pooling and unitization. As no ambiguity existed, the court found that it did not need to grant an interpretation; thus, the court was powerless to write a new or different contract for the parties. The court also found that "implying a covenant of pooling and unitization would impose burdens upon the estate that were never bargained for or contemplated by the parties . . . ."   [[227]](#footnote-228)227

On appeal, the Supreme Court of Appeals found that the circuit court did not err in its denial of summary judgment or denial of a favorable declaratory judgment for Ascent. It relied upon the fact that "[t]he lease secured production of ***oil*** and gas in paying quantities, quickly, and for the last four decades has permitted production from the mineral estate under the [94-acre] tract without need for pooling and unitization."   [[228]](#footnote-229)228The court did not deny that Ascent's claim that pooling and unitization would result in the production of greater quantities of ***oil*** and gas, but the circuit court "did not have the right to alter, pervert or destroy the clear meaning and intent of the parties to the [lease]."   [[229]](#footnote-230)229The court held that "[i]n the absence of language in an ***oil*** and gas lease expressing a right to pool or unitize the lease with other mineral estate, this Court will not infer such a right."   [[230]](#footnote-231)230

XIII. WYOMING

*A. Legislative Developments*

During Wyoming's 20-day Legislative Budget Session, the legislature created or amended several Wyoming statutes involving the ***oil*** and gas industry, including three substantive ad valorem taxation statutes relating to mineral production. First, House Enrolled Act 78 implements monthly payment of ad valorem tax on mineral production not later than the twenty-fifth of the second month following production. Additional procedures for reporting, payment, reconciliation, and distribution of the monthly payment as well as a monthly payment schedule for production through 2026 was enacted.   [[231]](#footnote-232)231

Second, Senate Enrolled Act 60 revises Wyoming's statutes governing perfection of tax liens for ad valorem/gross products tax purposes by clarifying that liens on mineral production occurring on or after January 1, 2021, will be perfected upon the production of the mineral. The notice requirements were also amended to require a notice of intent to foreclose be given when foreclosing on a lien pursuant to a tax sale for mineral production.   [[232]](#footnote-233)232

Third, Senate Enrolled Act 7 created new legislation allowing for disclosure of an itemized list of an ad valorem taxpayer's taxable tangible personal property, as provided to the county assessor, to a new owner of that taxable property.   [[233]](#footnote-234)233

Other notable ***oil*** and gas legislation during the 2020 session included revisions to the calculation of risk penalties and mandatory royalties involving drilling units. The legislature amended the risk penalty to include nonconsenting owners who have executed a lease for ***oil*** and gas development. When a nonconsenting owner is not subject to a lease, for the first well drilled the risk penalty is 200% of the drilling costs and 12 5% of the costs of newly acquired well equipment, and for every subsequent well the risk penalty lowers to 15 0% of drilling costs and 125% of costs of newly acquired well equipment.   [[234]](#footnote-235)234

The Wyoming ***Oil*** and Gas Conservation Commission (WOGCC) was granted regulatory authority over all underground disposal wells, both commercial and noncommercial. Rules required for implementation of this new law will be by the WOGCC and the Department of Environmental Quality.   [[235]](#footnote-236)235

Finally, legislation was created regarding a new ***oil*** and gas production tax rate exemption. A 4% severance tax rate will be charged for the first six months and 5% for the next six months for ***oil*** and gas wells drilled after July 1, 2020, but prior to December 31, 2025, which is a decrease from 6 %. However, this exemption will not apply (1) to gas production when the 12-month rolling average of the Henry hub spot price for natural gas exceeds $ 2.95 per thousand cubic feet at the time of first production and (2) when crude ***oil*** production exceeds $ 50.00 per barrel for first production in a 12-month rolling average of the West Texas Intermediate spot price of sweet crude ***oil***.   [[236]](#footnote-237)236

*B. Judicial Developments*

*Denbury Onshore, LLC v. APMTG Helium LLC* is an appeal from a trial court's ruling following a bench trial brought by APMTG Helium LLC against defendant Denbury Onshore, LLC.   [[237]](#footnote-238)237U nder a contract between Denbury and APMTG, Denbury agreed to deliver certain amounts of helium to APMTG each year. Denbury was unab le to fulfill its obligations under the contract claiming its nonperformance was excused by two force majeure events: (1) its contractor failed to complete its natural gas processing plant; and (2) its supply wells failed to continue to produce because of sulfur deposits plugging the wellbores. The trial court found Denbury had failed to prove its nonperformance of the contract was excused by a valid force majeure event except for a 36-day period, and further denied Denbury's request to terminate the contract under the doctrines of frustration of purpose and impossibility to perform. The Wyoming Supreme Court affirmed the district court's ruling.

