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Oil & Gas Law - Royalty Dethroned: Wyoming's Approach to Gathering Costs

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OIL & GAS LAW – Royalty Dethroned: Wyoming’s Approach to Gathering Costs, *Cabot Oil & Gas Corp. v. Followwill*, 93 P.3d 238 (Wyo. 2004).

INTRODUCTION

In January 2002, the Followwills (Owners), owners of overriding royalty interests in mineral production, filed a lawsuit against Cabot Oil & Gas Corporation (Cabot), an oil and gas producer, in the United States District Court for the District of Wyoming.¹ Owners possessed overriding royalty interests stemming from thirteen federal oil and gas leases.² These overriding royalty interests entitled Owners to payment with respect to sales of natural gas produced from ninety-six wells on lands located in three different Wyoming counties.³ Cabot, a successor in interest to the original lessees, assumed the responsibility for payment of royalties and overriding royalties on gas produced and sold from or allocated to these federal lands.⁴

Unrelated third party companies, such as Mountain Gas, Inc., Williams Field Services Company, and Questar Gas Management Company transported the majority of the gas produced from these federal leases.⁵ Under three agreements between Cabot and its transporters, gas was to be transported off the lease to downstream points of sale.⁶ They transported the gas from the wells where the gas is produced off the lease to a processing plant, which was located at the interconnection of interstate transmission

1. Brief for Appellee at 1, *Cabot Oil & Gas Corp. v. Followwill*, 93 P.3d 238 (Wyo. 2004) (No. 02-283) [hereinafter Brief for Appellee]. Oil and gas expert Richard Hemingway states, “[I]n perhaps a majority of the states, a conveyance or reservation of the ‘minerals’ will include oil, gas and petroleum products, unless a contrary intent is manifested on the face of the instrument.” RICHARD W. HEMINGWAY, *LAW OF OIL AND GAS* § 1.1, at 1 (3d ed. 1991).

2. *Cabot Oil v. Followwill*, 93 P.3d 238, 240 (Wyo. 2004).

3. *Id.*

4. *Id.* Royalties, as they pertain to oil and gas, are defined as “a share of the product or profit from real property, reserved by the grantor of a mineral lease, in exchange for the lessee’s right to mine or drill on the land.” BLACK’S LAW DICTIONARY 1356 (8th ed. 2004). Overriding royalty interests, in comparison with general royalty interests, are defined as a share of either production or revenue from production (free of the costs of production) carved out of a lessee’s interest under an oil and gas lease. *Id.* Overriding royalty interests are often used to compensate those who have helped structure a drilling venture. *Id.* An overriding royalty interest ends when the underlying lease terminates. *Id.*; *Martin v. Glass*, 571 F. Supp. 1406, 1410 (N.D. Tex. 1983), *aff’d*, 736 F.2d 1524 (5th Cir. 1984) (explaining that an overriding royalty is a royalty paid out of a lessee’s or operator’s interest in an oil and gas lease in addition to the lessor’s royalty and indicating that an overriding royalty, as opposed to an ordinary royalty, is limited to the life of the lease through which it is created).

5. *Cabot*, 93 P.3d at 240.

6. *Id.* These agreements were termed “Gas Gathering Agreements” in order to signify that these facilities were exempt from federal regulation by the Federal Energy Regulatory Commission. Brief for Appellant at 7, *Cabot Oil & Gas Corp. v. Followwill*, 93 P.3d 238 (Wyo. 2004) (No. 02-283) [hereinafter Brief for Appellant].

systems where the gas was sold.⁷ After transportation, these companies invoiced Cabot for their services.⁸ Cabot subsequently deducted pro rata shares of its costs for these transportation services from the amounts owed to the respective Owners.⁹ In essence, Cabot deducted the transportation costs from the Owners' royalties.¹⁰

The controversy in *Cabot Oil* centered on the definition of "gathering" as contained in the 1989 amendment to the Wyoming Statutes Annotated section 30-5-304.¹¹ This amendment indicated that a "mineral owner . . . is entitled to the payment of a royalty on production, free and clear of the costs of production . . ." ¹² The amendment further stated "[c]osts of production means all costs incurred for . . . gathering . . ." ¹³ Specifically, by deducting transportation costs, Owners claimed Cabot improperly and illegally deducted costs of production, gathering in particular, from their share of the proceeds of production.¹⁴ They contended the cost of transportation from the lease to the production plant was considered a "gathering" cost under Wyoming Statutes Annotated section 30-5-304(a)(vi), and as such, it was a nondeductible "cost of production."¹⁵

Cabot, on the other hand, argued the transportation from the lease to the processing plant was considered a *post*-production process, not gathering.¹⁶ Cabot claimed that historically, royalty owners shared costs of transportation of gas from the place of production to a processing plant or to some other distant point of sale.¹⁷ Cabot stated that section 30-5-304(a)(vi) states that the "reasonable and actual direct costs associated with transporting . . . the gas from the point of entry into the market pipeline" are not included in the nondeductible "costs of production."¹⁸ Therefore, Cabot contended the amendment did not abrogate the traditional shared expense of transportation from the lease to a distant point of sale, and transportation off the lease to a point of sale is not "gathering" but is *post*-production transportation. Hence, according to Cabot, transportation costs are not part of the nondeductible costs of production as defined in the Wyoming Royalty Pay-

7. *Cabot*, 93 P.3d at 240.

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*; WYO. STAT. ANN. § 30-5-304 (LexisNexis 2004).

12. *Cabot*, 93 P.3d at 241; *see* WYO. STAT. ANN. § 30-5-304(a)(ii).

13. WYO. STAT. ANN. § 30-5-304(a)(vi) (emphasis added).

14. Brief for Appellee at 1.

15. *Cabot*, 93 P.3d at 239.

16. *Id.*

17. Brief for Appellant at 6 (citing *State of Wyo. v. Davis Oil Co.*, 728 P.2d 1107, 1109 (Wyo. 1986)).

18. *Id.* at 9.

ment Act (Act), and it was proper for Cabot to deduct such costs from Owners' royalties.¹⁹

Owners brought this case to recover damages and other remedies from Cabot under Wyoming Statute Annotated section 30-5-304.²⁰ Wyoming Statute Annotated section 30-5-304(a)(vi) and (vii) in pertinent part states:

(vi) "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;²¹

(vii) "Royalty" means the mineral owner's share of production, *free of the costs of production*;²²

Neither "gathering" nor "market pipeline" is specifically defined in the Act.²³ Therefore, on September 30, 2002, Cabot filed a motion requesting certification of three questions to the Wyoming Supreme Court.²⁴ On November 22, 2002, Judge Downes of the United States District Court for the District of Wyoming certified two questions to the Wyoming Supreme Court.²⁵ The certified question relevant to this case note was "[w]hat is meant by the term 'gathering' as that term is employed in Wyoming Statute Annotated section 30-5-304(a)(vi) in defining 'costs of production?'"²⁶

19. WYO. STAT. ANN. §§ 30-5-301 to 305 (LexisNexis 2004).

20. WYO. STAT. ANN. § 30-5-304.

21. *Cabot*, 93 P.3d at 240 (quoting WYO. STAT. ANN. § 30-5-304(a)(vi) (LexisNexis 2004) (emphasis added)).

