Award Winning

The Override

Every Landman Wants One!

Volume XVI, Issue III | January, 2024

LAAPL
LOS ANGELES ASSOCIATION OF PROFESSIONAL LANDMEN

Presidents Message

Sarah Downs, Esq., RPL
President
Southern California Gas Company

Happy New Year LAAPL Members, I hope your new year is off to a great start. The Downs household had a fun-filled holiday season with tamale making, cookie decorating, and Christmas lights tours along the beaches of Southern California. LAAPL breaks its seasonal holiday lull with our annual joint meeting with the Los Angeles Basin Geological Society, where members will enjoy a stout presentation given by Dave Larue, who will be speaking on the Kern River oil field. This January may be off to a quiet start, but rest assured this year will be a turbulent year for energy.

Before the end of the year, energy companies across California woke to new proposed amendments to the Low-Carbon Fuel Standard Program (LCFS). The LCFS is a program that was created under AB32, to proactively reduce California's greenhouse gas emissions that cause climate change. The goal is to reduce carbon intensity of transportation fuel by 2030. The program requires sellers of transportation fuel in California to meet certain annual reduction targets or buy credits to meet the standards. The LCFS proposed amendments were released during the week prior to Christmas without fanfare.

Given the current climate, the result was not surprising, nonetheless the fossil fuel industry no doubt felt rocked when one of the amendments included the phasing out of methane avoidance credits for RNG by 2040. This directly affects those producers and purchasers who are acquiring credits that are granted by capturing GHG emissions that

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Meeting Luncheon Speaker

Dave Larue, Chevron North American Exploration & Production, Retired, is a stratigrapher and earth modeler who retired from Chevron in 2018 and is currently an Adjunct Professor at the University of California, Riverside. He was the last Ph.D. student of the founder of sequence stratigraphy, Larry Sloss, and a student of one of the dominant figures in fluvial sedimentology, Roscoe G. Jackson II.

Kern River Field, Kern County, California. The Kern River Field of California contains a succession of upper Miocene fluvial deposits more than 1,000 feet thick which represents a distributive fluvial system. Well spacing is so tight (100–200 feet) that well logs can be used to create images that appear similar to seismic sections which can be readily interpreted.

Opinionated Corner

Joe Munsey, RPL
Past President
Co-Newsletter Chair
Southern California Gas Company

Taking a stab at using our usual Happy New Year's greetings from years past. Welcome back from the holidays – assuming all have shaken off the lethargic fog of making too much merry during the holidays. May all prospects produce hydrocarbons in paying quantities.

Seems like a worn-out and out-of-place phase in today's green energy economy. We realize the shale boom is still full steam ahead, although it got tamed in recent years, and the mainstream and alternative media is not running the big headlines about the shale boom as in the past. By all accounts, drilling dry holes in the "shales" are less severe than conventional plays. It's the shale "sweet spot" that, well, is sweet to find. Even I have lost track of new convention plays still being explored, drilled, and if lucky, come in and produce in paying quantities.

Comparing oil biz lingo with green energy biz lingo – seems strange, except there are certainly recent parallels coming to light. Not all green energy prospects can pass the threshold of "paying quantities" if the subsidies go away. We are seeing offshore windmill prospects facing strong head winds, pun intended, and going the way of the dodo bird before those windmill blades have a chance of turning to the right. We assume those blades turn to the right. Reckon condemning a conventional oil/gas prospect because the geology does not support it corresponds to a condemned offshore windmill prospect if it does not really pencil out.

The green wind energy suppliers are not faring well these days. Case in point, from recent ancient history, being June 2023, we find Siemens blamed a "substantial increase in failure rates of wind turbine components" for its mounting losses—about $4.8 billion this year—and warned that its financial problems could drag on for years as it **repairs and replaces faulty equipment** [emphasis added]. Siemens has a backlog of orders from wind developers chasing government subsidies, but banks won't extend credit because of its financial troubles. Siemens wants Berlin, as in the political epicenter of Germany, to issue loan guarantees on the faulty premise that its failure could endanger the country's economy and national security. Wind is the new too-big-to-fail enterprise. Jim Wicklund in his article of November 17, 2023, "Things I Learned This Week at Ruthie's Diner" provided this bit of interesting data.

Well, from the perspective of land and legal professionals chasing land work, seems there is still ample on-shore wind work, solar, renewable natural gas, rights of way, due diligence, title curative, surface rights agreements, and throwing in the kitchen sink too, [thinking….big…..money] still yet to grab in green energy for the foreseeable future. Let's not forget the standard and usual fossil fuel land work. Here's to keeping one foot in the green energy biz and one foot available for the fossil fuel energy biz – both require land and legal work.

Our Honored Guests

November's luncheon was another successful LAAPL Chapter meeting held at the "The Grand."

Our presenters:

- Brad Pierce, MS, Adjunct Professor, Pierce Energy Management Company

Our esteemed guests [alphabetical order]:

- Don Barkley, Yorke Engineering
- Cheryl DeMucci, Paragon Partners
- Brenna Junkermier, The Termo Company
- Uduak-Joe Ntuk, Consultant

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would otherwise be released directly to the atmosphere. This is one of several amendments that will directly affect the RNG economy, cutting off its legs as a transportation fuel. According to Bloomberg, "RNG production has increased 20-fold over the past 10 years, and RNG continues to increase its share of fuel used for natural gas-powered vehicles."

If passed, the RNG market will surely suffer economically, and the domino effect will concern not just the transportation industry, but the energy portfolio of California. Many RNG farmers heavily rely on their methane being sold as transportation fuel. This is one of many proposed changes we can expect to see this year, focused on squeezing the life out of unwanted energy sources. No doubt, 2024 will be a pivotal year for the California energy market.

Scheduled LAAPL Luncheon Topics and Dates

January 25, 2024
[4th Thursday]
Annual Joint Meeting with
Los Angeles Basin Geological Society
Dave Larue
"A Geological Overview of the Kern Oil Field"
[Held at Signal Hill Petroleum's Conference Room]

March 21, 2024
Frank Rizzo
Environmental Resource Management
"Stakeholder Agreements"

May 16, 2024
MacKenzie E. Hunt, Esq.
Bright and Brown
"Sometimes Title Just Ain't Enough"
Officer Elections

September 19, 2024
TBD

September 2024
Date TBD
Location TBD
West Coast Landmen's Institute

The Override is, and has been Edited by Joe Munsey, RPL and Published by Randall Taylor, RPL, since September of 2006.

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Chapter Board Meetings

Marcia Carlisle
The Termo Company
LAAPL Secretary

We encourage all members to attend our LAAPL Board Meetings which are typically held in the same room as the luncheon immediately after the meetings are adjourned.

The LAAPL Board of Directors and Committee Members held a virtual Board meeting on November 16, 2023, led by Sarah Downs, President. The topics discussed at the meeting were as follows:

- Jason Downs requested and was granted reimbursement for the luncheon cost.
- There were several new member applications which will be voted on during the next Chapter meeting.
- Jeff Farquhar, Vice President, is working on procuring luncheon speakers.
- Randall Taylor and Joe Munsey, Newsletter and Publications Co-chairs, will send out all of 2023's The Override issues to the Board/ Committee Chairs to vote on their choice for submittal to AAPL for the Best Newsletter [Small Chapter Category] competition.
- Jason Downs secured Black Gold Golf Course in Yorba Linda for the yearly tournament.
- Sarah Downs, President, suggested marketing for new members via personal outreach.

Treasurer's Report

Jason Downs, CPL
Treasurer
Land Representative
Chevron Pipe Line and Power Company

As of 10/30/2023, the LAAPL account showed a balance of	$32,675.49
Deposits	$1,208.95
Total Checks, Withdrawals, Transfers	$-3,232.78
Balance as of 1/16/2024	$30,711.66

LAAPL and LABGS Hold Annual Joint Luncheon

January 25, 2024

The Los Angeles Association of Professional Landmen and the Los Angeles Basin Geological Society will hold its joint luncheon on January 25, 2024. Please note the date of the luncheon is the fourth Thursday of January to be held at Signal Hill Petroleum's Conference Room.

When: Thursday, Jan 25th [Fourth Thursday of the Month]

Time: 11:30AM
Cost: $25.00 [Pre-registered] $35.00 Walk In
Locale: Signal Hill Petroleum
2633 Cherry Avenue
Signal Hill, CA 90755

Speaker: Dave Larue, Adjunct Professor, University of California, Riverside, Retired Chevron North America Exploration & Production
Topic: "Kern River Field – Kern County, CA"

Contact: **To register** for "head count" purposes please email LABGS secretary, Joseph Landeros at **landerosjd@gmail.com**

Online at www.labgs.org.