*EOG Resources, Inc. v. Floyd C. Reno & Sons, Inc.* was an appeal of a condemnation decision that arose when the parties could not agree to amend an existing 2010 surface use agreement (2010 SUA).   [[238]](#footnote-239)238Following the landowner's rejection of the proposed amendment, the ***oil*** and gas company filed an eminent domain action seeking possession of 2,100 acres for rights-of-way and easements for its ***oil*** and gas operations. Ultimately the ***oil*** and gas company reduced the acreage requested to 70 acres needed for a water pipeline. The district court dismissed the ***oil*** and gas company's complaint for failing to comply with the Wyoming Eminent Domain Act's good-faith negotiation requirement, which was affirmed by the Wyoming Supreme Court on grounds different than those cited by the district court.

*Exaro Energy III, LLC v. WOGCC* was an appeal of Exaro Energy III, LLC (Exaro) following the WOGCC's denial in part of its drilling and spacing unit application.   [[239]](#footnote-240)239Exaro filed two applications with the WOGCC seeking approval of adjacent drilling and spacing units in the Jonah Field, which were opposed by Jonah Energy, LLC (Jonah). Following a contested case hearing in which Exaro's two applications were consolidated, the WOGCC approved one application but denied the other stating it believed "additional data from horizontal development in the Jonah Field should be analyzed prior to approving the Application to establish a drilling and spacing unit on the Subject Lands." Exaro appealed the WOGCC's decision to the district court and requested it be certified to the Wyoming Supreme Court. The court reversed the WOGCC's decision to grant only one application, finding Exaro's evidence satisfied the statutory requirements for establishment of the drilling and spacing units in both applications and that substantial evidence was given to support that finding. The court further found the WOGCC's decision to grant only one of the applications was arbitrary and capricious.

*Black Diamond Energy of Delaware, Inc. v. WOGCC* involved two ***oil*** and gas exploration companies with like names, but separately owned and managed, according to both companies.   [[240]](#footnote-241)240Black Diamond Energy of Delaware, Inc. (BDED) and Black Diamond Energy, Inc. (BDI) both held ***oil*** and gas leases issued by the State of Wyoming and posted bonds with the WOGCC and the Wyoming Office of State Lands and Investments (WOSLI). In 2011, following a series of events, the WOSLI terminated one of BDI's leases and called the bonds by letter to First Interstate Bank. The Bank held all appropriate bonds for both entities and the bank allegedly sent BDI 's bonds and BDED's WOSLI Bonds to the WOGCC. In 2014, the WOGCC foreclosed BDI's bonds. BDED was not a party to these actions. Upon learning its WOSLI bonds had been forfeited along with BDI's bonds, BD ED filed two appeals with the district court. The first action against WOSLI was dismissed for failure to timely file a petition for review when the bonds were forfeited and therefore deprived the district court jurisdiction. BDED's second complaint against both the WOGCC and WOSLI alleging conversion and breach of contract was also dismissed for lack of jurisdiction. The Wyoming Supreme Court affirmed both dismissals.

*C. Administrative Developments*

Pursuant to the Wyoming State Legislature's enactment of Senate Enrolled Act 0012, granting the WOGCC authority to regulate commercial disposal wells, the WOGCC is in the process of amending, updating, and adopting its procedural rules found in Chapters 1 and 3.   [[241]](#footnote-242)241

The Wyoming Department of Environmental Quality, Water Quality Division is in the process of promulgating new rules on both financial assurance (revising Chapter 14) and on minimum standards for the design and construction of commercial oilfield waste disposal facilities (new Chapter 28).   [[242]](#footnote-243)242

Rocky Mountain Mineral Law Foundation Journal

Copyright © 2021 Rocky Mountain Mineral Law Foundation.

All Rights Reserved.