22. WYO. STAT. ANN. § 30-5-304(a)(vii) (emphasis added).

23. Brief for Appellant at 9.

24. Brief for Appellee at 2.

25. *Id.*

26. *Cabot*, 93 P.3d at 239. The other certified question, not addressed in this case note was:

Do the causes of action for recovery of the one hundred dollar per month penalty imposed under Wyo. Stat. Ann. § 30-5-303(c) for failure to provide complete reporting as required by Wyo. Stat. Ann. § 30-5-305(b) and for improperly deducting "costs of production" as defined in Wyo. Stat.

The parties' contentions required the Wyoming Supreme Court to determine whether the Wyoming Legislature, with its adoption of the 1989 amendment to the Act, abrogated the historical allocation of shared transportation expenses from the lease to the processing plant or downstream point of sale.²⁷ The amendment in question required the court to make a threshold determination as a matter of law.²⁸ The court examined whether the statute was clear or ambiguous and explained that if the statute is "clear and unambiguous, we give effect to the plain language of the statute."²⁹ In contrast, if the statute is ambiguous, "we resort to general principles of statutory construction to determine the legislature's intent."³⁰ Ultimately, the Wyoming Supreme Court held that the transportation costs in question were within the definition of "'gathering' under section 30-5-304(a)(vi), and therefore, they were improperly deducted from Owners' royalties."³¹

To analyze the proper interpretation of "gathering," the background section of this case note will explain the complexities of oil and gas terminology and the different royalty valuation methods used in various jurisdictions. Next, the principal case section will outline the facts and holding of *Cabot Oil*. The analysis section will first examine the following two methods of statutory construction available to the court: (1) the plain language reading of an unambiguous statute; and (2) the application of general principles of statutory construction to an ambiguous statute. Next, the analysis section will argue that under *either* method, the Wyoming Supreme Court's interpretation of the term "gathering" was erroneous. Finally, this note will suggest methods and mitigating strategies for practitioners to avoid the confusion created in *Cabot Oil* and illustrate the need for an amendment to Wyoming Statutes Annotated section 30-5-304(a)(vi) to better reflect the well established law of traditionally shared transportation expenses from the lease or unit to a processing plant.

Ann. §30-5-304(a)(vi) accrue when the statutes are violated or when a plaintiff knows or has reason to know of the existence of the violations?

Id.

27. *Id.* at 240.

28. *Id.*

29. *Id.* *Cabot Oil* explained that a "statute is unambiguous if its wording is such that reasonable persons are able to agree as to its meaning with consistency and predictability." *Id.* (quoting *Allied-Signal, Inc. v. Wyo. State Bd. of Equalization*, 813 P.2d 214, 220 (Wyo. 1991)).

30. *Id.* at 241 (quoting *State v. Bannon Energy Corp.*, 999 P.2d 1306, 1309 (Wyo. 2000)). Again, the *Cabot Oil* court explained that a statute is ambiguous only if it is found to be "vague or uncertain and subject to varying interpretations." *Id.* (quoting *Allied-Signal, Inc. v. Wyo. State Bd. of Equalization*, 813 P.2d 214, 219-20 (Wyo. 1991)).

31. *Id.* at 242.

BACKGROUND

In earlier days, the discovery of oil served as the primary objective of oil and gas exploration and drilling operations.³² Many during this earlier time considered the discovery of only gas, on a particular lease, to be a major misfortune due to the difficulty of marketing such a product.³³ However, the companies or lessees that did market gas compensated the lessor through a fixed periodic payment while the lease was so held.³⁴ Over time and technological development, a market developed and gas demand grew substantially.³⁵ This new demand indicated that the ultimate value of gas, and the value of the right to extract and sell gas, could not be determined at the time of leasing and induced a change in the way gas royalties were assessed.³⁶ Royalties on oil and gas leases gradually shifted from a fixed periodic payment to a payment measured either by the volume of gas extracted or the value of the gas produced.³⁷

To grasp an understanding of the intricacies of an oil and gas lease and the relationship between a lessor and lessee, it is necessary to be familiar with the different rights, obligations, and duties that are enjoyed or borne by the owner of each interest.³⁸ These concepts are complex and extremely counter-intuitive.

The rights of a mineral estate owner differ from jurisdiction to jurisdiction.³⁹ Mineral estate owners hold either a possessory corporeal estate in the minerals or they have a right to use the surface of the land for the exploration, development and production of the oil and gas.⁴⁰ In essence, mineral estate owners have the inherent right to enter the land and develop the mineral estate.⁴¹ However, due to the high cost of development, the mineral owner usually conveys the development rights to another through oil and gas leases, under which the mineral owner lessor and the lessee share certain costs and profits.⁴²

32. EUGENE O. KUNTZ, A TREATISE ON THE LAW OF OIL AND GAS § 40.1 (1989).

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.*

37. *Id.*

38. HEMINGWAY, *supra* note 1, § 2.1, at 36.

39. *Id.*

40. *Id.* at 37. Corporeal is defined as possession of a material object, such as a farm or a coin. BLACK'S LAW DICTIONARY 1202 (8th ed. 2004).

41. HEMINGWAY, *supra* note 1, § 2.1, at 37.

42. *Id.* Within this context, Wyoming Statutes Annotated section 30-5-304(a)(i) defines a lessee as "the person entitled under an oil and gas lease to drill and operate wells, paying the lessor a royalty and retaining the remainder, known as the working interest." *Cabot Oil v. Followwill*, 92 P.3d 238, 242 (Wyo. 2004). The *Cabot Oil* court further stated "[t]he lessee pays all costs of production out of his interest, the lessor's interest being free and clear of all

Under a typical oil and gas lease, costs for exploration, development, and production, are usually borne entirely by the lessee.⁴³ The economic benefits enjoyed by the lessor depend upon the parties' agreement.⁴⁴ Such benefits usually consist of a cash payment for the execution of the lease and payments made by the lessee to preserve the development rights in effect until oil or gas is discovered.⁴⁵ Upon discovery and production, the lessee then pays the lessor a royalty, or share in the production from the land.⁴⁶

Today, calculations of gas royalty payments generate much conflict between lessors and lessees.⁴⁷ Litigation on this issue is frequent and likely to continue because the royalty owner and working interest owner relationship is inherently fraught with conflict.⁴⁸ This inherent conflict exists because a lessor's reserved royalty is relatively free of up-front risk, while the lessee's interest in the development of the lease is high risk.⁴⁹ Thus, while a lessee is highly concerned with the costs connected with exploration, development, and production, the lessor does not share these concerns since the royalty is generally due on either gross value or sales price of the gas produced, regardless of the cost to produce it.⁵⁰

Parties to an oil and gas agreement frequently litigate the allocation of gathering and transportation as exhibited in *Cabot Oil*.⁵¹ A general term for gathering refers to the "process of collecting the gas at the point of production (the wellhead) and moving it to a collection point for further move-

those costs." *Id.* Section 30-5-304(a)(ii) defines a lessor as "the mineral owner who has executed a lease and who is entitled to the payment of a royalty on production, free and clear of the costs of production." WYO. STAT. ANN. § 30-5-304(a)(ii) (LexisNexis 2004).