LAAPL Education Report

January 2024 – April 2024

John R. "JR" Billeaud, RPL, Land Manager, California Natural Resources Group, LLC
Education Chair

January

Event	Dates	Location	Speakers	Credits	Cost
Earth, Wind & Solar	January 24, 2024	Webinar	Reagan M. Marble & Peter Hosey of Jackson Walker LLP	1 CEU	-AAPL Members: $55 -Non-AAPL Members: $95 -Students: Free
LAAPL/LA Basin Geological Society (LABGS) Joint Luncheon	January 25, 2024	Signal Hill Petroleum Office, Signal Hill, CA	Dave Larue (A Geological Overview of the Kern Oil Field)	1 CEU	With reservation: $25 W/O reservation: $35 Retirees: $20 Students: Free

February

Event	Dates	Location	Speakers	Credits	Cost
Navigating Mineral & Royalty Disputes	February 7, 2024	Webinar	Robert 'Eli' Kiefaber, JD	1 CEU	-AAPL Members: $55 -Non-AAPL Members: $95 -Students: Free
NAPE Summit: Expo and Business Conference	February 7-9, 2024	Houston, TX	Business Conf: Various Speakers Keynote Luncheon: TX Gov. Abbott	N/A	Expo: $420 Business Conf: $450 Expo + Business Conf: $780
Asserting Dominance: Do Renewable Developers Have to Accommodate Oil & Gas Surface Use?	February 14, 2024	Live Webinar	Bradley Gibbs of Oliva Gibbs	1 CEU	-AAPL Members: Free -Non-AAPL Members: $95 -Students: Free

March

Event	Dates	Location	Speakers	Credits	Cost
Consent to Assign and Preferential Rights	March 13, 2024	Webinar	Robert 'Eli' Kiefaber, JD	1 CEU	-AAPL Members: $55 -Non-AAPL Members: $95 -Students: Free
LAAPL March Educational Luncheon	March 21, 2024	The Grand, Long Beach, CA	TBD	1 CEU	
AAPL RPL/CPL Certification Exam Review	March 27-29, 2024	Ft. Worth, TX	Various	RPL: 6 CEU & 1 Ethics CPL: 18 CEU & 1 Ethics	Early bird (until 3/12/24): -AAPL Members: $400 -Non-AAPL Members: $480 -Students: Free Reg. Price (after 3/12/24): -AAPL Members: $500 -Non-AAPL Members: $600 -Students: Free

April

Event	Dates	Location	Speakers	Credits	Cost
A&D Considerations for Evolving Lower 48 Portfolios: Investment Responses, Refreshed Strategies, and a Path Ahead	April 3, 2024	Webinar	Robert Clarke	1 CEU	-AAPL Members: $55 -Non-AAPL Members: $95 -Students: Free
2024 Appalachian Land Institute	April 4, 2024	Pittsburgh, PA	Various	10 CEU; 1 CEU Ethics	Early bird (until 3/4/24): -AAPL Members: $295 -Non-AAPL Members: $425 -Students: Free Reg. Price (after 3/4/24): -AAPL Members: $365 -Non-AAPL Members: $525 -Students: Free

End of 2023 Quotes and Comments

The following are a compilation of quotes and comments, with editing, from various sources which we have not obtained permission to re-publish. At the very least, consider all rights are reserved by the original authors and publications – inspiration providing these quotes and comments directly related by the recent December 2023 COP 28 Summit.

The President of Cop28, Sultan Al Jaber, has claimed there is "no science" indicating that a phase-out of fossil fuels is needed to restrict global heating to 1.5C, the Guardian and the Centre for Climate Reporting can reveal.

Al Jaber also said a phase-out of fossil fuels would not allow sustainable development "unless you want to take the world back into caves". Al Jaber is also the chief executive of the United Arab Emirates' state oil company, Adnoc, which many observers see as a serious conflict of interest.

Al Jaber spoke with Robinson of She Changes Climate event. Robinson said: "We're in an absolute crisis that is hurting women and children more than anyone … and it's because we have not yet committed to phasing out fossil fuel…" Al Jaber said: "I accepted to come to this meeting to have a sober and mature conversation. I'm not in any way signing up to any discussion that is alarmist. There is no science out there, or no scenario out there, that says that the phase-out of fossil fuel is what's going to achieve 1.5C." Robinson challenged him further, saying: "I read that your company is investing in a lot more fossil fuel in the future." Al Jaber responded: "You're reading your own media, which is biased and wrong. I am telling you I am the man in charge."

Guterres told Cop28 delegates on Friday: "The science is clear: The 1.5C limit is only possible if we ultimately stop burning all fossil fuels. Not reduce, not abate. Phase out, with a clear timeframe."

"Al Jaber is asking for a 1.5C roadmap – anyone who cares can find that in the International Energy Agency's latest net zero emissions scenario, which says there cannot be any new fossil fuel development. The science is absolutely clear [and] that absolutely means a phase-out by mid-century, which will enhance the lives of all of humanity."

Prof Sir David King, the chair of the Climate Crisis Advisory Group and a former UK chief scientific adviser, said: "It is incredibly concerning and surprising to hear the Cop28 president defend the use of fossil fuels. It is undeniable that to limit global warming to 1.5C we must all rapidly reduce carbon emissions and phase-out the use of fossil fuels by 2035 at the latest. The alternative is an unmanageable future for humanity."

Dr Friederike Otto, of Imperial College London, UK, said: "The science of climate change has been clear for decades: we need to stop burning fossil fuels. A failure to phase out fossil fuels at Cop28 will put several millions more vulnerable people in the firing line of climate change." Otto also rejected the claim that fossil fuels were necessary for development in poorer countries, saying that the latest report from the Intergovernmental Panel on Climate Change "shows that the UN's sustainable development goals are not achievable by continuing the current fossil-driven high emission economies. [There are] massive co-benefits that come with changing to a fossil-free world".

The European Union's Green Deal is on the rocks, barely four years after it was unveiled to great fanfare. Key elements of the program, especially concerning land conservation, have withered on contact with the European Parliament, and enthusiasm for the rest is waning. Brussels frets it can't keep pace with the subsidies in America's Inflation Reduction Act—because Europe doesn't have the money.

Germany is slipping into political disarray after a court ruling in mid-November disallowed the budget gimmick Berlin planned to use to finance its net-zero pledges. By forcing tens of billions of euros of green spending back onto the government's balance sheet from the slush funds where politicians hoped to hide the expense, the ruling has confronted voters with the true costs of net zero. The choice now will be between social welfare and climate, and the fiscal and political math imperils Chancellor Olaf Scholz's coalition.

The common denominator is reality. European countries, like the U.S., are discovering that no matter how hard they push on the net-zero string, costs never come down, green jobs never materialize to replace industrial employment, and the subsidy bill never declines. Meanwhile, Europe's economies already are highly efficient in carbon emitted per euro of gross domestic product—and China and India keep building coal-fired power plants anyway.

Developing economies don't have the luxury of net-zero fantasies and understand they need fossil fuels for their people to enjoy rising prosperity. The alternative is the cave of Mr. Jaber's telling, and it turns out that no number of elaborate climate summits will persuade ordinary people to return to the darkness.

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Guest Article
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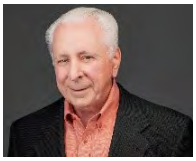
The Everett LNG regasification terminal in the Boston harbor has 3.4 Bcf of LNG storage capacity and has been the "pressure valve" for New England, supplying natural gas when regional systems can't handle demand. But it is soon not to be. The terminal is slated to close by the end of May 2024. New York won't allow drilling and Massachusetts won't allow pipelines. The federal government delays all pipelines. Good luck in the winters of 2024 and 2025.

Guest Article



Today's Materialistic World Cannot Survive Without Crude Oil

By Ronald Stein, PE, Founder and Ambassador for
Energy & Infrastructure of PTS Advance, Irvine, California

Originally Published December 31, 2023, at ***AMERICA OUT LOUD NEWS***

Ronald Stein, P.E., is an engineer, energy consultant, speaker, author of books and articles on energy, environmental policy, and human rights, and Founder of PTS Advance, a California based company. Mr. Stein is the senior policy advisor on energy literacy for the Heartland Institute and CFACT, and co-author of the Pulitzer Prize nominated book "Clean Energy Exploitations."

Ron advocates that energy literacy starts with the knowledge that renewable energy is only intermittent electricity generated from unreliable breezes and sunshine, as wind turbines and solar panels cannot manufacture anything for the 8 billion on this planet.

Conversations are needed to discuss the difference between just ELECTRICITY" from renewables, and the "PRODUCTS" that are the basis of society's materialistic world.

The elephant in the room that no one wants to discuss is that crude oil is the foundation of our materialistic society as it is the basis of all products and fuels demanded by the 8 billion on this planet.

As a reality check for those pursuing net-zero emissions, wind and solar do different things than crude oil. Unreliable renewables, like wind turbines and solar panels, only generate occasional electricity but manufacture no products for society.

Crude oil is virtually never used to generate electricity but, when manufactured into petrochemicals, is the basis for virtually all the products in our materialistic society that did not exist before the 1800s being used at these infrastructures like transportation, airports, hospitals, medical equipment, appliances, electronics, telecommunications, communications systems, space programs, heating and ventilating, and militaries.

Most importantly, today, there is a lost reality that the **primary usage of crude oil** is NOT for the generation of electricity but to manufacture derivatives and fuels, which are the ingredients of everything needed by economies and lifestyles to exist and prosper.

Energy realism requires that the legislators, policymakers, and media that demonstrate pervasive ignorance about crude oil usage understand the staggering scale of the decarbonization movement. In fact, all the parts and components for wind, solar, and nuclear are made with oil derivatives manufactured from crude oil! Thus, ridding the world of oil will eliminate wind, solar, nuclear, and hydro!

