CAMRO
Colorado Alliance of Mineral and Royalty Owners
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In the last newsletter I announced that I was an objector to the title board in the matter of initiative 97 which would establish a 2500 foot setback statewide for oil and gas wells. The title board decision at the hearing held on February 7 is now appealed to the Colorado Supreme Court. What follows is a truncated copy of the appeal, but has all the salient points. The significant take away from the 2/7 hearing was that the fiscal impact statement written by the legislative services staff was incomplete and did not adhere to state law. Briefs to the Supreme Court are due March 6, and responses 20 days later.

Neil Ray

DATE FILED: February 14, 2018 4:17 PM
SUPREME COURT, STATE OF COLORADO
2 East 14th Avenue Denver, Colorado 80203
ORIGINAL PROCEEDING PURSUANT TO C.R.S. § 1-40-107(2)
Petitioner:
Neil Ray v.
Respondents: Anne Lee Foster and Suzanne Spiegel,
and
Colorado Ballot Title Setting Board:
Suzanne Staiert, Glen Roper, and Jason Gelender
PETITION FOR REVIEW OF FINAL ACTION OF THE TITLE SETTING BOARD CONCERNING PROPOSED INITIATIVE 2017-2018 #97

Pursuant to section 1-40-107(2), Petitioner Neil Ray, through undersigned counsel, respectfully petitions this Court to review the
? COURT USE ONLY ?

title, ballot title, and submission clause set by the Colorado Ballot Title Setting Board (the "Title Board") for Proposed Initiative 2017-2018 #97 (the "Initiative").
I. ACTION OF THE TITLE BOARD
The Title Board conducted its initial public hearing on the Initiative on January 17, 2018, and set a title. Petitioner subsequently filed a timely Motion for Rehearing on January 24, 2018. The Title Board considered the motion at the rehearing and denied it except to the extent the Title Board amended the ballot title and abstract. Petitioner now seeks review of the Title Board's actions under C.R.S. § 1-40-107(2).
II. ISSUES PRESENTED FOR REVIEW
A. Whether the Title Board erred in ruling that the measure contains a single subject as required by Article V, § 1(8) of the Colorado Constitution and C.R.S. § 1-40-105(4).
B. Whether the measure's abstract fails to comply with the requirements of C.R.S. § 1-40-105.5(3), and is otherwise misleading and prejudicial.
C. Whether the Title Board has jurisdiction on rehearing to return the abstract to Legislative Council when the abstract fails to meet legal requirements.
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D. Whether Legislative Council's failure to post on its website data that was submitted by the proponents, as required by C.R.S. § 1- 40-105.5(6), divested the Title Board of jurisdiction to consider the measure.
E. Whether the Title Board erroneously relied on proponent testimony in considering the abstract when that testimony related to economic data submitted by the proponents to Legislative Council but was not posted on Legislative Council's website, as required by C.R.S. § 1-40-105.5(6), nor available to the Title Board or the Petitioner at the hearing.
G. Whether the title is misleading in a number of respects.
III. SUPPORTING DOCUMENTATION
As required by section 1-40-107(2), attached is a certified copy of the final action by the Title Board and Petitioner's Motion for Rehearing.
IV. RELIEF REQUESTED
Petitioner respectfully requests that the Court reverse the Title Board's denial of Petitioner's Motion for Rehearing and direct the Title Board to decline to set a title on the measure, or alternatively, to return the measure to Legislative Council for drafting of a fiscal impact estimate and abstract that comply with the statutory requirements, and redrafting of the ballot title.
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Respectfully submitted on February 14, 2018.
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CAMRO
Colorado Alliance of Mineral and Royalty Owners

Protecting Our Property Rights - Protecting Our Future

Colorado Courts Avoid Hearing Payments of proceeds Royalty Cases

DISCLAIMER – THE FOLLOWING ARTICLE IS PRESENTED FOR INFORMATION PURPOSES TO CAMRO MEMBERS, ON A SUBJECT OF SIGNIFICANT RELEVANCE TO THEIR INTERESTS. IT DOES NOT REPRESENT LEGAL OR PROFESSIONAL ADVICE. PLEASE CONSULT WITH YOUR OWN ADVISORS FOR ANY PROFESSIONAL ADVICE WITH RESPECT TO YOUR PERSONAL SITUATION.