43. HEMINGWAY, *supra* note 1, § 2.1, at 37.

44. *Id.* A typical royalty clause states that "royalty is payable on 1/8 of the 'market value' of gas 'at the well' when gas is sold or used 'off the premises,' or on 1/8 of the 'amount realized' when gas is sold 'at the well.'" Owen L. Anderson, *Royalty Valuation: Should Royalty Obligations Be Determined Intrinsically, Theoretically, or Realistically?: Part 2*, 37 NAT. RESOURCES J. 611, 620-32 (1997). This clause requires that the lessee pay the lessor a proportion of the sale price of the gas when an arms-length transaction occurs in the vicinity of the well. *Id.* If no arms-length transaction occurs in the vicinity of the well, the lessee owes the lessor his share of the "market value" of the gas. Owen L. Anderson, *Royalty Valuation: Calculating Freight in a Marketable-Product Jurisdiction*, 20 ENERGY & MIN. L. FOUND. § 10.02 (1999) [hereinafter *Calculating Freight*]. "Market value at the well" means market value before processing and transportation, and gas is sold "at the well" if the price paid is consideration for the gas as produced but not for processing and transportation. See *State of Wyo. v. Davis Oil Co.*, 728 P.2d 1107, 1109 (Wyo. 1986).

45. HEMINGWAY, *supra* note 1, § 2.1, at 37.

46. *Id.*

47. Edward B. Poitevent, II, *Post-Production Deductions from Royalty*, 44 S. TEX. L. REV. 709, 713 (2003).

48. Owen L. Anderson, *Calculating Royalty: "Costs" Subsequent to Production—"Figures don't lie, but . . ."*, 33 WASHBURN L. J. 591, 591 (1994).

49. *Id.*

50. *Id.*

51. *Cabot Oil v. Followwill*, 93 P.3d 238, 240 (Wyo. 2004).

ment through a pipeline's principal transmission system."⁵² This process is often the center of gas-royalty litigation because the royalty owner wants the highest possible royalty payment, while the lessee wants to pay the lowest possible royalty payment.⁵³ Therefore, the lessee will deduct any permissible costs incurred in gathering and transporting the gas from the sale proceeds in an attempt to minimize his royalty obligation.⁵⁴

Gathering/Transportation Costs and the Two Basic Rules for Royalty Valuation

To better understand the context in which *Cabot Oil* fits, it is necessary to explore how other oil and gas producing states treat the concepts at issue in *Cabot Oil*. Two basic common law rules exist regarding royalty in an oil and gas lease: (1) the wellhead-valuation rule and (2) the marketable-product rule.⁵⁵ The majority rule is the wellhead-valuation rule, which generally provides that the lessee pay royalties on the value of the gas upon its severance from the wellhead.⁵⁶ The wellhead-valuation rule allows any costs incurred by a lessee after the production reaches the wellhead, whether to improve the quality of the production or to transport it to a market where it may be sold, to be shared proportionally by the lessee and lessor.⁵⁷ Under this rule, transportation costs are defined as *post*-production costs to transport oil and gas to a purchaser's pipeline, whether on or off a lease, and may be shared with a lessor through a deduction from the value of production.⁵⁸ Likewise, gathering costs are defined as the "cost to collect gas from various wells in a field subsequent to its passage from the wellhead."⁵⁹ The wellhead-valuation rule requires the lessor and lessee to share gathering costs, and therefore, such costs are deductible from the overall value of production.⁶⁰

52. TXO Prod. Corp. v. State Comm'r of Land Office, 903 P.2d 259, 262 (Okla. 1994).

53. See, e.g., *Cabot Oil v. Followwill*, 93 P.3d 238 (Wyo. 2004).

54. Adam Marshall, *Royalty Valuation: Rogers v. Westerman Farm Co.: Burdening Lessees with an Implied Duty to Deliver Gas to a Marketable Location*, 56 OKLA. L. REV. 233, 237 (2003).

55. Poitevent, *supra* note 47, at 713-18.

56. See, e.g., *Garman v. Conoco, Inc.*, 886 P.2d 652 (Colo. 1994).

57. Poitevent, *supra* note 47, at 716. The lessee pays royalties on the market value of the gas upon severance at the well-head. *Id.*

58. *Id.* at 717.

59. *Id.*

60. *Id.* at 716-18. Texas, Louisiana, and Mississippi are considered wellhead valuation states. See, e.g., *Wall v. United Gas Public Service Co.* 152 So. 561 (La. 1934) (holding the gas in this particular instance was sold pursuant to the market price royalty clause and needed to be calculated at the wellhead); *Heritage Resources, Inc. v. NationsBank*, 939 S.W.2d 118 (Tex. 1996) (holding reasonable transportation costs deductible from royalty payments); *Piney Woods Country Life School v. Shell Oil Co.*, 726 F.2d 225 (5th Cir. 1984) (holding that royalty compensates the lessor for the value of the gas after the lessee fulfills its obligations under the lease to produce gas at the surface, but before the lessee adds to the value of

Louisiana is considered a wellhead valuation state.⁶¹ In Louisiana, a lessee is not required to solely bear *post-production* costs.⁶² The value of gas, for royalty purposes, is the value of raw gas sold in comparable sales or if the gas is unmarketable at the well, the value after deducting marketing costs *such as transportation* from the lessee's sale price.⁶³ The costs of any enhancements to convert the gas into a marketable product are proportionately allocated under this approach.⁶⁴

Louisiana's wellhead valuation approach is illustrated in *Wall v. United Gas Public Service Co.*⁶⁵ In *Wall*, the United Gas Public Service Company (United Gas) possessed a mineral rights lease with Wall.⁶⁶ Wall, the lessor, received \$200.00 per year for the wells that produced only gas until the time that United Gas began selling such gas.⁶⁷ The lease provided Wall with a share of all gas "calculated at the market price per thousand feet, corrected to two pounds above atmospheric pressure."⁶⁸ United Gas, the lessee, paid for the transportation of the gas off the lease to a buyer's processing plant.⁶⁹ United Gas subsequently deducted these transportation expenses and paid Wall a royalty based on four cents per thousand cubic feet.⁷⁰ However, United Gas actually sold the gas for 5.8 cents per thousand cubic feet.⁷¹ Wall argued the proper market price on which to base the royalty calculations was not the four cents but the selling price of 5.8 cents.⁷² The *Wall* court held that the royalty should be calculated at the wellhead.⁷³ Thus,

this gas by transporting it). Edward Poitevent explains that conversion occurs when the oil or gas is captured from its free state inside the ground and harnessed in a well's pipes or pumps:

As soon as the oil or gas is harnessed, it is capable of being measured and either physically divided up between the lessor and lessee or allocated by value between the two parties. The costs of any improvements to the oil and gas (i.e., dehydration, *transportation to a buyer's pipeline*) are proportionately allocated under this approach.