We've become a very materialistic society over the last 200 years, and the world has populated from 1 to 8 billion because of all the products and different fuels for jets, ships, trucks, cars, military, and the space program that did not exist before the 1800s.

- If the world governments want to rid the earth of crude oil usage, what's the backup source that can manufacture refrigerators, tires, asphalt, X-ray machines, iPhones, air conditioners, and the other 6,000 products that wind and solar CANNOT manufacture?
- Crude oil use is essential to human flourishing for the foreseeable future. The pursuit of "net zero by 2050, without first identifying the crude oil replacement, would be one of the most destructive developments in human history.
- Everything that needs electricity to function is made with petrochemicals manufactured from crude oil, such as iPhones, Defibrillators, televisions, X-ray equipment, etc.!
- Without crude oil, there would be nothing that needs electricity!
- Net-zero pledges can potentially worsen climate inequities. For example, wealthy countries, which include some of the largest historical polluters, can fund offset projects outside their borders while continuing to pollute at home.
- In turn, developing nations, which are some of the most vulnerable to and least responsible for the climate crisis, are expected to take much more costly climate actions like transitioning to renewables and electrifying transit.
- Until a crude oil replacement is identified, the world cannot do without crude oil, which is the basis of our materialistic "products" society.

World leaders continue experiencing a "dangerous delusion" of a global transition to "just electricity" that they believe will eliminate the use of the crude oil that made society achieve so much in a few centuries. Without those products made from the petrochemicals manufactured from crude oil, the policymakers must be imagining no jets, ships, defense, or space programs!

Over the last 200 years, after the discovery of crude oil, the world populated from **1 to 8 billion**. Today, all the electricity generation options available, such as wind turbines, solar panels, nuclear, hydro, coal, and natural gas, are all dependent on the products and components manufactured from crude oil to be able to generate electricity.

Looking back at the **history of the petroleum industry**, it illustrates that the black cruddy looking **crude oil was virtually useless** unless it could be **manufactured (refineries) into oil derivatives** that are now the basis of chemical products, such as plastics, solvents, and medications, that are essential for supporting modern lifestyles. The more than **6,000**

World Without Crude
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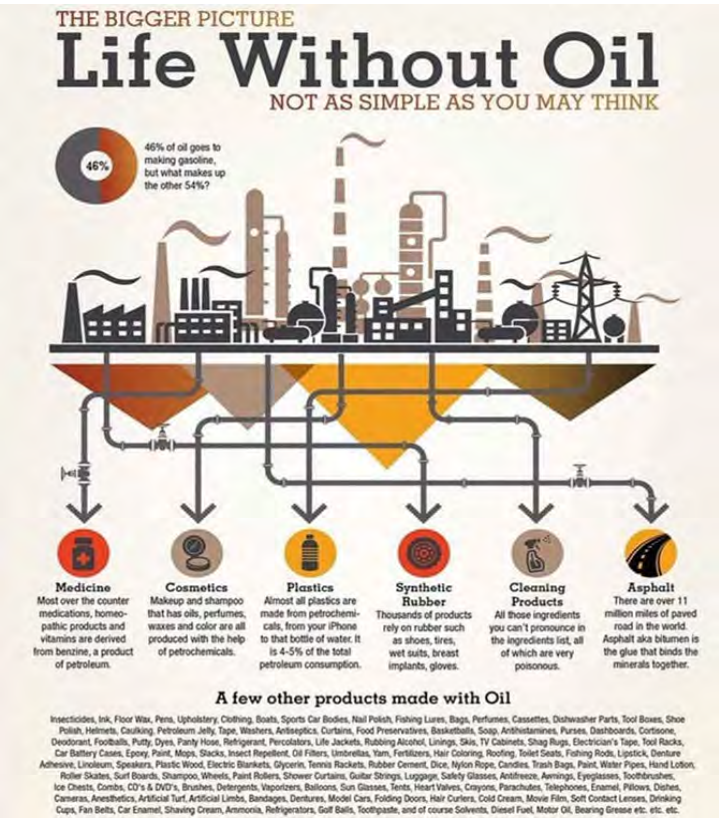

products that are based on oil are being used for the health and well-being of humanity and the generation of electricity did not exist a few short centuries ago.

Today, we have more than **50,000 merchant ships**, more than **20,000 commercial aircraft**, and more than **50,000 military aircraft** that use the fuels manufactured from crude oil. The fuels to move the heavy-weight and long-range needs of jets moving people and products, the merchant ships for global trade flows, and the military and space programs are also dependent on what can be manufactured from crude oil.

For aircraft and ships, just like that, for the diverse options for the generation of electricity, they all utilize parts and components made from the oil derivatives manufactured from raw crude oil.

Without crude oil, there can be no electricity. All the parts to generate electricity, and all the components needed to use electricity, are all made from the oil derivatives manufactured from raw crude oil. In the pre-1800s, before crude oil, humanity had no electricity.

From this quick refresher on energy literacy, further conversations are needed to discuss the difference between just ELECTRICITY from renewables and the PRODUCTS that are the basis of society's materialistic world.

Please share this energy literacy information with your friends and wake your leadership up to the truth.

Mr. Stein can be reached at Ronald.Stein@PTSadvance.com

Texas Supreme Court Ruling Restricting Post-Production Deductions in New Royalty Clauses Now Being Tested in $100M Lawsuit

By Alyce Boudreaux Hoge, Esq.

Alyce Boudreaux Hoge is an attorney licensed in Texas and Louisiana. She has practiced energy and mineral law for the past 30+ years. The founder of Land Training LLC, she also teaches the Professional Land Management and Division Order Certificate Programs at Midland College in Midland, Texas. Previously, she has taught PLM programs at the University of Texas (PETEX) and the University of Houston. A native of Louisiana, Alyce is fond of saying she gives "legal advice with Cajun spice."

Author's Comments: Landowners and oil and gas companies in Texas are facing a significant legal battle over the interpretation of new royalty clauses. The recent ruling by the Texas Supreme Court has restricted post-production cost deductions, causing turmoil in the industry. This groundbreaking decision has sparked a $100 million lawsuit against Devon Energy and BPX Properties, with landowners alleging underpaid royalties. In this article, we will delve into the details of this case and explore the implications of the court's ruling on the oil and gas sector.

Pay attention – there are some new royalty clauses in town and the Texas Supreme Court is interpreting them against oil and gas companies who attempt to deduct post-production costs from their lessor's royalty payment. What's unique about these provisions is that they prohibit deductions AFTER the point of sale to third-party affiliates.

Devon v. Sheppard Lawsuit

Landowners and oil and gas companies in Texas are facing a significant legal battle over the interpretation of new royalty clauses. The recent ruling by the Texas Supreme Court has restricted post-production cost deductions, causing turmoil in the industry. This groundbreaking decision has sparked a $100 million lawsuit against Devon Energy and BPX Properties, with landowners alleging underpaid royalties. In this article, we will delve into the details of this case and explore the implications of the court's ruling on the oil and gas sector.

"In the case of Devon et al. v. Sheppard (No. 20-0904, March, 2023), the Texas Supreme Court affirmed the lower court's ruling that the clear language of the lease provision unambiguously prevented deductions of post-production costs from a third-party affiliate who deducts costs from published index prices downstream from the point of sale. Devon Energy Production Co., L.P., f/k/a GeoSouthern DeWitt Properties, LLC; BPX Properties (NA) LP; GeoSouthern Energy Corp.; and BPX Production Co. are all being sued under these leases.

The recent test case highlights the impact of this new ruling. Specifically, Devon Energy and BPX are facing lawsuits from numerous landowners in DeWitt County, southeast of San Antonio. These landowners in the Eagle Ford Shale allege that they have been underpaid royalties and interest amounting to $100 million, citing the Texas Supreme Court opinion as supporting evidence. (See Houston Chronicle article by Amanda Drane of July 3, 2023)

New Royalty Provisions

So, what are these new provisions? First, it's important to understand that the plaintiff in the Supreme Court case and the newly filed case is Michael Sheppard, an attorney and mineral owner who created the provisions not only for his lease but for other lessors in the area. Second, the parties all agree that per the "gross proceeds" language of the traditional royalty clause in the lease, no post-production costs are deductible to the point of sale. At issue are these new, bespoke provisions affecting whether oil companies can take the posted price of the product and deduct costs for "gathering and handling, including rail car transportation, of $18" as discussed in the case, from the per barrel posted price and use this figure to calculate royalties.

Here are the two provisions:

> 3(c) If any disposition, contract or sale of oil or gas shall include any reduction or charge for the expenses or costs of production, treatment, transportation, manufacturing, process[ing] or marketing of the oil or gas, then such deduction, expense or cost shall be added to…gross proceeds so that Lessor's royalty shall never be chargeable directly or indirectly with any costs or expenses other than its pro rata share of severance or production taxes.
>
> AND
>
> Payments of royalty under the terms of this lease shall never bear or be charged with, either

Case - Energy continued on page 11

Case - Energy continued from page 10

directly or indirectly, any part of the costs or expenses of production, gathering, dehydration, compression, transportation, manufacturing, processing, treating, post-production expenses, marketing or otherwise making the oil or gas ready for sale or use, nor any costs of construction, operation or deprecation of any plant or other facilities for processing or treating said oil or gas. Anything to the contrary herein notwithstanding, it is expressly provided that the terms of this paragraph shall be controlling over the provisions of Paragraph 3 of this lease to the contrary and this paragraph shall not be treated as surplusage despite the holding in the cases styled "Heritage Resources, Inc. v. NationsBank," 939 S.W. 2d 118 (Tex. 1996) and "Judice v. Mewbourne Oil Co.", 939 S.W. 2d [133,] 135-36 (Tex. 1996).