**End of Document**

1. 1The lead editor for this report is Mark D. Christiansen of Edinger Leonard & Blakley PLLC, Oklahoma City, OK. The contributors work in the state for which they report: George R. Lyle, Traci N. Bunkers, and Adam Harki of Guess & Rudd P.C., Anchorage, AK; Thomas A. Daily of Daily & Woods, P.L.L.C., Fort Smith, AR; John J. Harris of Casso & Sparks, LLP, City of Industry, CA; Sam Niebrugge and Hayden T. Weaver of Davis Graham & Stubbs LLP, Denver, CO; Chris Steincamp of Depew Gillen Rathbun & McInteer, LC, Wichita, KS; April L. Rolen-Ogden, Michael H. Ishee, and Taylor Ashworth of Liskow & Lewis, Lafayette, LA; Andrew J. Cloutier of Hinkle Shanor LLP, Roswell, NM; Gregory D. Russell, Timothy J. Cole, and Ilya Batikov of Vorys, Sater, Seymour and Pease LLP, Columbus, OH; Mark D. Christiansen of Edinger Leonard & Blakley PLLC, Oklahoma City, OK (Part A) and Susan Dennehy Conrad of the Oklahoma Corporation Commission, Oklahoma City, OK (Part B); Nicolle R. Snyder Bagnell, Emily A. Davis, and Nicole A. Jensen of Reed Smith LLP, Pittsburgh, PA; Jolisa Dobbs, Emily A. Fitzgerald, and Aaron C. Powell of Thompson & Knight LLP, Dallas, TX; Brittany Alston and Curtiss Boggs of Jackson Kelly PLLC, Morgantown, WV; and Jeffrey S. Pope and Deanna (Sami) Falzone of Holland & Hart LLP, Cheyenne, WY. [↑](#footnote-ref-2)
2. 2  471 P.3d 569 (Alaska 2020). [↑](#footnote-ref-3)
3. 3   *Id.* at 599. [↑](#footnote-ref-4)
4. 4   *Id.* at 585. [↑](#footnote-ref-5)
5. 5   *Id.* at 573. [↑](#footnote-ref-6)
6. 6   *Id.* at 590. [↑](#footnote-ref-7)
7. 7  Case No. 3AN-18-05628 CI (Alaska Super. Ct. Apr. 13, 2020) (Decision on Administrative Appeal). The contributors of this report represented co-appellant Anadarko Petroleum Corporation in the appeal. [↑](#footnote-ref-8)
8. 8   *Id.* at 1-2. [↑](#footnote-ref-9)
9. 9   *Id.* at 12-13. [↑](#footnote-ref-10)
10. 10   *Id.* at 17. [↑](#footnote-ref-11)
11. 11   *Id.* at 23. [↑](#footnote-ref-12)
12. 12  432 F. Supp. 3d 1003 (D. Alaska 2020). [↑](#footnote-ref-13)
13. 13  42 U.S.C. § 4332(2)(C). [↑](#footnote-ref-14)
14. 14  5 U.S.C. § 706(2). [↑](#footnote-ref-15)
15. 15  16 U.S.C. § 3120(a). [↑](#footnote-ref-16)
16. 16   *Nuiqsut*, 432 F. Supp. 3d at 1046. [↑](#footnote-ref-17)
17. 17   *See* Native Vill. of Nuiqsut v. BLM, No. 20-35224 (9th Cir. Mar. 12, 2020). [↑](#footnote-ref-18)
18. 18  No. 3:20-cv-00206 (D. Alaska filed Aug. 24, 2020). [↑](#footnote-ref-19)
19. 19  While these cases were filed in 2020 and have not been resolved, they are included herein based on their relevance to ANWR. [↑](#footnote-ref-20)
20. 20  Complaint at 21, *Nat'l Audubon Soc'y*, No. 3:20-cv-00206 (D. Alaska Aug. 24, 2020). [↑](#footnote-ref-21)
21. 21   *Id.*, Order Granting Motion to Stay. [↑](#footnote-ref-22)
22. 22  982 F.3d 723 (9th Cir. 2020). [↑](#footnote-ref-23)
23. 23  Center for Biological Diversity; Defenders of Wildlife; Friends of the Earth; Greenpeace USA; and Pacific Environment. [↑](#footnote-ref-24)
24. 24   *Ctr. for Biological Diversity*, 982 F.3d at 740. [↑](#footnote-ref-25)
25. 25  2020 Ark. 210, 601 S.W.3d 100. [↑](#footnote-ref-26)
26. 26  This term is used in Arkansas to refer to compulsory pooling. [↑](#footnote-ref-27)
27. 27  Some of those leases provided 20% royalty while others provided for 25%. [↑](#footnote-ref-28)
28. 28  Ark. Code Ann. § 15-72-304(a). [↑](#footnote-ref-29)
29. 29  No. 4:18-cv-00621, 2020 WL 4228580 (E.D. Ark. July 23, 2020). [↑](#footnote-ref-30)
30. 30  This is the only ***oil*** refinery located within Arkansas. [↑](#footnote-ref-31)
31. 31  A.B. 3214, 2019 Reg. Sess.; Stats. 2020, Ch. 119 (Cal. 2020) (amending Cal. Gov't Code § 8670.64). [↑](#footnote-ref-32)
32. 32  Cal. Pub. Res. Code § 21000 et seq. [↑](#footnote-ref-33)
33. 33  As discussed below, DOGGR's name was changed effective January 1, 2020, to "California Geologic Energy Management Division" (CalGEM). [↑](#footnote-ref-34)
34. 34  259 Cal. Rptr. 3d 109 (Ct. App. 2020), as modified on denial of reh'g (Mar. 20, 2020). [↑](#footnote-ref-35)