A disturbing trend has started to occur which has a direct impact on Colorado mineral and royalty owners. This problem has caused delay or denial of royalty owners pursuing legal resolution of allegedly improper deduction of costs from their royalty payments.

The issue at hand is the recent pattern of Colorado courts refusing to hear cases involving post-production costs, "until all administrative remedies have been exhausted" with the Colorado Oil and Gas Conservation Commission (COGCC). The COGCC is the state agency tasked with the management of oil and gas activities in Colorado.

CAMRO is aware of a number of filed litigation cases which have been refused or delayed by several Colorado courts, and have been directed to the COGCC, instead of proceeding on a normal court docket. As discussed below, CAMRO does not believe that this trend is in the best interest of mineral and royalty owners. It only serves to increase costs to mineral owners, and either delay or deny resolution to their problem.

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Legislative Update

We are just over 1/3 of the way through our 120 legislative session, set to end this year on May 9th. There have been 246 House bills introduced so far, and 167 Senate bills for a grand total of 413. CAMRO is tracking 13 bills impacting the oil and gas industry or mineral rights specifically. We can reasonably expect another 235 or so to be introduced before session is over.

CAMRO supports 1 bill, opposes 2, and are monitoring 10 additional bills that may impact individual mineral rights. You can find an updated listing of the bills we are tracking here:

http://www.coloradocapitolwatch.com/bill-analysis/3824/2018/0/

CAMRO continues to be active in Ag Council and other activities at the capitol, and appreciates any feedback on current or pending legislation from the membership. With this feedback, our Legislative Committee, Neil Ray, Don Phend, Keith Crichton, and Cindy Bargell direct my lobbying activities on your behalf at the capitol.

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First, some general background

The deduction of "post-production costs" from natural gas royalty payments in Colorado is not a new issue to many CAMRO members. Basically, the subject centers on the oil and gas producer's "implied duty of marketability". This simply means that the producer must, in many cases, "bear the cost of getting gas to a marketable condition and marketable location". In plain language, that means that the producer must process the gas, and deliver it to the inlet of an interstate pipeline, at no cost to the royalty owner.

Colorado courts have consistently found that if a lease is silent with respect to these post-production cost deductions, or if the lease specifically prohibits such deductions, the royalty must be paid without any of these deductions. However many legal disputes have arisen in Colorado, claiming that these deductions are still being made to royalty owners, regardless of their alleged impermissibility.

The traditional recourse to royalty owners has been to initiate legal action in a court of law with proper jurisdiction, in either an individual or class action lawsuit. However, with some courts now attempting to shift the burden of deciding these issues to the COGCC, a number of problems arise that negatively affect royalty owners.

First and foremost, CAMRO takes the position that these cases are contract disputes, which should be resolved in a court of law. In fact, the Colorado Statute on this subject (C.R.S 34-60-118.5 (5.5)) states in part:

> *"Before hearing the merits of any proceeding regarding payment of proceeds pursuant to this section, the oil and gas conservation commission shall determine whether a bona fide dispute exists regarding the interpretation of a contract defining the rights and obligations of the payer and payee. If the commission finds that such a dispute exists, the commission shall decline jurisdiction over the dispute and the parties may seek resolution of the matter in district court."*

Regardless of the above, if the COGCC did in fact decide to hear such a proceeding, a number of issues immediately arise which would make it a practical impossibility to reach a satisfactory resolution.

issues that would need to be resolved

- Can post-production costs be charged to royalty owners in this specific matter?

This would presumably involve a hearing process in front of the COGCC, where both parties to the dispute can present their case. Let's assume a good set of facts for the royalty owner, and that the COGCC agrees with the significant legal precedent. If the COGCC decides that the costs cannot be deducted from royalty payments, is the dispute resolved?

Hardly! It is just getting started. Now we need to determine:

- Determine the point that the product is marketable. (This may involve extensive data analysis, expert witness reports and expert witness testimony).

- Are post-production costs actually being deducted, and if so, what type are they? (This requires significant accounting analysis, as it is not always obvious what deductions are being taken – many may be so-called "stealth deductions").