Royalty Payment Based on Index Price

Typically, a royalty owner is paid on the posted index price less any costs incurred by the oil and gas company to move the product to a refinery. For oil, this can be done by rail and so the railroad charges a fee to the oil and gas company and this fee is deducted from the per barrel price. The royalty owner's decimal interest is multiplied by the number of barrels produced at the reduced (after deducting transportation costs to get it to the refinery) per barrel index price.

In the olden days, during my time at Exxon, it was a requirement to include the index price and any deductions, such as transportation costs, on the division order. This allowed royalty owners to understand how their payments were calculated and replicate the calculation if needed. For instance, if the posted index price for oil was based on WTI (West Texas Intermediate), but "gathering and handling, including rail car transportation" amounted to a total deduct of $18 fee, we would display the posted price as WTI minus the $18 gathering and handling, including rail car transportation fee on the division order. As a result, the royalty payment would be based on $52 per barrel, if the WTI posting was $70 per barrel that particular month. Deducting transportation costs from the posted price and paying the royalty owner based on the actual price is still a standard practice in the industry today; however, today most companies use the NADOA Model Form Division Order with no added provisions.

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Example:

Posted Index Price: West Texas Intermediate. $70/barrel
Railroad Fee: - $18/barrel
Royalty Payment based on: $52/barrel oil*

Formula for Royalty Owner:
Decimal Interest * number of barrels produced x $52/barrel

*Royalty Payment Typically Based on this Amount

Impact of New Interpretation

According to the Houston Chronicle article, there are about 5 leases in the new lawsuit with this key language, but it could affect up to 200 leases with the same provisions in the area. And, of course, any new leases negotiated with these added provisions will be affected.

Let's do a current example of one month for a large landowner to see how this issue might affect one individual lessor who owns 100% of the minerals in an Eagleford well with a ¼ RI:

See the chart below for a new well's production in the Eagleford shale. The well will also produce gas, but we will examine just the oil in this example.

(α) 1500 bbls per day x 30 days = 45,000 bbls x posted price of $70 per bbl = 45,000 * $70 = $3,150,000 * ¼ RI = **$787,500**, with an additional deduction for severance tax

(β) 1500 bbls per day x 30 days = 45,000 bbls x posted price of $70 per bbl less the $18 gathering and handling, including rail car transportation fee cited in the case

= 45,000 * ($70-$18= $52) = $2,340,000 * ¼ RI = **$585,000**, with an additional deduction for severance tax

This is a difference of roughly **$200,000** more per month owed to this particular royalty owner.

Posted Price

Its long been held that landowners and producers have the opportunity to reach an agreement regarding the rightful amount of royalty, the criteria for its calculation, and the allocation of expenses. It is important to note that a landowner's royalty that excludes postproduction costs, holds greater value for the royalty holder but is more costly for the producer. This is because the landowner will benefit from the increased value of production without having to bear the expenses incurred in getting the product to market. Consequently, disputes over the terms of mineral leases and the distribution of postproduction costs are quite common. However, the specific application of the royalty clause in this lease are unique and, according to the Texas Supreme Court, "unprecedented."

Analysis

So why is the Texas Supreme Court who is historically "pro-industry" ruling against an oil and gas company? In my opinion, the Texas Supreme Court has gone to such extremes to rule in favor of oil and gas companies that it is to the point of bordering on the ridiculous. Take the 1995 Texas Supreme Court case quoted in the lease provision, Heritage v. Nations Bank. In that case, the royalty clause had typical market value language but also included this language:

> …provided, however, that there shall be no deductions from the value of the Lessor's royalty by reason of any required processing, cost of dehydration, compression, transportation or other matter to market such gas.

That's pretty unambiguous language in my opinion. Yet in Heritage, the court ruled that this language was "surplusage" and that the lease language really meant that oil and gas royalty were to be paid on net proceeds and deductions were allowed.

One could argue that if one part of the royalty clause called for a market valuation and another part said "no deductions," this creates an ambiguity. Under contract law, an ambiguity in a lease is construed against the lessee. Despite this, the court ruled in the oil and gas company's favor.

This paved the way for a skilled attorney and mineral owner to skillfully construct language designed

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to counter the ruling in the Heritage case, ultimately leading to the present outcome. I would contend that the financial burden on the oil and gas company is significantly higher when they are obliged to pay post-deduction costs to a third-party affiliate, as opposed to if the court had permitted post-production deductions prior to sale. Typical post-production cost deductions range from a few cents (19 - 21 cents per barrel), rather than nearly $20 per barrel as in this example. Nevertheless, this is the current situation we find ourselves in.

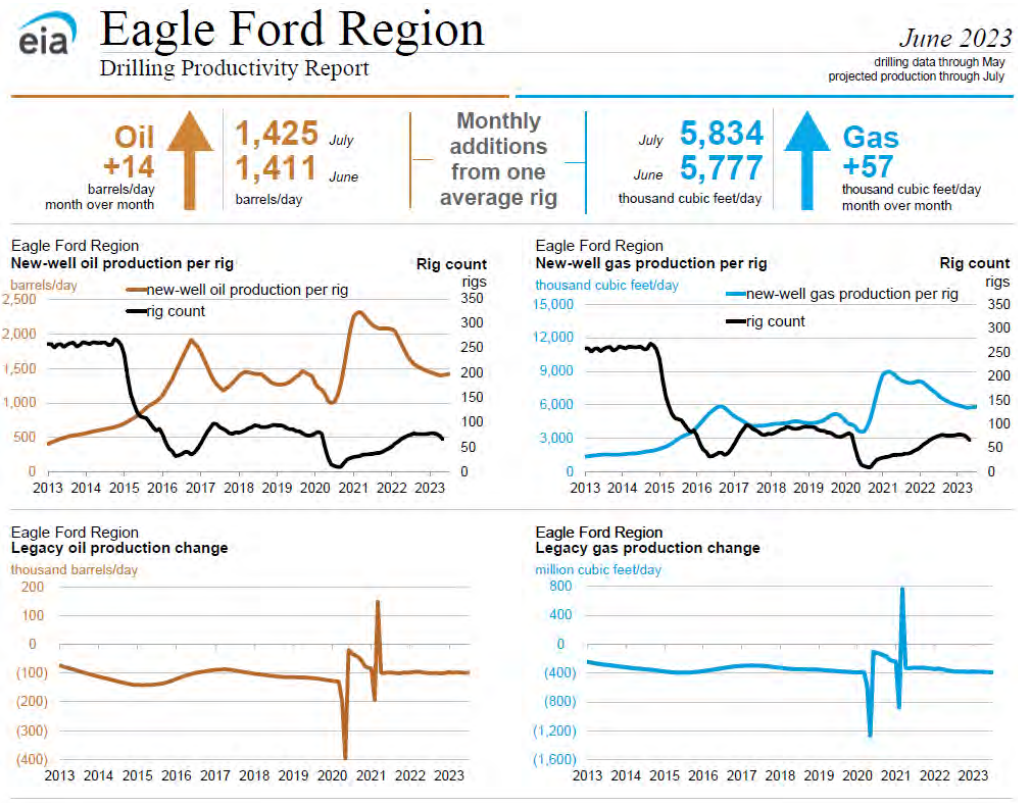
Impact on Land Professionals

This affects all land professionals. For the landman, be aware of this provision and its impact on your company's bottom line when negotiating a new lease. For lease analysts, make sure you note these provisions well when analyzing the oil and gas lease. For division order analysts, this may require manual handling of checks for lessors with this lease language. Typically, when the revenue accountant gets a posted index price, that price is applied to all the owners in a deck. That won't work for lessors with this language creating a whole new administrative burden (not to mention financial) to the oil and gas company.

Conclusion

In conclusion, the recent Texas Supreme Court ruling restricting post-production cost deductions in new royalty clauses has sent shockwaves through the oil and gas industry. With landowners now armed with a powerful legal precedent, oil and gas companies will need to carefully review their lease agreements and navigate the complexities of calculating royalties. This landmark ruling serves as a reminder that the balance between landowners and producers is constantly evolving, and the interpretation of lease provisions can have significant financial implications. It remains to be seen how this ruling will shape future lease agreements and the relationship between landowners and oil and gas companies. This is why it is crucial for all stakeholders to stay informed and seek expert guidance to ensure fair and equitable agreements moving forward.

Even though this is a Texas case, the ruling may give landowners in other producing shale basins such as Oklahoma and the Bakken in North Dakota and Montana additional incentive to challenge long held practices in these other states.