35. 35   *Id.* at 175 n.50; *see also* CalGEM, Notice to Operators 2020-03 (Mar. 30, 2020). [↑](#footnote-ref-36)
36. 36  No. F078460, 2020 WL 1698749 (Cal. Ct. App. Apr. 8, 2020) (unpublished). [↑](#footnote-ref-37)
37. 37  814 F. App'x 318 (9th Cir. 2020). [↑](#footnote-ref-38)
38. 38  272 Cal. Rptr. 3d 11 (Ct. App. 2020). [↑](#footnote-ref-39)
39. 39  Waste Prevention, Production Subject to Royalties, and Resource Conservation; Rescission or Revision of Certain Requirements, 83 Fed. Reg. 49,184 (Sept. 28, 2018) [↑](#footnote-ref-40)
40. 40  Waste Prevention, Production Subject to Royalties, and Resource Conservation, 81 Fed. Reg. 83,008 (Nov. 18, 2016). [↑](#footnote-ref-41)
41. 41  472 F. Supp. 3d 573 (N.D. Cal. 2020), *appeal docketed*, No. 20-16793 (9th Cir. Sept. 16, 2020). [↑](#footnote-ref-42)
42. 42  5 U.S.C. § 551 et seq. [↑](#footnote-ref-43)
43. 43  See September 23, 2020 press release at https://www.gov.ca.gov/2020/09/23/governor-newsom-announces-california-will-phase-out-gasoline-powered-cars-drastically-reduce-demand-for-fossil-fuel-in-californias-fight-against-climate-change/ [↑](#footnote-ref-44)
44. 44  A.B. No. 1057, 2019-2020 Cal. Leg. Sess. (2019). Stats.2019, c. 771, § 8, eff. Jan. 1, 2020. [↑](#footnote-ref-45)
45. 45   *See* Notice to Operators 2020-01 (Jan. 2, 2020), https://filerequest.conservation.ca.gov/RequestFile/36768. [↑](#footnote-ref-46)
46. 46   *See* Notice to Operators 2020-02 (Jan. 7, 2020), https://filerequest.conservation.ca.gov/RequestFile/36769. [↑](#footnote-ref-47)
47. 47   *See* Notice to Operators 2020-09 (Dec. 7, 2020), https://filerequest.conservation.ca.gov/RequestFile/2820999. [↑](#footnote-ref-48)
48. 48  2020 CO 73, 474 P.3d 46. [↑](#footnote-ref-49)
49. 49  Colo. Rev. Stat. § 32-1-401(1)(a). [↑](#footnote-ref-50)
50. 50  Bill Barrett Corp. v. Lembke, 2018 COA 134, P 38. [↑](#footnote-ref-51)
51. 51   *Id.* P 47. [↑](#footnote-ref-52)
52. 52   *Bill Barrett*, 2020 CO 73, P 16. [↑](#footnote-ref-53)
53. 53   *Id.* P 22. [↑](#footnote-ref-54)
54. 54  Colo. Rev. Stat. § 34-60-106(2.5)(a); Colo. Rev. Stat. § 34-60-102(1)(a). [↑](#footnote-ref-55)
55. 55  Colo. Rev. Stat. § 29-20-101. [↑](#footnote-ref-56)
56. 56  Rule 302. [↑](#footnote-ref-57)
57. 57  Rule 301.f. [↑](#footnote-ref-58)
58. 58  Rule 604. [↑](#footnote-ref-59)
59. 59  Rule 604. [↑](#footnote-ref-60)
60. 60  Rule 303.a.(5). [↑](#footnote-ref-61)
61. 61  Rule 314. [↑](#footnote-ref-62)
62. 62  Rule 507.a.(2). [↑](#footnote-ref-63)
63. 63  Rule 511. [↑](#footnote-ref-64)
64. 64  Rule 502. [↑](#footnote-ref-65)
65. 65  Rule 903. [↑](#footnote-ref-66)
66. 66  Rule 1202.c.(1). [↑](#footnote-ref-67)
67. 67  Kan. Const. art. I, § 6. [↑](#footnote-ref-68)
68. 68  464 P.3d 344 (Kan. 2020). [↑](#footnote-ref-69)
69. 69  469 P.3d 666 (Kan. Ct. App. 2020). [↑](#footnote-ref-70)
70. 70  469 P.3d 1266, 1270 (Kan. Ct. App. 2020). [↑](#footnote-ref-71)
71. 71  352 P.3d 1032 (Kan. 2015). [↑](#footnote-ref-72)
72. 72  No. 6:18-cv-01030, 2019 WL 3202257, at \*8 (D. Kan. July 16, 2019), *reconsideration denied*, No. 6:18-cv-01030, 2019 WL 6310156 (D. Kan. Nov. 25, 2019). [↑](#footnote-ref-73)
73. 73  475 P.3d 1268 (Kan. Ct. App. 2020). [↑](#footnote-ref-74)
74. 74  971 F.3d 1222, 1226 (10th Cir. 2020), *petition for cert. docketed*, No. 20-1195 (Mar. 1, 2021). [↑](#footnote-ref-75)
75. 75  561 F. App'x 322, 326 (5th Cir. 2014). [↑](#footnote-ref-76)
76. 76  293 So. 3d 157 (La. App. 2 Cir. 2020), *writ denied*, 302 So. 3d 1116 (La. 2020) (mem.). [↑](#footnote-ref-77)
77. 77  Article 29 states that for operations to meet the good faith standard and interrupt prescription, they must be: (1) commenced with reasonable expectation of discovering and producing minerals in paying quantities at a particular point or depth, (2) continued at the site chosen to the point or depth, and (3) conducted in such a manner that they constitute a single operation although drilling or mining is not conducted at all times. [↑](#footnote-ref-78)
78. 78  37 So. 3d 1122 (La. App. 2 Cir. 2010). This nonexclusive list of factors includes