- Are any types of post-production costs actually allowable, or should they all be disallowed? (This could involve significant legal and fact analysis).

- What is the amount of each type of unallowable post-production cost that has been charged? (Calculation of damages – this involves "discovery" of accounting records, significant accounting analysis and often the preparation of a report and testimony by an expert witness on the subject).

- What is the total amount of damages that should be awarded? (The amounts awarded by courts are not always the same as the amount requested by the prevailing plaintiff, presumably this discretion would also be granted to the COGCC).

These cases take considerable time and effort to present. They may involve a year or more in preparation, and often last for a week or more in court. The question has arisen if the COGCC even has sufficient time, resources and personnel to administer multiple cases of this type each year.

Yet another issue involves the future of class action cases under the jurisdiction of the COGCC. Traditionally, many post production cases have been litigated as class action. They have many small royalty owners, who have in fact suffered real economic damages, but their dollar amounts are too small to economically pursue in a separate legal action. Class actions have been the only feasible recourse for many small royalty owners to recover their economic damages. It is unclear how the class action concept would be able to proceed through the COGCC, and in fact several of the currently delayed cases are in fact class action cases.

What Can CAMRO members do?

The COGCC needs to hear us on this issue. CAMRO's board of directors does not feel that the commission or it's staff is equipped to judge the merits of contract disputes, nor does it have jurisdiction to do so. Nor does the board feel it would be in the best interest of the state or its mineral owners to have the legislature grant jurisdiction in these matters. It is also doubtful the legislature itself would do so.

COGCC Rule 510

The CAMRO board has voted to have an attorney draft a statement under rule 510 and present it at the next hearing opportunity. The commission is obligated to consider these statements under the rule as follows.

510. STATEMENTS AT HEARING

a. Any person may make an oral statement at a hearing or submit a written statement, according to instructions available on the COGCC website (under "Forms"), prior to or at any hearing that relates to the proceeding before the Commission. The Commission, at its discretion, may limit the length of any oral statement or restrict repetitive statements. In an adjudicatory hearing, an oral statement shall not be accepted into the record unless:

(1) The statement is made under oath; and

(2) The parties to the hearing are allowed to cross-examine the maker of the statement.

b. The Commission, at its discretion, may accept a sworn written statement into the record with due regard to the fact the statement was not subject to cross-examination.

c. The parties to the hearing shall have the right to object to inclusion of any statement under this Rule 510. into the record. The Commission shall note the objection for the record. If the Commission accepts the basis for excluding the 510. statement from the record the substance of the statement shall not be considered by the Commission in making a decision on the matter at issue.

CAMRO members can file their own written 510 statements, here are the how to instructions.

And here are the cases currently docketed:

171200788 (Airport Land Partners,Ltd.) 171200789 (Richard N. Casey) ; 171299790 (Paul Limbach, Nanci Limbach, and Fred Limbach) 17120091 (Shideler Energy); 171200792 (Shuster).

Instructions to submit a written statement under Rule 510

Submit a Rule 510 statement to the Commission by writing/ typing a **maximum of two (2) pages.** You must include the following information and you must identify the document as a "510 Statement" and **verify your submission by dating, printing your name and signing the statement:**

Docket Number:

Your Full Name:

Your Mailing Address:

Your Phone Number:

Your E-Mail Address:

Submit an original Statement and **two (2) copies** preferably no later than **10 business days before the hearing** on which this statement is being submitted. These deadlines can be determined by accessing the appropriate hearing schedule from the homepage. Statements received after the hearing may not be included in the record. Please mail your original and two (2) copies to:

COGCC
Attention: Hearings Department,
1120 Lincoln Street, Suite 801,
Denver, Colorado 80203.

In order to meet the deadline you may email a PDF to COGCC at COGCC.Hearings_Unit@state.co.us and in the subject line, type: Rule 510 Statement Docket Number ____(locate number on Notice).

However, you must also submit your original and two (2) copies and COGCC must receive them with-in two business days. Statements must be sworn by signing at the bottom of the last page and shall not exceed 2 pages in length. Statements that are not properly sworn or received by deadline may not be included in the record.

We highly encourage like comments to be submitted as one statement signed by all supporters in agreement of the statement to eliminate repetitive statements being submitted.