New Well Oil Production Chart for the Eagle Ford Shale Region

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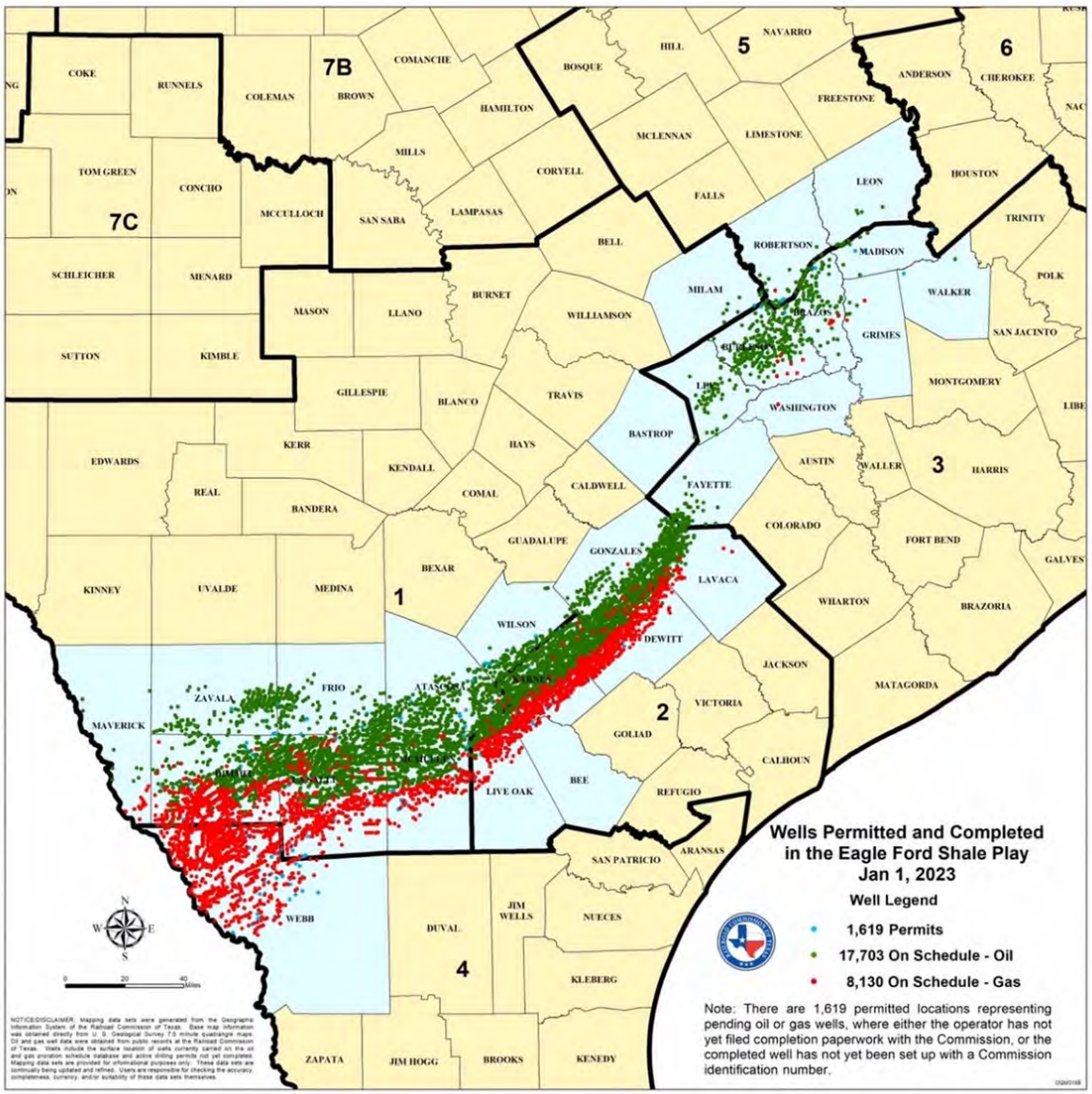
continued from page 13



Map of the Eagle Ford Shale

Eagle Ford Price

United States Price Date : 2023-07-06

→ **68.25** $US/1 Barrel 0.00 0.00%

Week High	Week Low	Month High	Month Low	3 Mos High	3 Mos Low	6 Mos High	6 Mos Low	Year High	Year Low
68.25	67.00	69.00	64.00	79.75	64.00	79.75	63.25	102.12	63.25

Eagle Ford Pricing for Month of July, 2023

2024 LAAPL Mickelson Golf Classic
Thursday, March 14th, 2024
Start Time 09:30am

Black Gold Golf Club
Located in Yorba Linda California

Directions:
blackgoldgolf.com
Black Gold Golf Club
1 Black Gold Dr.
Yorba Linda, CA 92886

LAAPL cordially invites you to participate in the 2024 LAAPL Mickelson Golf Classic fundraiser to be held at Black Gold Country Club in Yorba Linda California. We look forward to your participation. This tournament honors the Late William A. Mickelson, a respected leader in LAAPL/BAPL, the California Oil & Gas Industry and truly a prowess on the golf course.

This year's fundraiser beneficiary is the R. M. Pyles Boys Camp (www.pylescamp.com). Join us for a day of fun and the opportunity to make positive changes in the lives of area youth. LAAPL will donate the net proceeds realized from the tournament to the R.M. Pyles Boys Camp, thus we encourage you to "sponsor" generously. **Please email your completed sponsorship forms and logos as soon as possible.** Lunch provided for all players.

2024 MICKELSON GOLF CLASSIC REGISTRATION FORM

____ "HOLE IN ONE": Full page ad – plus presenting sponsor status in all tournaments material and program sponsorship $1000.00
(Includes golf for FOUR players)

____ "BIRDIE": Half page ad - golf tournament program $250.00
(Includes golf for ONE player)

_____ GOLF ONLY, Price "Bogey Special" $200.00
(Includes golf only for ONE player)

____ "CLUBHOUSE SPECIAL": $150.00
(Includes your name listed in tournament materials and golf tournament program, *No Golf*)

Team Captain & Company Sponsor **Phone**

Address City State Zip

***Player Name:*_____ *Email* _____**

***Player Name:*_____ *Email* _____**

***Player Name:*_____ *Email* _____**

***Player Name:*_____ *Email* _____**

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Total paid at LAAPL.COM $_____

Comments/Special Requests:

Tournament format will be a 4-man scramble. Prizes will be awarded for 1st place, longest drive, and closest to the pin if allowed by the golf club. **Club Rules:** No coolers on the course, no golf carts driven on vehicle parking lot, shirts with collars only (no t-shirts, sweats, tank tops, denim, short shorts or cut-offs).

Case of the Month - Right of Way

The Solomonic Problem: Who Gets to Keep the Baby (the Land and Improvements) When Multiple Claimants Want It?

By Mike Rubin, Esq., Partner, Rutan & Tucker, LLP

Ed. Note: This Case of the Month was summarized and presented at Chapter 67 of the International Right of Way Association's Luncheon on November 14, 2023. RE: Pacific Gas & Electric Company v Superior Court of San Joaquin [South San Joaquin Irrigation District, Real Party in Interest] 95 Cal. App. 5th 819 (September 21, 2023)

ISSUE: When electric, gas, or water public utility property is condemned by a public agency to put the property to the same use, what is the standard of proof that the public utility must meet to successfully challenge the public agency's findings in its Resolution of Necessity ("R/N"), including the finding that the public agency's project is for "a more necessary public use"?

Background Facts

South San Joaquin Irrigation District brought an eminent domain action to acquire a portion of PG&E's electric utility distribution system in order to use it to provide its own retail electric service. The District adopted a R/N finding that the public use by the District of PG&E's facilities constitutes a more necessary public use than the use by PG&E. PG&E objected to the District's right to take its property based upon CCP 1250.360 (f) and CCP 1250.370, and claimed that it was entitled to bar the condemnation if it showed, by a mere preponderance of the evidence, that any of the findings in the District's R/N were not correct, including whether the District's use was not more necessary than PG&E's use.

Discussion

CCP 1245.250 provides that except as otherwise provided by statute, a R/N "conclusively establishes the matters referred to in Section 1240.030 [(a) the public interest and necessity require the project, (b) the project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury, and (c) the property sought to be acquired is necessary for the project]. The normal means to object to the findings in a Resolution of Necessity is to challenge the validity of the Resolution of Necessity pursuant to CCP 1245.255 which allows the property owner to overcome the conclusive presumption if the property owner shows that its adoption or contents were influenced or affected by a gross abuse of discretion by the governing body. This is a very difficult standard to meet in court. Caselaw has established that the challenge can only be based upon what was introduced into the record for the hearing on the R/N and that, to prevail, the property owner must show there was no substantial evidence in the record upon which the findings could be based, with the courts giving great deference to decision making of the governing body.

PG&E did not challenge the validity of the R/N pursuant to CCP 1245.255, which would trigger the very heavy burden of proving a gross abuse of discretion. Instead, PG&E argued that it has the right to show by a mere preponderance of the evidence that one of the findings in the R/N are not correct. PG&E argued that CCP 1250.360 (f) allows PG&E to bypass the need to utilize the gross abuse of discretion procedure, because this latter section states that one ground to object to the right to take is that the property is being taken for a more necessary public use but the acquisition does not satisfy the requirements for a more necessary public use.