    the geology of the drilling site and surrounding area based upon prior wells and seismic data; the expertise and experience of the geologists, petroleum engineers, and ***oil*** men making the recommendations and decisions; the depth of review of the available geology; the timing of the lease and its terms; the expenses incurred in the operation; the permit applications; the various types of testing performed; the analysis of formations encountered during drilling; the keeping of well logs; the time put into drilling; the depth drilled; and the size of pipes used.

    *Id.* at 1131. [↑](#footnote-ref-79)
79. 79  307 So. 3d 1087 (La. App. 3 Cir. 2020). [↑](#footnote-ref-80)
80. 80  298 So. 3d 296 (La. App. 3 Cir. 2020), *writ granted*, 302 So. 3d 523 (La. 2020) (mem.). [↑](#footnote-ref-81)
81. 81  949 F.3d 915, 918 (5th Cir. 2020). [↑](#footnote-ref-82)
82. 82  119 So. 3d 943 (La. App. 2 Cir. 2013). [↑](#footnote-ref-83)
83. 83  Last Will & Testament of Welch v. Welch, No. A-1-CA-37121, 2020 WL 6111010 (N.M. Ct. App. Oct. 15, 2020). [↑](#footnote-ref-84)
84. 84   *Id.* P 51. [↑](#footnote-ref-85)
85. 85   *Id.* PP 12-14. [↑](#footnote-ref-86)
86. 86   *Id.* P 41. [↑](#footnote-ref-87)
87. 87   *Id.* PP 52-53. [↑](#footnote-ref-88)
88. 88  Jalapeno Corp. v. N.M. ***Oil*** Conservation Comm'n, No. A-1-CA-37449, 2020 WL 5743659 (N.M. Ct. App. Sept. 23, 2020). [↑](#footnote-ref-89)
89. 89   *Id.* P 11 (quoting N.M. Stat. Ann. § 70-2-17(B)). [↑](#footnote-ref-90)
90. 90   *Id.* P 12 (citing Rutter & Wilbanks Corp. v. ***Oil*** Conservation Comm'n, 532 P.2d 582 (N.M. 1975)). [↑](#footnote-ref-91)
91. 91  WildEarth Guardians v. Bernhardt, No. 1:19-cv-00505, 2020 WL 6799068 (D.N.M. Nov. 19, 2020). [↑](#footnote-ref-92)
92. 92   *Id.* at \*7-14. [↑](#footnote-ref-93)
93. 93   *Id.* at \*10-11. [↑](#footnote-ref-94)
94. 94   *Id.* at \*15-16. [↑](#footnote-ref-95)
95. 95  W. Ref. Sw., Inc. v. U.S. Dep't of the Interior, 450 F. Supp. 3d 1214, 1225-26(D.N.M. 2020), *appeal dismissed*, No. 20-2072 (10th Cir. June 24, 2020). [↑](#footnote-ref-96)
96. 96   *Id.* at 1226. [↑](#footnote-ref-97)
97. 97   *Id.* at 1232. [↑](#footnote-ref-98)
98. 98  N.M. ***Oil*** Conservation Comm'n, Order No. R-20985-A (Jan. 16, 2020) (with redline changes to the rules attached). [↑](#footnote-ref-99)
99. 99  N.M. Admin. Code 19.15.5.10(A). [↑](#footnote-ref-100)
100. 100  N.M. Admin. Code 19.15.5.10(D). [↑](#footnote-ref-101)
101. 101   *Id.* [↑](#footnote-ref-102)
102. 102   *Id.* 19.15.5.10(E). [↑](#footnote-ref-103)
103. 103   *Id.* 19.15.5.10(F), (G); N.M. Stat. Ann. § 70-2-25(B). [↑](#footnote-ref-104)
104. 104  N.M. ***Oil*** Conservation Comm'n, Order No. R-21343-A (Sept. 3, 2020) (the changes to the various rules are located at http://www.emnrd.state.nm.us/OCD/documents/FinalRule.pdf). [↑](#footnote-ref-105)
105. 105  N.M. Stat. Ann. § 70-13-1 et seq. [↑](#footnote-ref-106)
106. 106   *Id.* § 70-2-12(A)(15). [↑](#footnote-ref-107)
107. 107  N.M. Admin. Code 19.15.2.7(P)(10). [↑](#footnote-ref-108)
108. 108  N.M. Admin. Code 19.15.34.6. [↑](#footnote-ref-109)
109. 109  N.M. Admin. Code 19.15.34.8(A)(1). [↑](#footnote-ref-110)
110. 110  N.M. Admin. Code 19.15.34.8(A)(2), (8). [↑](#footnote-ref-111)
