



Valuation of Oil Per “At the Well” Lease Term Means Just That to North Dakota Supreme Court

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In a case of first impression in North Dakota, its Supreme Court, on a certified question of law from the federal district court, determined that a lease royalty provision based on valuation of oil at the well meant that post-production costs may be deducted once oil is valued at the well. The Court determined that for these 5 similar royalty payment cases, valuation does not occur somewhere downstream of the well where oil enters “the pipeline,” as royalty owners asserted. [Blasi v. Bruin E&P Partners, LLC, 2021 ND 86; 959 N.W.2d 872 \(N.D. 2021\)](#).

Blasi argued that reference to the pipeline to which the wells may be connected for valuation purposes was ambiguous because in its estimation, it did not mean the pipeline connecting the well to the tank battery but meant the pipeline which the oil enters at some downstream location. The Court found no ambiguity in the lease language because the pipeline connection in question was expressly identified in the lease. The Court determined, “[t]he meaning is based upon the pipeline’s proximity to the wells, not its physical characteristics – it is ‘the pipeline to which the lessee may connect wells on said land.’”

The word “may” in this lease royalty provision was significant to the Court because the lessee must pay the royalty whether it connects the wells to a pipeline or not, at this described location of the “wells on said land.” Thus, the Court found this lease language unambiguous and held that the valuation of oil was at the well and not at some downstream location as suggested by the royalty owners.

In reaching this holding, the Court cited to authoritative oil and gas treatises and case law from other jurisdictions, like Texas and Kansas, which have interpreted similar oil and gas royalty provisions that provide for delivery free of costs into the pipeline to which the well is connected.

The Colorado Court has determined that the point of valuation in the case of gas royalties under an “at the well” or “at the mouth of the well” royalty payment provision is a question of fact in every case (*see Rogers v. Westerman*, 29 P.3d 887 (Colo. 2001)). However, the old form leases in *Rogers* did not contain a reference to the pipeline connecting to the wells, as the leases did in *Blasi*.

Drafting royalty provisions contained in your lease should be considered in the context of current case law in the state in which the minerals are located, as a form lease that works in one state can create serious liability issues for a payer in another state.

For more information on drafting payment of proceeds provisions, or payment of proceeds disputes in North Dakota or any state, please contact [Karen Spaulding](#).

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