A statute that authorizes condemnations for a more necessary public use, CCP 1240.650, provides that a use by a public entity is deemed a more necessary use than use by any person other than a public entity, but where the property that has been appropriated to a public use is an electric, gas or water public utility property, and the condemning agency will be putting it to the same use, the presumption of a more necessary public use is only a rebuttable presumption, affecting the burden of proof. Unlike other types of condemnations, therefore, the statute does not provide that the finding of more necessary public use in the R/N is "conclusive". Because of that, PG&E was able to also argue that it can object to the findings in the R/N pursuant to CCP 1250.370 which provides that a property owner can object to any of the findings in the R/N where the governing agency has not adopted a R/N that conclusively establishes the required findings.

Takeaway:

There are a number of public agencies that are seeking to condemn the properties of private water companies as well as other public utilities so that the public agency can operate the facilities for the same use but arguably

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in ways that it views as more equitable or appropriate for its constituents. Unlike other condemnation proceedings, when a governmental entity seeks to condemn an electric, gas, or water public utility property to put the property to the same use, it will not benefit from the conclusive presumption that the findings in its R/N are accurate. The utility will be able to object to the findings if it can show, by a preponderance of the evidence, that any of the findings are not accurate.

Sidebar:

A number of our Chapter members participated in some way in this case, including Nossaman's Brad Kuhn, and Doug Evertz and Jennifer McClure of Murphy & Evertz.

Mr. Rubin can be reached at mrubin@rutan.com.

In Federal Takings, Kohl V. United States Was the GOAT!

By Jeremy Bagott, MAI, AI-GRS

Ed. Note: Jeremy Bagott, MAI, AI-GRS, is an independent fee appraiser specializing in the valuation of real property rights for right-of-way clients in Southern and Central California. He is author of "The Compact Real Estate Appraiser" and "Guaconomics: Dipping a Chip into America's Besieged Party Bowl [gmail.us6.list-manage.com]."

VENTURA, Calif. (Aug. 18, 2023) – The outcome of Kohl v. United States seems predictable today, but only a decade after the end of the Civil War, matters involving States Rights were to be avoided at all costs.

The Fifth Amendment always contained the phrase "nor shall private property be taken for public use, without just compensation," but for the nation's first 100 years, the federal power of eminent domain was dormant for a property that wasn't in the District of Columbia. It was unclear whether the federal government could directly acquire a privately owned property through eminent domain if the property were located in a state.

That is, until the U.S. Supreme Court examined the matter in 1876 in Kohl v. United States. This landmark case is the greatest of all time – the GOAT – when it comes to settling federal eminent domain authority. While the petitioners protested that no act of Congress was used to determine the details of an acquisition, the high court ruled such legislation was unnecessary.

To modern observers, with the benefit of hindsight, the matter before the Waite Court may appear clear-cut. But it wasn't at the time. With the wounds of the Civil War still fresh, Congress steered clear of head-on collisions over States Rights. For federal condemnation of land, the respective state would have to give authority for a proceeding and the appropriation would have to be made through state law and by the decision of state courts. Kohl v. United States changed all that. It established that the federal government could directly condemn land for its own uses.

Wrote Associate Justice William Strong for the majority: "The Fifth Amendment contains a provision that private property shall not be taken for public use without just compensation. What is that but an implied assertion, that, on making just compensation, it may be taken?"

Another sticky subject Kohl addressed was whether the government could determine the value of a property in order to "justly compensate" the property owner. The majority ruled the property could be appraised by the government.

The condemnee in the Kohl case was the owner of a leasehold estate. In June 1873, U.S. Attorney for the Southern District of Ohio, Warner M. Bateman, filed a petition in the Hamilton County Probate Court to appropriate, under the right of eminent domain, the lot for a U.S. post office, custom house and other government buildings. The taking comprised 25 parcels on about 4 acres.

But the gimlet-eyed property owner, estate executrix Mary R. Kohl, noticed there was nothing in the action of the legislative branch of the federal government providing for the exercise of such power. It opened a Pandora's box that took the matter before the U.S. Supreme Court.

Strong, a Grant appointee, called the federal government's authority to appropriate property for public uses "essential to its independent existence and perpetuity." With that, the Supreme Court birthed the existence of federal condemnation authority in the states.

Writing the dissent was Associate Justice Stephen Johnson Field, an irascible Californian and Lincoln appointee who had served as alcalde of Marysville under Mexican rule and state assemblyman for Yuba County after statehood. He had been appointed chief justice of the California Supreme Court after his predecessor, Chief Justice David S. Terry, had killed U.S. Senator David Colbreth Broderick in a duel and left the state.

Field embraced a States Rights stance, pointing out, "The Federal courts have no inherent jurisdiction of a proceeding instituted for the condemnation of property, and I do not find any statute of Congress conferring upon them such authority."

Less than a year after Kohl, Strong was tapped to be one of the five justices to sit on the Electoral Commission convened to resolve the disputed electoral votes in the contentious U.S. presidential election of 1876. The commission awarded the disputed votes to Ohioan Rutherford B. Hayes.

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Guest Article

California Aims to Force Adoption of Electric Trucks, But 19 States Sue to Block

By Steve Goreham, MS, MBA

Originally in Master Resource [masterresource.org.]

Ed. Note: Mr. Goreham is the Executive Director of the Climate Science Coalition of America, a non-political association of scientists, engineers, and citizens dedicated to informing Americans about the realities of climate science and energy economics.

Earlier this year, California passed regulations that would turn the trucking industry upside down. New mandates for zero emissions trucks would disrupt the industry, raise shipping costs, and put trucking companies out of business. A group including 19 states and several trucking organizations recently filed suit to block the California regulation.

California's Advanced Clean Fleets (ACF) Regulation goes into effect on January 1, 2024. The ACF requires [rmi.org] that truck operators buy only Zero Emissions Vehicle (ZEV) trucks for medium-duty and heavy-duty trucking operations as early as January 2024. The ACF also requires that trucking companies transition their fleets to 100 percent ZEV trucks by 2035 to 2042, depending upon class of truck.

On November 3, 19 state attorneys general and several trucking organizations filed [landline.media] a brief in the US Court of Appeals for the District of Columbia Circuit to block ACF. The suit argues that the ACF regulation is unconstitutional and highlights the negative consequences of forced electrification of the heavy truck fleet.

ZEV trucks are plug-in battery electric trucks and hydrogen fuel-cell trucks. The goal of ACF is to remove all trucks with internal combustion engines from California roads by as early as 2035.

According to the regulation [rmi.org], new trucks for drayage, high priority truck fleets, and public fleets must be ZEV trucks as of January. Drayage trucks operate at California ports or transport containerized freight to and from intermodal rail yards. High-priority fleets belong to private companies with more than 50 trucks or over $50 million in annual revenue. Public fleets are owned by state and local governments.

For practical purposes, ACF will require half of all new heavy-duty truck sales to be electric trucks, instead of diesel trucks. Few new trucks would be hydrogen fuel-cell trucks, which are not competitive at this time.

Under the Clean Air Act of 1967, Congress preempted states from adopting emissions standards for motor vehicles. But in Section 209 of the Act, California was permitted to seek a waiver from this preemption. In March of 2023, the Environmental Protection Agency granted [epa.gov] a waiver to allow California to establish the ACF emissions standard for heavy trucks. If this waiver stands, the Advanced Clean Fleets Regulation may allow California to try to force a national transition to electric trucks.

The suit filed against Advanced Clean Fleets regulation argues [landline.media] that the EPA should not have granted the waiver. It argues that the ACF crosses state lines, and that California should not be allowed to regulate trucking for the nation.

Eight other states, Colorado, Maryland, Massachusetts, New Jersey, New York, Oregon, Vermont, and Washington, have already adopted [foxnews.com] California's ACF rules. Another six states are expected to join. But can electric trucks do the job?

Electric trucks suffer major disadvantages when compared to diesel trucks. Diesel trucks can travel about 1200 miles after filling the tank in 15 minutes. The range of electric trucks is about 150-330 miles and recharging may take hours, even on a high-speed charger.

Electric truck cabs cost two to three times as much as diesel cabs, an incremental cost of as much as $300,000 per truck. Electric cabs also weigh about 10,000 pounds more than comparable diesel versions. This can reduce

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net freight carried by as much as 20 percent.

Few heavy truck charging stations exist, and the power requirements are huge. The new heavy-duty truck charging station [spectrumnews1.com] in South El Monte, California can charge up to 32 trucks in about 90 minutes. The South El Monte site was funded [fleetequipmentmag.com] through the Joint Electric Truck Scaling Initiative, funded by California state and local agencies. But six megawatts of electricity will be needed to simultaneously charge these trucks, more than the power consumed by 200,000 homes or used in a small California city, such as San Bernardino or Huntington Beach.

But the South El Monte site is one of very few heavy truck charging sites. The California Energy Commission estimates [reuters.com] that 157,000 medium- and heavy-duty chargers will be required by 2030. If these are built, the peak electricity draw could be as much as an additional 5,000 cities the size of San Bernardino. It's very unlikely that the California grid could deliver this much power. Heavy duty charging sites would also need to be built all over the nation.

The California Air Resources Board, which established the ACF, claims that the regulation is needed to "protect the public health and welfare of Californians." But ACF benefits to Californians will be negligible. Particulate air pollution in California has been reduced to such low levels that a single large wildfire exhausts [legalinsurrection.com] more particulate pollution in a few days than all California vehicles exhaust in an entire year. China emits [globalcarbonatlas.org] more greenhouse gases in a day than California trucks emit in a year.