111. 111  N.M. Admin. Code 19.15.16.21(A). [↑](#footnote-ref-112)
112. 112  2020-Ohio-5473, 165 N.E.3d 298. [↑](#footnote-ref-113)
113. 113   *Id.* P 2. [↑](#footnote-ref-114)
114. 114   *Id.* P 43. [↑](#footnote-ref-115)
115. 115  2020-Ohio-3631 (7th Dist.). [↑](#footnote-ref-116)
116. 116  2020-Ohio-4232. [↑](#footnote-ref-117)
117. 117  2020-Ohio-5046 (7th Dist.). [↑](#footnote-ref-118)
118. 118   *Id.* P 61. [↑](#footnote-ref-119)
119. 119   *Id.* [↑](#footnote-ref-120)
120. 120  2020-Ohio-5605 (7th Dist.). [↑](#footnote-ref-121)
121. 121   *Id.* P 28. [↑](#footnote-ref-122)
122. 122  2020-Ohio-5606 (7th Dist.). [↑](#footnote-ref-123)
123. 123  2020-Ohio-1109 (7th Dist.), *aff'd*, 2020-Ohio-6762 (mem.). [↑](#footnote-ref-124)
124. 124   *Id.* P 26 (quoting Ohio Rev. Code § 5301.47(A)). [↑](#footnote-ref-125)
125. 125   *Id.* P 27 (quoting Ohio Rev. Code § 5301.47(E)). [↑](#footnote-ref-126)
126. 126  2020-Ohio-3042, 154 N.E.3d 644 (5th Dist.). [↑](#footnote-ref-127)
127. 127   *Id.* P 4. [↑](#footnote-ref-128)
128. 128   *Id.* P 6. [↑](#footnote-ref-129)
129. 129  2020-Ohio-236 (7th Dist.). [↑](#footnote-ref-130)
130. 130  814 F. App'x 67 (6th Cir. 2020). [↑](#footnote-ref-131)
131. 131   *Id.* at 69. [↑](#footnote-ref-132)
132. 132   *Id.* [↑](#footnote-ref-133)
133. 133  2020-Ohio-1311 (7th Dist.), *reconsideration denied*, 2020-Ohio-3581 (7th Dist.). [↑](#footnote-ref-134)
134. 134   *Id.* P 3. [↑](#footnote-ref-135)
135. 135   *Id.* P 26. [↑](#footnote-ref-136)
136. 136   *Id.* [↑](#footnote-ref-137)
137. 137  450 F. Supp. 3d 790 (N.D. Ohio. 2020), *appeal docketed*, No. 20-3469 (6th Cir. May 1, 2020). [↑](#footnote-ref-138)
138. 138   *Id.* at 794. [↑](#footnote-ref-139)
139. 139   *Id.* at 811. [↑](#footnote-ref-140)
140. 140  807 F. App'x 528 (6th Cir. 2020). [↑](#footnote-ref-141)
141. 141   *Id.* at 531. [↑](#footnote-ref-142)
142. 142  2020-Ohio-3877, 161 N.E.3d 778 (5th Dist.). [↑](#footnote-ref-143)
143. 143   *Id.* P 6. [↑](#footnote-ref-144)
144. 144   *Id.* P 35. [↑](#footnote-ref-145)
145. 145  2020 OK 89, 480 P.3d 887. [↑](#footnote-ref-146)
146. 146   *Id.* P 11. [↑](#footnote-ref-147)
147. 147  52 O.S. § 549.1 et seq. [↑](#footnote-ref-148)
148. 148  2020 OK 89, P 25. [↑](#footnote-ref-149)
149. 149  91 Okla. Bar J. 647 (Okla. Civ. App. 2020 - # 118,091) (Not for Publication). [↑](#footnote-ref-150)
150. 150  91 Okla. Bar J. 1167 (Okla. Civ. App. 2020 - # 118,362) (Not for Publication). Appellant/Defendant's Petition for Certiorari, filed on Oct. 8, 2020, remained pending as of January 31, 2021. [↑](#footnote-ref-151)
151. 151   *Bollenbach*, slip op. at 17. [↑](#footnote-ref-152)
152. 152   *Id.* [↑](#footnote-ref-153)
153. 153   *Id.* at 18. [↑](#footnote-ref-154)
154. 154  91 Okla. Bar J. 527 (Okla. Civ. App. 2020 - # 117,569) (Not for Publication). [↑](#footnote-ref-155)
155. 155  91 Okla. Bar J. 1165 (Okla. Civ. App. 2020) (Not for Publication). [↑](#footnote-ref-156)
156. 156  In footnote 2 of the opinion, the court of appeals observed: "The tracts are located in Pennsylvania and the circumstances surrounding execution of the lease occurred in Pennsylvania. The parties agree that Pennsylvania law controls the parties' legal relationship." [↑](#footnote-ref-157)