Id. at 720 (emphasis added).

61. Poitevent, *supra* note 47, at 720.

62. *Id.* In Louisiana, a lessee is not required to solely bear post-production costs unless there is a contract or agreement to the contrary. *Id.*

63. *Id.*

64. *Id.* These costs of enhancements include transportation to a buyer's pipeline. *Id.*

65. *Wall v. United Gas Public Service Co.*, 152 So. 561 (La. 1934). See also Poitevent, *supra* note 47, at 720.

66. *Wall*, 152 So. at 562.

67. *Id.* The lease also provided for a one-eighth share of all oil produced. *Id.*

68. *Id.*

69. *Id.*

70. *Id.* at 562-63.

71. *Id.* at 563.

72. *Id.*

73. *Id.*

the *Wall* court ruled in favor of United Gas and allowed *transportation* costs to be deducted from the value of production.⁷⁴

In contrast, the minority rule is the marketable-product approach.⁷⁵ The marketable-product rule requires a lessee to convert the gas to a marketable product before royalties are paid, and thus the lessee must absorb any *post-production* costs in the process.⁷⁶ However, the lessee and lessor share costs attributed to any *added* value after the gas has reached a marketable status.⁷⁷ In jurisdictions adopting this approach, courts have held that the implied duty to market production requires a lessee to absorb all costs, both production and *post-production*, necessary to transform the gas into a marketable product at the well.⁷⁸ Jurisdictions that have applied this minority rule hold that the lessee may deduct a portion of its costs from the value of production that enhance already marketable oil and gas and not simply costs to market.⁷⁹ If a market exists at the well, reasonable costs associated with transportation are deductible after a showing that the gas was in a marketable condition prior to transportation.⁸⁰ In order to deduct reasonable transportation costs, the lessee must demonstrate that the lessor will not receive less than she would have if the gas were sold on the lease.⁸¹ Under this approach, gathering costs that are necessary to place gas into a purchaser's pipeline may not be deducted from the value of production.⁸²

Oklahoma follows the marketable product approach.⁸³ In Oklahoma, a lessee may deduct the lessor's proportionate share of the costs

74. *Id.*

75. *See, e.g.,* *Garman v. Conoco, Inc.*, 886 P.2d 652 (Colo. 1994). The *Garman* court stated, "[m]arketable means 'fit to be offered for sale in a market; being such as may be justly and lawfully bought or sold . . . [and] wanted by purchasers.'" *Id.* at 660-61 (quoting WEBSTER'S NEW INTERNATIONAL DICTIONARY 1383 (3d ed. 1986).

76. *Calculating Freight, supra* note 44, at 335-36.

77. *Id.* at 341.

78. *Poitevent, supra* note 47, at 716-19. Richard Hemingway explains that the lessee is under an implied obligation to market "with due diligence" the products produced. HEMINGWAY, *supra* note 1, § 8.9(C), at 482. Such implied obligation includes the lessee's duty to obtain the best price reasonably possible by the exercise of reasonable effort. *Id.* at 483. However, it has been repeatedly held that the lessee does not have to stand the expense of a long and costly gathering system to transport the products to the nearest market. *Id.*

79. *Poitevent, supra* note 47, at 718. Several states under this rule have also held that in order to deduct its costs the lessee must establish the following elements: "(1) that the costs enhanced the value of an already marketable product; (2) that the costs to be shared with the lessor are reasonable; and (3) that actual royalty revenues increased proportionately with the costs assessed against the lessor's nonworking interest." *Id.*

80. *Id.*

81. *Id.*

82. *Id.*

83. *Id.* at 735.

measured after the gas is transformed into a marketable condition.⁸⁴ An example of Oklahoma's approach can be found in *TXO Production Corp. v. Oklahoma ex rel. Commissioners of the Land Office*.⁸⁵ TXO possessed an oil and gas lease with the State of Oklahoma.⁸⁶ The lease required TXO to deliver a royalty share of oil and gas in kind, "without cost into pipelines," or "in lieu thereof, pay to lessor the market value thereof, as the Commissioners may elect."⁸⁷ The State decided to receive its royalty based on the "value of production."⁸⁸ TXO paid royalty to the State but first deducted a proportionate share of gathering and transportation costs from the royalty payments.⁸⁹ The *TXO* court held that the gathering costs necessary to prepare the oil and gas for a buyer's pipeline could not be deducted from the State's royalty.⁹⁰ The *TXO* court further reiterated that under the implied duty to market, any *post*-production expenses, such as gathering and transportation, necessary to make the oil and gas marketable could not be deducted.⁹¹ Certainly, the *TXO* court would have reached a different conclusion if these costs were to enhance already marketable oil and gas.

Wyoming's Approach

In June of 1982, the Wyoming Legislature enacted Wyoming's Royalty Payment Act (Act).⁹² According to the legislative history, this Act was remedial in purpose and ensured the "proper payment of proceeds derived from production of oil, gas or related hydrocarbons."⁹³ The Act ensured quick payment of royalties by "providing time limits within which payments must be made."⁹⁴ Also, the Act mandated a "penalty interest to be paid on delayed payments" and shifted the "payment of costs, penalties and attorney fees to recalcitrant royalty payors."⁹⁵

In July of 1989, the Wyoming Legislature amended the Act.⁹⁶ The amendment, section 30-5-304, provided definitions for key terms such as

84. *Id.* For a lessee to deduct, he must demonstrate that the costs "(1) enhanced the value of an already marketable product; (2) are reasonable; and (3) increased actual royalty revenues proportionately to the costs assessed against the lessor's nonworking interest." *Id.*

85. *TXO Prod. Corp. v. Okla. ex rel. Comm'rs of the Land Office*, 903 P.2d 259 (Okla. 1994). *See also* Poitevent, *supra* note 47, at 739.

86. *TXO*, 903 P.2d at 260.

87. *Id.*

88. *Id.*

89. *Id.*

90. *Id.* at 263.

91. *Id.*

92. Brandin Hay, *Survey of Wyoming Law: Wyoming's Royalty Payment Act*, 31 LAND & WATER L. REV. 823, 823 (1996).

93. *Id.* (quoting 1982 Wyo. Sess. Laws ch. 27, preamble).