California's Advanced Clean Fleets regulation, if adopted, will be a disaster for trucking and consumers. The jump in truck costs will put small truckers out of business. Freight delivery times will increase because of long charging times. Longer delivery times and smaller loads will require 20 to 50 percent more trucks to move the same amount of freight.

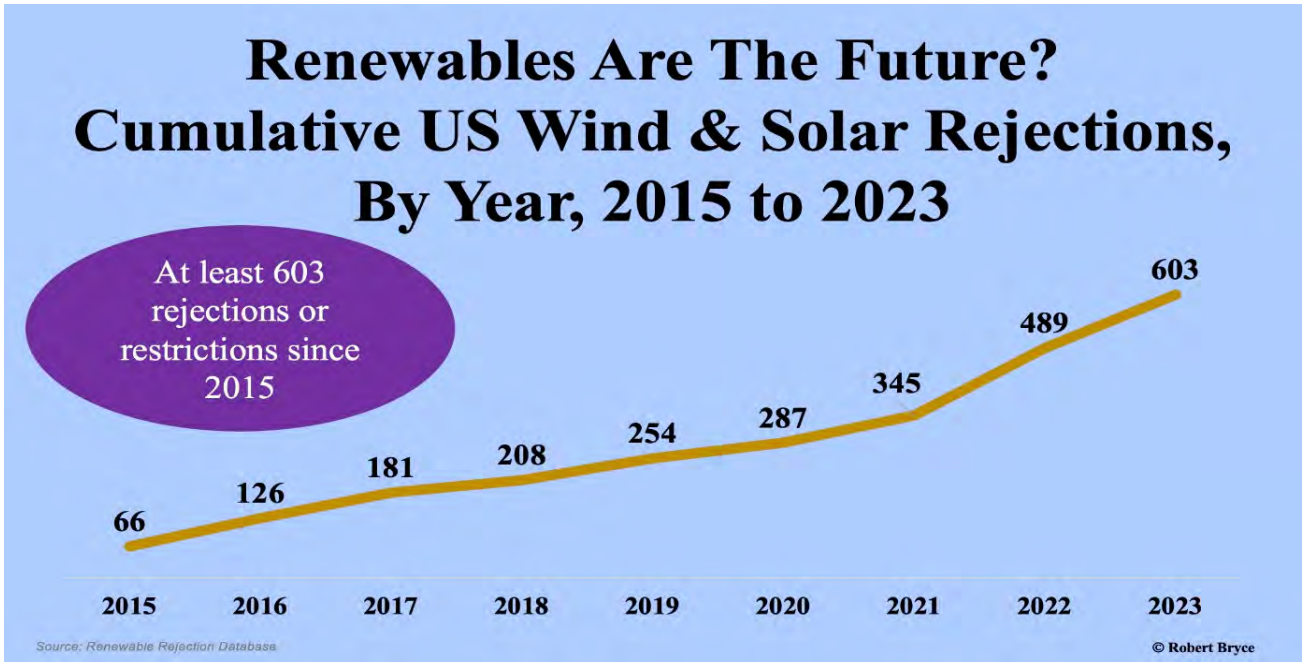
In 2022, trucks moved [trucking.org] 73 percent of US domestic freight. Forced adoption of electric trucks will boost the cost of food, medicines, clothing, and materials for consumers and businesses, put upward pressure on inflation, and provide negligible pollution control benefits. The US Court of Appeals and other states should reject California's ACF regulation.

Mr. Goreham can be reached at gorehamsa@comcast.net.

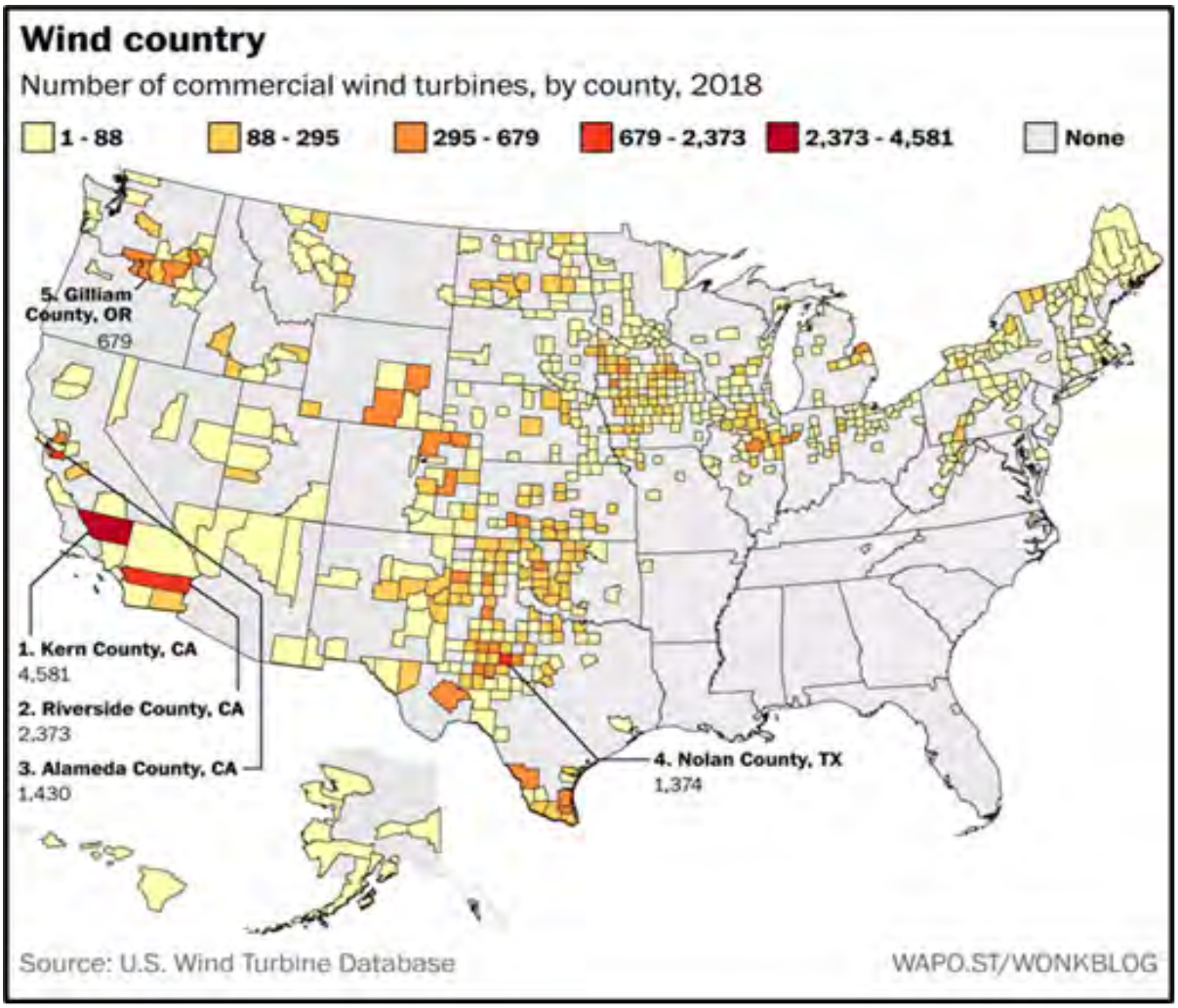
INTERESTING CHARTS

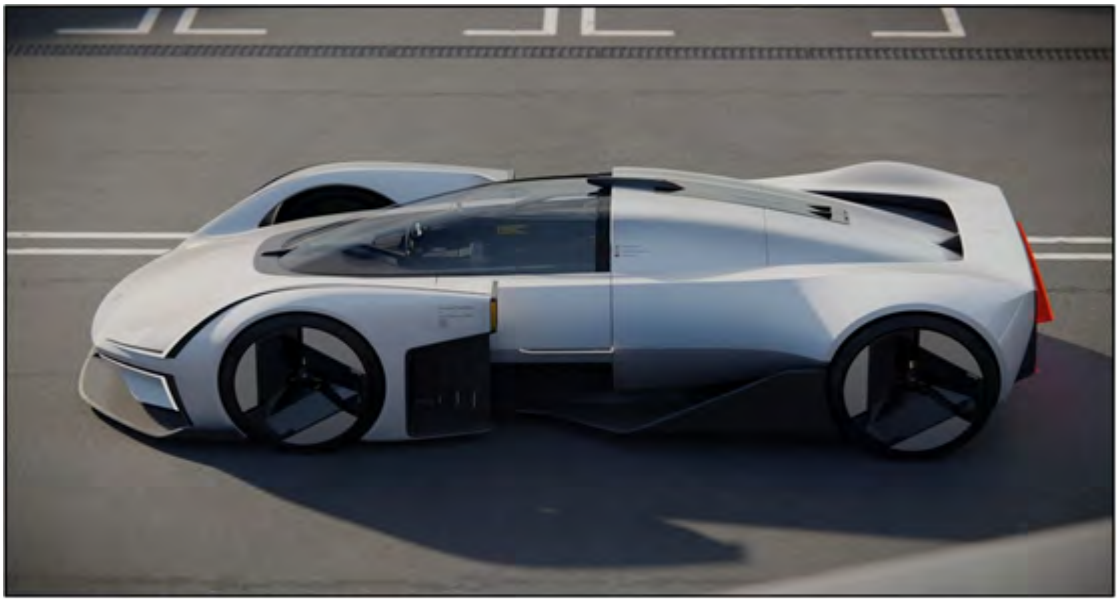
Provided to *The Override* by James R. Halloran who can be reached by contacting him at jameshalloran8969@gmail.com. Mr. Halloran provides daily [almost] insight on the energy industry.