157. 157   *Id.* at 16-17. [↑](#footnote-ref-158)
158. 158  2020 OK CIV APP 4, 457 P.3d 284. [↑](#footnote-ref-159)
159. 159   *Id.* P 2. [↑](#footnote-ref-160)
160. 160  The court noted that "Devon's title search did not reveal an existing 1956 lease at the time the parties entered into the lease agreement." *Id.* P 2 n.2. [↑](#footnote-ref-161)
161. 161   *Id.* P 7 (quoting French Energy, Inc. v. Alexander, 818 P.2d 1234, 1239 (Okla. 1991)). [↑](#footnote-ref-162)
162. 162   *Id.* P 9. [↑](#footnote-ref-163)
163. 163  2020 OK 84, 474 P.3d 869. [↑](#footnote-ref-164)
164. 164  52 O.S. 2011, §§ 318.2-.9. [↑](#footnote-ref-165)
165. 165  2020 OK 84, P 7 (citations omitted). [↑](#footnote-ref-166)
166. 166   *Id.* P 17. [↑](#footnote-ref-167)
167. 167   *Id.* [↑](#footnote-ref-168)
168. 168  2020 OK 29, 465 P.3d 1206. [↑](#footnote-ref-169)
169. 169 https://oklahoma.gov/occ.html. [↑](#footnote-ref-170)
170. 170  224 A.3d 334, 352 (Pa. 2020). [↑](#footnote-ref-171)
171. 171   *Id.* [↑](#footnote-ref-172)
172. 172  Briggs v. Sw. Energy Prod. Co., 245 A.3d 1050 (Table) (Pa. Super. Ct. Dec. 8, 2020). [↑](#footnote-ref-173)
173. 173   *Id.* [↑](#footnote-ref-174)
174. 174  229 A.3d 372 (Table), 2020 WL 1488440 (Pa. Super. Ct. 2020). [↑](#footnote-ref-175)
175. 175   *Id.* at \*1. [↑](#footnote-ref-176)
176. 176   *Id.* [↑](#footnote-ref-177)
177. 177   *Id.* at \*6 (quoting Hite v. Falcon Partners, 13 A.3d 942, 948 (Pa. Super. Ct. 2011)). [↑](#footnote-ref-178)
178. 178   *Id.* (citing *Hite*, 13 A.3d at 949 n.8). [↑](#footnote-ref-179)
179. 179  232 A.3d 872, 877 (Pa. Super. Ct. 2020). [↑](#footnote-ref-180)
180. 180   *Id.* at 874-75. [↑](#footnote-ref-181)
181. 181   *Id.* at 877. [↑](#footnote-ref-182)
182. 182  No. 3:19-cv-00296, 2020 WL 2128968 (M.D. Pa. May 5, 2020). [↑](#footnote-ref-183)
183. 183   *Id.* at \*5. [↑](#footnote-ref-184)
184. 184   *Id.* [↑](#footnote-ref-185)
185. 185  No. 4:20-cv-00782, 2020 WL 5502151 (M.D. Pa. Sept. 11, 2020). [↑](#footnote-ref-186)
186. 186   *Id.* at \*6. [↑](#footnote-ref-187)
187. 187   *Id.* [↑](#footnote-ref-188)
188. 188   *Id.* [↑](#footnote-ref-189)
189. 189  229 A.3d 570 (Table) (Pa. 2020). [↑](#footnote-ref-190)
190. 190  SLT Holdings, LLC v. Mitch-Well Energy, Inc., 217 A.3d 1258, 1269 (Pa. Super. Ct. 2019). [↑](#footnote-ref-191)
191. 191  229 A.3d at 571. [↑](#footnote-ref-192)
192. 192   *Id.* [↑](#footnote-ref-193)
193. 193  938 F.3d 96, 99 (3d Cir. 2019). [↑](#footnote-ref-194)
194. 194  EHB Docket No. 2020-085-L (Dec. 16, 2020). [↑](#footnote-ref-195)
195. 195  620 S.W.3d 335 (Tex. 2020). [↑](#footnote-ref-196)
196. 196  596 S.W.3d 740 (Tex. 2020). [↑](#footnote-ref-197)
197. 197  595 S.W.3d 285 (Tex. App.--El Paso 2020, pet. denied). [↑](#footnote-ref-198)
198. 198   *Id.* at 299. [↑](#footnote-ref-199)
199. 199   *Id.* at 301. [↑](#footnote-ref-200)
200. 200  598 S.W.3d 431 (Tex. App.--Fort Worth 2020, no pet.). [↑](#footnote-ref-201)
201. 201   *Id.* at 438. [↑](#footnote-ref-202)
202. 202  595 S.W.3d 678 (Tex. 2020). [↑](#footnote-ref-203)
203. 203  No. 16-34850, 2020 WL 930111 (Bankr. S.D. Tex. Feb. 21, 2020). [↑](#footnote-ref-204)
204. 204  447 F. Supp. 3d 522, 533 (N.D. Tex. 2020). [↑](#footnote-ref-205)
