

# Nuts and Bolts of the Wyoming Royalty Payment Act and other Emerging Issues in Oil and Gas Development in Wyoming

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# Wyoming Royalty Payment Act

(Wyo. Stat. §§ 30-5-301 to 30-5-305)

- The WRPA is "a remedial statute...to be liberally construed to achieve (its) remedial purpose." *Moncrief v. Harvey*, 816 P.2d 97 (Wyo. 1991). It was "enacted in 1982 to stop oil producers from retaining other people's money for their own use." *Cabot Oil & Gas Corp. v. Followill*, 93 P.3d 238, 242 (Wyo. 2004).
- "Oil royalty owners are having to wait too long to receive the money they are owed, according to state Sen. Tom Stroock, who thinks a legislative bill he has pre-filed will help solve the problem." *Royalty Checks Too Slow: Bill Would Speed Them Up*, CASPER STAR TRIBUNE, Dec. 19, 1981
- "Stroock told the committee that oil companies, facing falling prices, have been able to use their superior bargaining power to force onto royalty owners a proliferation of deductions which take big bites out of royalty income checks." *Oilmen Split over Royalty Rule Bill*, CASPER STAR TRIBUNE, Jan. 19, 1989

# Wyo. Stat. § 30-5-301 (time for payment)

- First Payment Payments MUST commence within 6 months after the first day of the month following the first sale
- Subsequent Payments Not later than 60 days after the end of the month within which production is sold.

### • Exceptions:

- o If amount owed less than \$100 (can aggregate but must pay yearly)
- Can't identify partied "legally entitled" to interest. (Escrow § 30-5-302)

### HARSH PENALTY!!

- o 18% per annum (§30-5-303(a))
- Attorneys' fees and costs (§30-5-303(b))

### Wyo. Stat. § 30-5-302 (escrow requirements)

- REQUIREMENTS "<u>Lessee</u>," "<u>Operator</u>" or "<u>party legally responsible for</u> <u>payment</u>" MUST deposit disputed/suspended royalty or working interest proceeds:
  - in a federally insured bank or savings and loan institution in Wyoming (Hilltop National Bank, ??)
  - using a standard escrow document form approved by the attorney general of Wyoming (http://ag.wyo.gov/wyoming-royalty-payment-act)
  - which deposit shall earn interest at the highest rate being offered by that institution
- PROVISION IS OFTEN BEING IGNORED!!

# Wyo. Stat. § 30-5-304 (default definitions)

- "Royalty" means the mineral owner's share of production, free of the costs of production...
- "Overriding royalty" means a share of production, **free of the costs of production**, carved out of the lessee's interest under an oil and gas lease;
- "Costs of production" means all costs incurred for exploration, development, primary or enhanced recovery and abandonment operations including, but not limited to lease acquisition, drilling and completion, pumping or lifting, recycling, gathering, compressing, pressurizing, heater treating, dehydrating, separating, storing or transporting the oil to the storage tanks or the gas into the market pipeline. "Costs of production" does not include the reasonable and actual direct costs associated with transporting the oil from the storage tanks to market or the gas from the point of entry into the market pipeline or the processing of gas in a processing plant;

# Wyo. Stat. 30-5-305 (reporting requirements)

- "Whenever payment is made for oil or gas production to an interest owner..." operator, lessee or party legally responsible for payment must send a report that included everything detailed in Wyo. Stat. § 30-5-305(b)
  Includes "itemized list of any other deductions"
- Must respond to certified mail requests for questions or requests for additional information within thirty (30) days of receipt (30-5-305(b)(xi)).
- Penalty? (no report or improper report)
  - o Wyo. Stat. § 30-5-305
  - \$100/month for incomplete or no reports (per owner and not per well...see *Morris v. CMS Oil and Gas Co.*, 22d P.3d 325 (Wyo. 2010))
  - Attorney's fees and costs

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# Penalty Recap (Wyo. Stat. § 30-5-303)

- Failure to Timely Pay or Incorrect Payments (18% interest per annum and attorney's fees)
- Failure to Escrow (18% interest per annum and attorney's fees)
- Improper Deduction (18% interest per annum on improperly deducted funds and attorney's fees)
- Failure to Report or Improper Reporting (\$100/month per owner and attorney's fees)
- Failure to Timely Respond to Information Request (\$100/month and attorney's fees)

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# Who is a Prevailing Party?

- "...the prevailing party in any proceedings brought pursuant to this article shall be entitled to recover all court costs and reasonable attorney's fees." Wyo. Stat. § 30-5-303(b)
- In *Morris v. CMS Oil and Gas Co.,* 227 P.3d 325, 335 (Wyo. 2010), the Wyoming Supreme Court defined a prevailing party under Wyo. Stat. § 30-5-303(b) "as one who improves his or her position by the litigation."
  - Denied majority of claims but royalty owner marginally improved position and Supreme Court held that royalty owner was entitled to all attorney's fees

# Who is a Prevailing Party?

- There must be a pre-existing legal relationship (i.e. lessee and royalty owner) for either party to recover fees and costs pursuant to WRPA. *Lon V. Smith Foundation v. Devon Energy Corporation*, 403 P.3d 997, 1012 (Wyo. 2017).
- "If a royalty owner sues an operator with which it has a contractual relationship claiming a violation of the WRPA but does not meet its burden to prove that the violation occurred, the operator would be the prevailing party and would be entitled to fees and costs under the fee provision..." *Lon V. Smith Foundation v. Devon Energy Corporation*, 403 P.3d 997, 1012 (Wyo. 2017).
  - Dicta that appears to overrule "improvement of position" standard from *Morris v. CMS Oil and Gas Co.*

# Application of WRPA

### (Lon v. Smith Foundation v. Devon Energy)

### Background:

- o Operator paid multiple parties on same interest for different wells
- Operator 'suspended' some proceeds but failed to escrow
- Foundation eventually recovered 'suspended' royalty funds from successor operator through settlement during litigation.

### Court's Analysis

- o Ownership issues boils down to application of 'ancillary probate' statute Wyo. Stat. § 2-11-201.
- Wills and Wyoming's intestacy statute are not to be considered in a Wyo. Stat. § 2-11-201 distribution...Wyoming court simply adopts the distribution order of the foreign probate court.
- No pre-existing legal relationship between the parties for purposes of the WRPA and therefore neither party entitled to award of attorney's fees.

#### Potential Concerns Following Decision

- Forum Shopping for Ancillary Probate
- 'Cooling' of royalty owner litigation

# Other Emerging Oil and Gas Issues in Wyoming

• Larger laterals leading to larger drilling and spacing units...rush to 'secure operatorship.'

• The Application to Prevent (others) from Drilling??

- Creation of large lease royalties, large ORRIs, large NPRIs prior to forced pooling
  - Wyo. Stat. § 30-5-109 is known as the compulsory/force pooling statute (no royalty to unleased owner during penalty period)
  - Very recent Colorado legislation limits royalty to that "consistent with the lease terms prevailing in the area" and a(HB 230)...COGCC had previously ruled that ORRIs not carved out pursuant to an arms length transaction could be subject to forced pooling
  - o Helis Oil and Gas v. Anadarko (Docket Nos. 78-2018, 80-2018 and 81-2018...June 2018)
- WOGCC moving to online filing

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