94. *Id.*

95. *Id.*

96. *Id.*

“lessee,” “lessor,” and “costs of production.”⁹⁷ The amendment also mandated payment reports to royalty owners and provided a penalty for lessees who failed to make the proper payment reports.⁹⁸ Part of the remedial purpose of this amendment was to provide specific definitions to make royalty calculations more precise and definite.⁹⁹ The controversial issue in *Cabot Oil* is whether the adoption of this 1989 amendment abrogated Wyoming’s practice of sharing transportation costs.¹⁰⁰ There appears to be no legislative history available to provide guidance on this issue.

Wyoming’s statutory law assesses royalties in a unique way.¹⁰¹ Wyoming statutes governing royalty transactions and common law decisions help to clarify ambiguous terms and phrases.¹⁰² Given the unique nature of Wyoming royalty statutes, attempts have been made to pigeonhole Wyoming’s law, or attach it to a majority/minority rule in regards to what costs are and are not deductible from royalty obligations.¹⁰³ For instance, in *Garman v. Conoco*, the Colorado Supreme Court ruled that when a lease is silent regarding the allocations of *post*-wellhead costs, the implied covenant to market creates an obligation for the lessee to bear those costs “required to transform raw gas into a marketable product.”¹⁰⁴ In support of its position, the *Garman* court noted, “Wyoming has codified the marketability approach.”¹⁰⁵ However, the Wyoming Supreme Court refuted this attempt to classify the state as adopting one rule over the other.¹⁰⁶

In *State of Wyoming v. Davis Oil Co.*, the Wyoming Supreme Court dealt with the issue of whether the State as a lessor was to receive its royalty based on gas sold in the form in which it emerged from the well or if it received its royalties based upon a percentage of the proceeds of products extracted from the gas after processing (i.e., marketable product).¹⁰⁷ The court ultimately ordered the State to receive the market value of the gas “at the well” and further clarified that “market value at the well means market value before processing and transportation, and gas is sold at the well if the price paid is consideration for the gas as produced but not for *processing* and *transportation*.”¹⁰⁸ In other words, royalty owners were to share costs of

97. *Id.*

98. 1989 Wyo. Sess. Laws ch. 255.

99. Brandin Hay, *Survey of Wyoming Law: Wyoming’s Royalty Payment Act*, 31 LAND & WATER L. REV. 823, 825 (1996). *See also* *Wold v. Hunt*, 52 F. Supp. 2d 1330, 1334 (D. Wyo. 1999).

100. Brief for Appellant at 6.

101. *Wold*, 52 F. Supp. 2d at 1336.

102. *Id.*

103. *Id.* at 1331.

104. *Garman v. Conoco, Inc.*, 886 P.2d 652, 659-62 (Colo. 1994).

105. *Id.* at 658.

106. *Wold*, 52 F. Supp. 2d at 1336.

107. *State of Wyo. v. Davis Oil Co.*, 728 P.2d 1107, 1108 (Wyo. 1986).

108. *Id.* at 1110 (emphasis added).

transportation of gas from the place of production to a processing plant or to a distant point of sale.¹⁰⁹

In 1999, *Wold v. Hunt Oil Co.* came before the United States District Court for the District of Wyoming with facts similar to those of *Cabot Oil*.¹¹⁰ Again, the legal issue submitted to the court was whether “gathering charges” by both Hunt Oil Company and the owner of the gathering line were legally deductible under the provision of Wyoming Statutes Annotated section 30-5-304.¹¹¹ Lessor Wold argued the term “gathering” referred to any pipeline system that was not federal or state regulated.¹¹² Wold further argued that costs of production were not deductible until after the product entered the regulated, open-access market pipeline.¹¹³ Conversely, lessee Hunt Oil Company argued the costs of transporting gas downstream from the outlet of the dehydrator (i.e., from the lease to a processing plant) were “post-production costs” and therefore deductible from Wold’s royalties.¹¹⁴ Hunt Oil Company further argued the Act was a statutory adoption of the marketable-product rule and that the gas was in marketable condition at the time it entered these gathering lines.¹¹⁵ Hunt Oil Company supported its argument by citing to the *Garman* decision by the Colorado Supreme Court.¹¹⁶ According to the Colorado Supreme Court, Wyoming followed the marketable approach, and since the oil was marketable upon severance from the wellhead, the costs of transportation from the lease to the processing plant were deductible from Wold’s royalties.¹¹⁷

In response to Hunt Oil Company’s arguments, the Wyoming Supreme Court stated:

The Court is not convinced that the assessment of the Colorado Supreme Court, in *Garman v. Conoco*, is correct when it stated, that “Wyoming has codified the marketability approach.” The Wyoming statutory scheme, as embodied in the RPA [Wyoming Royalty Payment Act], is unique. It is not particularly helpful to engraft upon that express statutory

109. *State of Wyo. v. Davis Oil Co.*, 728 P.2d 1107, 1109 (Wyo. 1986). *See also* *Heritage Resources, Inc. v. Nationsbank*, 939 S.W.2d 118, 122 (Tex. 1996) (holding reasonable transportation costs deductible from royalty payments); *Johnson v. Jernigan*, 475 P.2d 396 (Okla. 1970) (holding transportation costs deductible from royalty payments); *Sternberger v. Marathon Oil Co.*, 894 P.2d 788, 799-800 (Kan. 1995) (determining that the deductions made by Marathon were properly characterized as “transportation” rather than “gathering” or other production costs).

110. *Wold*, 52 F. Supp. 2d at 1330.

111. *Id.* at 1331.

112. *Id.*

113. *Id.*

114. *Id.*

115. *Id.*

116. *Id.* at 1333.

117. *Id.* at 1331; *Garman v. Conoco, Inc.*, 886 P.2d 652, 659-62 (Colo. 1994).

scheme the common law construction approach that is reflected in the Colorado court's *Garman* opinion. The Wyoming statutes must be read alone and without reference to the common law as it may have evolved in other states such as Colorado.¹¹⁸

The *Wold* court rejected both Wold's and Hunt Oil Company's arguments and held that gathering costs are specifically included as nondeductible costs of production in express, unambiguous language in the Act.¹¹⁹ The court noted that both Hunt Oil Company and the owner of the gathering lines regarded the charges at issue as gathering charges.¹²⁰ The court thus based its conclusion upon the name given to the pipelines at issue without any analysis of their function.¹²¹

The *Wold* decision seemed to suggest if the parties had called the pipelines at issue "transportation lines" instead of "gathering lines," then the costs would have been deductible.¹²² Of course, legislatures never give parties the ability to avoid legislation by merely changing what they call something.¹²³ The *Wold* court essentially started the trend away from the historical allocation, outlined in *State of Wyoming v. Davis Oil Co.*, of transportation costs from the lease to a downstream processing plant.¹²⁴ The *Wold* decision spurred many subsequent lawsuits on the same theory and issue as presented in *Wold*.¹²⁵ Thus arose the recent controversy of *Cabot Oil v. Followwill*.¹²⁶

PRINCIPAL CASE

The *Wold* decision failed to specifically define the terms "gathering" or "market pipeline."¹²⁷ Therefore, *Cabot Oil* gave the Wyoming Supreme Court the opportunity to logically clarify those terms.¹²⁸ Again, the issue at hand was whether the Wyoming Legislature, through the 1989 amendment to Wyoming Statute Annotated section 30-5-304, intended to abrogate the historically shared expenses of gas transportation from the lease to the processing plant or downstream point of sale.¹²⁹ In deciding this case, the Wyo-

118. *Wold*, 52 F. Supp. 2d at 1336 (citing *Garman*, 886 P.2d at 658).