205. 205   *Id.* at 526. [↑](#footnote-ref-206)
206. 206  No. 11-18-00128-CV, 2020 WL 2838529 (Tex. App.--Eastland May 29, 2020, pet. denied). [↑](#footnote-ref-207)
207. 207   *Id.* at \*2 (first alteration in original). [↑](#footnote-ref-208)
208. 208   *Id.* at \*6. [↑](#footnote-ref-209)
209. 209   *Id.* [↑](#footnote-ref-210)
210. 210  No. 09-18-00463-CV, 2020 WL 238538 (Tex. App.--Beaumont Jan. 16, 2020, no pet.). [↑](#footnote-ref-211)
211. 211  No. 08-19-00096-CV, 2020 WL 4 25 1373 (Tex. App.-- El Paso July 24, 2020, pet. denied). [↑](#footnote-ref-212)
212. 212  593 S.W.3d 721 (Tex. 2020). [↑](#footnote-ref-213)
213. 213  5 95 S.W.3d 668 (Tex. 2020). [↑](#footnote-ref-214)
214. 214   *Id.* at 673. [↑](#footnote-ref-215)
215. 215   *Id.* at 677. [↑](#footnote-ref-216)
216. 216  5 93 S.W.3d 7 32 (Tex. 2020). [↑](#footnote-ref-217)
217. 217   *Id.* at 740. [↑](#footnote-ref-218)
218. 218  No. CV H-18-2275, 2020 WL 1442136 (S.D. Tex. Feb. 25, 2020). [↑](#footnote-ref-219)
219. 219  621 B.R. 188 (Bankr. S.D. Tex. 2020). [↑](#footnote-ref-220)
220. 220  622 B.R. 274 (Bankr. S.D. Tex. 2020). [↑](#footnote-ref-221)
221. 221   *Id.* at 282-84. [↑](#footnote-ref-222)
222. 222  No. 19-0368, 2020 WL 1911459 (W. Va. Apr. 20, 2020). [↑](#footnote-ref-223)
223. 223   *See* Davis v. Hardman, 133 S.E.2d 77 (W. Va. 1963); Paxton v. Benedum-Trees ***Oil*** Co., 94 S.E. 472 (W. Va. 1917). [↑](#footnote-ref-224)
224. 224  851 S.E.2d 94 (W. Va. 2020). [↑](#footnote-ref-225)
225. 225   *Id.* at 96. [↑](#footnote-ref-226)
226. 226  851 S.E.2d 782 (W. Va. 2020). [↑](#footnote-ref-227)
227. 227   *Id.* at 786. [↑](#footnote-ref-228)
228. 228   *Id.* [↑](#footnote-ref-229)
229. 229   *Id.* [↑](#footnote-ref-230)
230. 230   *Id.* [↑](#footnote-ref-231)
231. 231  House Enrolled Act 78, HB0159, 2020 Budget Sess. (Wyo. 2020) (creating Wyo. Stat. Ann. § 39-13-113). [↑](#footnote-ref-232)
232. 232  Senate Enrolled Act 60, SF0139, 2020 Budget Sess. (Wyo. 2020) (revising Wyo. Stat. Ann. § 39-13-108). [↑](#footnote-ref-233)
233. 233  Senate Enrolled Act 7, SF0019, 2020 Budget Sess. (Wyo. 2020) (creating Wyo. Stat. Ann. § 39-13-102(q)(ii)(E)). [↑](#footnote-ref-234)
234. 234  House Enrolled Act 1 4, HB0014, 2020 Budget Sess. (Wyo. 2020) (revising Wyo. Stat. Ann. § 30-5-109). [↑](#footnote-ref-235)
235. 235  Senate Enrolled Act 12, SF0045, 2020 Budget Sess. (Wyo. 2020) (revising Wyo. Stat. Ann. § 30-5-104(d)(vi)(B). [↑](#footnote-ref-236)
236. 236  House Enrolled Act 97, HB0243, 2020 Budget Sess. (Wyo. 2020) (creating Wyo. Stat. Ann. § 39-14-205). [↑](#footnote-ref-237)
237. 237  2020 WY 146, 476 P.3d 1098. [↑](#footnote-ref-238)
238. 238  2020 WY 95, 4 68 P.3d 667. [↑](#footnote-ref-239)
239. 239  2020 WY 8, 455 P.3d 1243. [↑](#footnote-ref-240)
240. 240  2020 WY 45, 460 P.3d 740. [↑](#footnote-ref-241)
241. 241  http: //wogcc.wyo.gov/news-announcements/noticeofintenttoamendadoptrulesandregulationsofthewyomingoilandgasconservationcommission. [↑](#footnote-ref-242)
242. 242  Proposed Rules & Regulations - Wyoming Department of Water Quality, http://deq.wyoming.gov/wqd/resources/proposed-rules-regs/; proposed Chapter 28, WQD Rules and regulations. [↑](#footnote-ref-243)