India and China are burning record amounts of coal. Reuters reported India plans to add 17 gigawatts of new coal-fired capacity over the next 16 month.



Land use conflicts are hindering or stopping wind and solar across rural America.





Polestar Synergy concept car. Polestar already makes an interesting EV and the lack of sales in China is causing them to dump EVs into Europe. If the cars look like this, you can dump one in my driveway!

Bibikos At the Well - January 2024

Mr. Bibikos practices as GA Bibikos, LLC, an oil and gas law practice, with his office in Harrisburg, PA, he can be reached at gbibikos@gabibikos.com.

Below are various oil and gas cases recited in his blog site [gabibikos.com] *At the Well Weekly* which may be of interest for your further inquiry.

Interesting

- ***Mountain Valley Pipeline***. *The **U.S. Supreme Court** denied an emergency stay application filed **by several families** requesting an order preventing the pipeline from accessing their properties pending review of **constitutional challenges** to Congress's decision to greenlight the project. Mountain Valley Pipeline. Ed Notes: The never-ending saga of the MVP.*

- **Commonwealth Court Kills RGGI [the Regional Carbon Cap-and-Trade Program]**. The Commonwealth Court granted **summary judgment** to lawmakers and **held** that **Pennsylvania can't** join RGGI without the **approval of the General Assembly** because the credits that power plants would need to buy **are a tax**, **not a fee** to administer the program. The DEP regulations that authorized PA to join RGGI are therefore **invalid**. Judge Ceisler dissented and would've held that there are issues of fact about whether the regulations created a **tax or fee** that preclude summary judgement.

- **Commonwealth Court Rejects Bid to Dismiss Right of Way Dispute**. The Commonwealth Court rejected bids by **PennDOT to dismiss** a dispute over a **subsurface water pipeline** that encroached on a landowner's property, holding that the landowner did not need to challenge a related highway occupancy permit issued by PennDOT **before suing in court** and that the **Board of Property** does **not have jurisdiction** over this dispute because no one is claiming title to Commonwealth property. Gas House Gang, LLC v. Northeast Marcellus Aqua Midstream I, LLC, --- A.3d ----, No.716 M.D. 2019, 2023 WL 7985904 (Pa. Cmwlth. Nov. 17, 2023).

Headlines & Holdings – Appalachia

- **Ohio Appellant Court Says Oil and Gas Lease Expired because Lessee Didn't Drill a Well.** A Court of Appeals in Ohio held that an oil and gas lease expired **because the lessee did not commence or complete** any oil and gas wells in a unit including the leased premises before the primary term expired, **holding that the lease required** the lessee to "begin and complete the drilling of a well" in order to perpetuate the lease and that never happened. *French v. Ascent Resources-Utica, LLC*, --- N.E.3d ---, No. 22 JE 0024, 2023 WL 5934666 (Ohio Ct. App. September 12, 2023).

- **Ohio Federal Court Rejects Claim that Fuel and Lost Plus Unaccounted for Gas are Improper Post-Production Costs.** A Federal Court in Ohio **rejected a bid by landowners to exclude** evidence that the costs of fuel and lost and unaccounted for gas ("FLU") is a **proper deduction** before paying royalties, **holding instead** that FLU is produced but not sold, is not an impermissible post-production cost charged to lessors, and is a permissible deduction because the lease only calls for royalties on gas actually sold. *Grissoms LLC v. Antero Resources*, --- F. Supp. 3d ----, No. 2:20-CV-2028, 2023 WL 5979262 (S.D. Ohio Sept. 14, 2023).

- **Federal Court in West Virgina Certifies Royalty Issues for West Virgina Supremes Review**. A federal court in West Virginia **granted a motion to certify** the following questions regarding royalties and post-production costs for review by and input from the West Virginia Supreme Court: **"1)** Do the requirements of Wellman v. Energy Resources, Inc., 557 S.E.2d 254 (W. Va. 2001) and Estate of Tawney v. Columbia Natural Resources, 633 S.E.2d 22 (W. Va. 2006), extend only to the 'first available market' as opposed to the 'point of sale' when the duty to market is implicated? **2)** Does the first marketable product rule extend beyond gas to require a lessee to pay royalties on natural gas liquids ('NGLs'), and if it does, do the lessors share in the cost of processing, manufacturing, and transporting the NGLs to sale?" *Romeo v. Antero Resources Corp*., --- S.E.3d ----, No. 1:17CV88, 2023 WL 6612491 (N.D.W. Va. Oct. 10, 2023).

- **West Virgina Court Says State Statute Preempts Local Oil and Gas Regulation**. A Court of Appeals in West Virginia held that **the state's Natural Gas Horizontal Well Control Act** delegates "sole and exclusive authority" over all aspects of oil and gas permitting and the location of oil and gas exploration and production activities to the Secretary of the West Virginia DEP such that **a city could not hinder** the well operator's ability to begin drilling once it got state approval, rejecting the city's position that a municipality retains authority to require zoning approval for an oil or gas well that has already been approved under the state's permitting program. *SWN Production Co., LLC v. City of* Weirton, --- S.E.3d ---, No. 22-ICA-83, 2023 WL 7178284 (W. Va. Ct. App. Nov. 1, 2023).

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- ***Oklahoma Supremes Address Top-Lease, Washout, and Related Issues***. *In a case **pitting a top-lessee against a base-lessee and a washout of overriding royalties**, the Supreme Court of Oklahoma held that there remained a question of **whether the base lease expired for lack of production in paying quantities** and, as to an associated overriding royalty interest, that interest may be extinguished by a surrender of the working interest from which the interest arises unless the surrender is the result of fraud or breach of a fiduciary relationship. Oil Valley Petroleum v. Moore, --- P.3d ----, No. 119810, 2023 WL 6119809 (Okla. September 19, 2023).*

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- ***Federal Court in Arkansas Denies Class Certification in Oil and Gas Dispute.*** *A Federal Court in Arkansas* ***denied a motion*** *to certify a class of plaintiffs claiming underpaid royalties,* ***holding that a class action is unjustified because*** *the six or so potential class plaintiffs failed to satisfy the numerosity requirement and whether or not the lessee shorted landowners their royalties is an individualized inquiry unfit for resolution by class action. Bradley v. XTO Energy, Inc., --- F. Supp. 3d ----, No. 3:21-CV-00079-BSM, 2023 WL 6129487 (E.D. Ark. Sept. 19, 2023).*

- ***Texas Appeals Court Holds that "Market Value at the Well" in Royalty Clause Authorizes Post-Production Costs.*** In a dispute over royalties and post-production costs, a court of appeals in Texas held that (a) the phrase "market value at the mouth of the well" in a royalty clause requires the deduction of post-production costs from royalty payments; (b) the lessee did not owe any royalties on fuel gas; and (c) the free-use clause in the lease did not alter the gas royalty provision's requirement that the lessors bear their share of post-production costs. *Enervest Operating v. Mayfield*, --- S.W.3d ----, No. 04-21-00337-CV, 2022 WL 4492785 (Tex. App. Sept. 28, 2022).

- ***Texas Appeals Court Addresses Estoppel by Deed in ORRI Dispute.*** A court of appeals in Texas held that a grantor seeking to reserve an overriding royalty interest in leases was a stranger to title who could not reserve the ORRI and that the "estoppel by deed" doctrine did not prevent the assignees from denying the attempted ORRI reservation. *Armour Pipe Line Co. v. Sandel Energy, Inc.*, --- S.W.3d ----, No. 14-20-00412-CV, 2022 WL 4542049 (Tex. App. Sept. 29, 2022).

- ***Wyoming Supreme Court Addresses Executory Rights of Oil and Gas Life Tenants.*** In a dispute over mineral rights, the Wyoming Supreme Court held that life tenants owned 100% of their mineral interests and had executory rights to lease their estate for a period that extended beyond their life tenancy, and the lessee, in turn, leased 100% of the mineral such that it had standing to quiet title to 50% of the mineral estate subject to the lease despite claims that the lessee could only bring such actions as a mineral owner (not a lessee). *North Silo Resources, LLC v. Desalms*, --- P.3d. ----, Nos. S-21-0267, S-21-0291,2022 WY 116, 2022 WL 4375436 (Wyo. Sept. 22, 2022).

- **Wyoming Supremes Uphold State's Oil and Gas Production Tax Determinations.** The Wyoming Supreme Court held that the state properly **increased the value of a well operator's production** for certain tax years **by moving the point of valuation** not from the custody transfer meter near the wells but downstream of that location, **rejecting the operator's contention that downstream field facilities** were "processing facilities" as defined by state law, and those costs are deductible from severance and ad valorem taxes such that the proper point of measuring gas production for tax purposes should be at the custody transfer meters. *Chesapeake Operating, LLC v. Wyo. Dep't of Revenue*, --- P.3d ----, No. S-23-0036, 2023 WL 7318919 (Wyo. Nov. 7, 2023).