119. *Id.* at 1336-37.

120. *Id.*

121. Judith M. Matlock, Memorandum from the Natural Resources and Energy Law Section Monthly Luncheon 6 (October 8, 2004) (on file with author).

122. *Id.*

123. *Id.*

124. *Wold*, 52 F. Supp. 2d at 1336-37.

125. Matlock, *supra* note 121, at 6.

126. *Cabot Oil & Gas Corp. v. Followwill*, 93 P.3d 238 (Wyo. 2004).

127. *Wold*, 52 F. Supp. 2d at 1336-37.

128. *Cabot*, 93 P.3d at 239.

129. Brief for Appellant at 9.

ming Supreme Court started with an analysis of the standard of review.¹³⁰ The amendment in question required the court to make a threshold determination as a matter of law.¹³¹ The court first considered whether the statute was clear or ambiguous.¹³² The court explained that if the statute is "clear and unambiguous, we give effect to the plain language of the statute."¹³³ In contrast, if the statute is ambiguous, the court "resort[s] to general principles of statutory construction to determine the legislature's intent."¹³⁴

The *Cabot Oil* court then reviewed the parties' contentions.¹³⁵ Owners contended that "gathering," as used in Wyoming Statute Annotated section 30-5-304(a)(vi) comprised two functions: (1) collecting gas and (2) moving it to a point where it can be processed or transported to the user.¹³⁶ Owners further argued that "market pipeline" is a pipeline that transports gas to "(1) a distribution center for delivery to consumers of gas, (2) an industrial consumer of the gas, or (3) a gas storage facility."¹³⁷ In contrast, Cabot argued that nondeductible gathering costs are part of the production function taking place in the locale of the lease or unit.¹³⁸ According to Cabot, transporting the gas from the locale of the production to a processing plant or distant delivery points where the gas is sold is a *post*-production function, the costs of which *are* deductible pro rata from royalty payees.¹³⁹ Furthermore, Cabot argued the *Wold* court reached its decision by deciding, "all pipelines were gathering lines that the legislature intended to include in non-deductible costs of production, and the decision did not answer the certified question presented here."¹⁴⁰

In its short opinion, the *Cabot Oil* court provided a brief and relatively cryptic analysis.¹⁴¹ In an attempt to define "gathering," the court stated, "the act is a remedial statute and, as such, is to be liberally construed to achieve its remedial purpose."¹⁴² According to the court, the Act was enacted in 1982 "to stop oil producers from retaining other people's money for

130. *Cabot*, 93 P.3d at 240.

131. *Id.*

132. *Id.*

133. *Id.* The *Cabot Oil* court explained that a statute is unambiguous if its wording is such that reasonable persons are able to agree as to its meaning with consistency and predictability. *Id.* (quoting *Allied-Signal, Inc. v. Wyoming State Bd. of Equalization*, 813 P.2d 214, 220 (Wyo. 1991)).

134. *Id.* The *Cabot Oil* court explained that a "statute is ambiguous only if it is found to be vague or uncertain and subject to varying interpretations." *Id.* (quoting *Allied-Signal*, 813 P.2d at 219-20).

135. *Id.* at 241.

136. *Id.*

137. *Id.*

138. *Id.*

139. *Id.*

140. *Id.* (emphasis added).

141. *Id.*

142. *Id.* at 242 (quoting *Moncrief v. Harvey*, 816 P.2d 97, 105 (Wyo. 1991)).

their own use.”¹⁴³ The proper definition of “gathering,” the court explained, will “distinguish between those transportation costs that are nondeductible production costs and those that are deductible *post*-production costs.”¹⁴⁴

The *Cabot Oil* court seemed to adopt the view of the *Wold* court.¹⁴⁵ The *Wold* court had determined that the Act reflected a “clear legislative purpose of simplifying the computation of royalties and providing a mechanism by which the royalty owner is able to determine if royalties are paid correctly.”¹⁴⁶ Apparently, the *Cabot Oil* court found no indication of ambiguity in the statute and thus took the supposed plain language meaning of the statute.¹⁴⁷

Cabot’s contention that the statute limits only those transportation costs that occur on the geographic region of the lease came under the scrutiny of the court.¹⁴⁸ Cabot’s argument indicated that all the activities in section 304(a)(vi) could only be accomplished on the lease site.¹⁴⁹ According to the court, no authority existed to support this contention.¹⁵⁰ The court stated that its resolution “must rely on the precise statutory language demarcating production from *post*-production by entry to the market pipeline and the definition of market pipeline must be gleaned from the statutory language.”¹⁵¹ Thus, the court found Cabot’s argument that *post*-production costs have begun at an offsite point would inject the “arbitrariness that the legislature intended to defeat by enactment of the Act.”¹⁵² Additionally, *Cabot Oil* emphasized the Wyoming Legislature departed from the “methodologies employed by other jurisdictions and excluded all charges between the wellhead and the market pipeline except those specifically excluded from the definition.”¹⁵³ Ultimately, the *Cabot Oil* court held, “‘gathering’ means to collect gas and move it to a point where it can be processed or transported to the user.”¹⁵⁴ All costs associated with that activity are nondeductible under section 30-5-304(a)(vi) and nondeductible from royalties.¹⁵⁵ Under this

143. *Id.* (quoting *Indep. Producers Mktg. Corp. v. Cobb*, 721 P.2d 1106, 1110 (Wyo. 1986)).

144. *Id.*

145. *Id.* at 241.

146. *Id.* (quoting *Wold v. Hunt*, 52 F. Supp. 2d 1330, 1334 (D. Wyo. 1999)).

147. *Id.* at 242. It is not entirely clear if the *Cabot Oil* court found the statute to be either ambiguous or unambiguous.

148. *Id.*

149. *Id.*

150. *Id.*

151. *Id.* It seems the *Cabot Oil* court performed a clear and unambiguous statutory analysis. However, no analysis or explanation exists as to why and how the court came to its conclusion. *Id.*

152. *Id.*

153. *Id.* (quoting *Wold v. Hunt*, 52 F. Supp. 2d 1330, 1336 (D. Wyo. 1999)).

154. *Id.* at 242.

155. *Id.* See WYO. STAT. ANN. § 30-5-304(a)(vi) (LexisNexis 2004).

definition, Cabot's transportation costs were considered "gathering" and were thus nondeductible.

ANALYSIS

Wyoming royalty owners have historically shared gas transportation costs from the place of production (i.e., the lease) to a processing plant or distant point of sale.¹⁵⁶ The illegal deductions claimed by Owners are based on the Wyoming Legislature's 1989 amendments to the Act.¹⁵⁷ In *Cabot Oil*, the Wyoming Supreme Court determined that "gathering" means "to collect gas and move it to a point where it can be processed or transported to the user."¹⁵⁸ "All costs associated with that activity are nondeductible under section 30-5-304(a)(vi) and nondeductible from royalties."¹⁵⁹ Thus, in one sweeping decision the Wyoming Supreme Court erroneously reversed decades of common law dating back to the 1930s.¹⁶⁰

A drastic change in interpretation with such a brief, illogical, and cryptic opinion by the *Cabot Oil* court is conclusory and unacceptable. Furthermore, the legislative history of the 1989 amendments provides little justification and no clear reasoning for the *Cabot Oil* decision.¹⁶¹ The use of the term "gathering" in the definition of "costs of production" presents the question of whether the Wyoming legislature intended for "gathering" to identify transportation off the lease to a processing plant or distant point downstream or intended it to mean the more limited on-lease production function of gathering.¹⁶² Wyoming law supports the latter definition and the *Cabot Oil* court erroneously interpreted "gathering" as termed in section 30-4-304(a)(vi).¹⁶³

The *Cabot Oil* court could have reached the correct, or more reasonable, definition of "gathering" in two ways. First, assuming the statute to be clear and unambiguous, a reasonable definition of "gathering" is obtained through a plain language reading of the statute.¹⁶⁴ Another reasonable definition of "gathering" is obtained through general principles of statutory construction, assuming the statute to be ambiguous.¹⁶⁵ Because the *Cabot Oil* court did not employ these methods to reach a reasonable definition, there is an urgent need for an amendment to Wyoming Statutes Annotated section

156. Brief for Appellant at 6.

157. *Id.* at 2.

158. *Cabot Oil*, 93 P.3d at 243.

159. *Id.*

160. *Id.* An earlier case illustrating the shared costs of transportation dates back to 1934. *Kretmi Dev. Co. v. Consol. Oil Corp.*, 74 F.2d 497 (10th Cir. 1934).

161. 1989 Wyo. Sess. Laws ch. 255.

162. Brief for Appellant at 6.

163. *Id.*

164. *Id.* at 9.

165. *Id.* at 10.

30-5-304(a)(vi) to better reflect the well-established law of traditionally shared transportation expenses from the lease to a processing plant or distant point of sale.

A simple reading of the express terms in Wyoming Statute Annotated section 30-5-304 leads to the first reasonable definition of “gathering.”¹⁶⁶ An overriding royalty interest, as defined in Wyoming Statute Annotated section 30-5-304(a)(v), is a “share of production, free of the costs of production, carved out of the lessee’s interest under an oil and gas lease.”¹⁶⁷ Nondeductible “cost of production” is defined in section 30-5-304(a)(vi) as:

[A]ll costs incurred for exploration, development, primary or enhanced recovery and abandonment operation 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.¹⁶⁸

A simple application of the express terms indicates that nondeductible costs must be incurred for “exploration, development, primary/enhanced recovery or abandonment operations.”¹⁶⁹ These operations take place on the unit or leased premises.¹⁷⁰ The transportation at issue in *Cabot Oil* is not an activity that takes place on the lease or unit.¹⁷¹

The express terms of the Act identify four categories of nondeductible “costs of production” which are nondeductible from a royalty payment, namely (1) exploration, (2) development, (3) primary or enhanced recovery, and (4) abandonment operations.¹⁷² *Cabot* procured a consulting engineer who explained in his affidavit that all of these four functions happen on the

166. *Id.* at 7. This is a determination made as a matter of law. *Cabot Oil & Gas Corp. v. Followill*, 93 P.3d 238, 240 (Wyo. 2004). If the court determines the statute to be clear and unambiguous, the court gives effect to the plain language of the statute. *Parker Land & Cattle Co. v. Wyo. game & Fish Comm’n*, 845 P.2d 1040, 1042 (Wyo. 1993). To do this, the court makes an inquiry respecting the ordinary and obvious meaning of the words employed according to their arrangement and connection and construes the statute as a whole, giving effect to every word, clause, and sentence, and construing all parts of the statute in *pari materia*. *Id.*

167. WYO. STAT. ANN. § 30-5-304(a)(v) (LexisNexis 2004).

168. *Id.* § 30-5-304(a)(vi) (emphasis added).

169. *Id.*

170. *See, e.g., McBeath, infra* note 174, at 1.

171. *Id.*

172. WYO. STAT. ANN. § 30-5-304(a)(vi) (LexisNexis 2004).

lease.¹⁷³ For example, "exploration" includes geologic studies of the lease, test drillings, and other similar activities.¹⁷⁴ "Development" consists of drilling, maintaining, and improving the actual wells.¹⁷⁵ "Primary or enhanced recovery" is the process of getting the hydrocarbon to the surface by either conventional means or introducing some other type of energy into the reservoir to stimulate flow.¹⁷⁶ Finally, "abandonment operations" shut down a well when it ceases to yield oil or gas or the flow of such is no longer economically profitable.¹⁷⁷ These four express categories (exploration, development, primary recovery, and abandonment) have established, well-understood meanings.¹⁷⁸ These are costs typical to the ordinary life cycle of

173. Brief for Appellant at 10; McBeath Aff. ¶ 3.

174. McBeath Aff. ¶ 3.

175. *Id.*

176. *Id.*

177. *Id.* McBeath explained that:

All of these activities occur on the lease or in the field. For instance "Exploration" involves acquiring the right to look for and develop oil and gas, and the process of acquiring and interpreting data in order to determine whether or not oil or gas underlies the lease. This includes leasing activities, running seismic surveys, performing geologic studies, drilling test wells and other activities. Once an accumulation of oil or gas is found by the exploration efforts, lease "Development" begins. "Development" encompasses the drilling of wells, well completion, determining the productive limits of the accumulation, testing and logging wells. As new information is obtained by drilling additional wells, the geologic studies commenced in the "Exploration" phase are updated and revised. "Primary Recovery" is the process of getting the hydrocarbon to the surface by conventional means, without introducing energy into the reservoir. "Primary recovery" starts from the moment the first barrel of oil or cubic foot of gas flows. "Enhanced Recovery" utilizes additional methods such as water or gas injection to recover oil or gas that might not have been recovered by "Primary Recovery" (note: water injection is generally referred to as "secondary recovery," a term not mentioned in the Act). "Abandonment Operations" are necessary when a well or wells on the lease cease to yield oil or gas or the rate of production is so low that it is not economically feasible to continue. "Abandonment Operations" may be occurring on one part of the lease or at one well while "Primary Recovery" or "Enhanced Recovery" continues on other parts of the lease. The activities associated with each of these four categories occur on the lease, on the wells or in the field.

Id.

178. Cabot also submitted definitions of these four terms to bolster its argument. Brief for Appellant at 11. See also WILLIAMS & MEYER, MANUAL OF OIL AND GAS LAW TERMS 298 (6th ed. 1984). Exploration is "[t]he search for oil and gas" and includes "aerial surveys, geophysical surveys, geological studies, core testing, and the drilling of test wells." *Id.* Development is "the drilling and bringing into production of wells in addition to the exploratory or discovery well on a lease." *Id.* at 218. Primary recovery is "the recovery of oil and gas by natural means, artificial lift, or by artificial means." *Id.* at 669. Abandonment is "[p]ugging a well, removal of installation, and termination of operations for production from the well." *Id.* at 2.

an oil and gas lease and none of them include transportation from the lease to a processing plant or distant point of sale.¹⁷⁹

In addition to the four main categories of costs of production, section 30-5-304(a)(vi) lists specific functions which are subcategories to exploration, development, recovery, and abandonment such as "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."¹⁸⁰ These subcategories outline specific examples of the various procedures and steps taken within the exploration, development, recovery, and abandonment functions. The meaning of words or terms used in a statute must be construed in connection with the words with which they are associated.¹⁸¹ If exploration, development, recovery, and abandonment take place on the lease, then it would follow that the subcategories ("gathering" in particular) also take place on the lease.¹⁸² Therefore, there is no suggestion in section 30-5-304(a)(vi) that the costs of transportation from the lease to a processing plant or distant point of sale are to be included in the nondeductible "costs of production."¹⁸³

The arrangement of words in the Act regarding "market pipeline" is also useful in determining the plain language meaning of "gathering" in section 30-5-304(a)(vi).¹⁸⁴ According to the statute, the point where "gathering" ends is where the "market pipeline" begins.¹⁸⁵ No published court decisions exist in which the term "market pipeline" is used, and a Westlaw search of texts and periodicals also revealed no use of the term "market pipeline."¹⁸⁶ Wyoming Attorney General Joseph B. Meyer suggested the term "market pipeline" was a shortening of the phrase "in the pipeline for transportation to market" from his 1989 opinion on the topic.¹⁸⁷ Mr. Meyer suggested the nondeductible "costs of production" specifically included costs of transpor-

179. Brief for Appellant at 12. See also WILLIAMS & MEYER, OIL AND GAS LAW § 103 (abridged ed. 2000).

180. WYO. STAT. ANN. § 30-5-304(a)(vi) (LexisNexis 2004) (emphasis added).

181. *Radalj v. Union Savings & Loan Ass'n*, 138 P.2d 984, 996 (Wyo. 1943). The *Radalj* court applied the maxim of *noscitur a sociis*, which means the "meaning of a word, or term, used in a statute must be construed in connection with the words with which it is associated." *Id.*

182. Brief for Appellant at 12.

183. *Id.* at 13.

184. *Id.* at 17.

185. WYO. STAT. ANN. § 30-5-304(a)(vi).

186. Matlock, *supra* note 121, at 8.

187. 89-001 Op. Att'y Gen. 3 (1989). This was an opinion submitted in regards to an amendment to a Wyoming tax statute section 39-2-202(b) dealing with oil and gas. *Id.* See WYO. STAT. ANN. § 39-2-202(b).

tation of oil to the storage tanks and gas into the market pipeline but did not include costs of transporting the oil from the storage tanks to market.¹⁸⁸

The doctrine of *pari materia* supports an important argument here. The parts of the statute dealing with gas are to be construed in *pari materia* with the parts dealing with oil.¹⁸⁹ The presumption is the legislature intended to adopt reasonable and logical legislation.¹⁹⁰ Cabot contended “the tank battery for storage of oil prior to running the oil into a pipeline or loading the oil on trucks for transportation to a pipeline is a production facility which is located on or near the lease.”¹⁹¹ In regards to oil, the Act obviously permits the deduction of the costs of transportation from the storage tanks to the market place.¹⁹² Unlike oil, which can be stored in tanks above ground, natural gas in its raw form must be in a pipeline under pressure from the moment of production.¹⁹³ Although the statute reflects this difference in production *procedure* between oil and gas, the logical and reasonable conclusion is that the statute still requires the same treatment in regards to *when* the production function ends (i.e., at the storage tank for oil and at the off-lease pipeline for gas).¹⁹⁴ Therefore, considering the doctrine of *pari materia*, a logical reading of section 30-5-304(a)(vi) would permit gas transportation costs from the lease to a processing plant or distant point of sale to be deductible from royalty payments.¹⁹⁵ Thus, it would follow that “gathering” ends when the gas is transported off the lease and Cabot’s transportation costs constituted deductible *post*-production costs.¹⁹⁶ Hence, the *Cabot Oil* court’s interpretation of “gathering” under the first method of statutory construction, a plain language reading of an unambiguous statute, is clearly erroneous.

Adherence to the rules of statutory construction in determining the meaning of “gathering” as used in Wyoming Statute Annotated section 30-5-304 provides a second method of reaching a reasonable definition of “gath-

188. *Id.* (quoting WYO. STAT. ANN. § 30-5-304(a)(vi)).

189. Brief for Appellant at 17 (citing *Petra Energy v. Dept. of Revenue*, 6 P.3d 1267, 1270 (Wyo. 2000)). *Pari materia* is Latin for “in the same matter, on the same subject or relating to the same matter.” BLACK’S LAW DICTIONARY 794 (8th ed. 2004). It is further defined as a canon of construction that statutes that are *in pari materia* may be construed together, so that inconsistencies in one statute may be resolved by looking at another statute on the same subject. *Id.*

190. Brief for Appellant at 18 (citing to *Stauffer Chemical Co. v. Curry*, 778 P.2d 1083, 1093 (Wyo. 1989)).

191. *Id.* at 17. “Tank battery” is defined as “[a] group of tanks located at convenient points for storing oil prior to transportation by truck or pipeline to a refinery.” WILLIAMS & MEYER, OIL AND GAS LAW, § 103 (Abridged ed. 1993).

192. WYO. STAT. ANN. § 30-5-304(a)(vi).

193. *Matlock*, *supra* note 121, at 1.

194. WYO. STAT. ANN. § 30-5-304(a)(vi).

195. Brief for Appellant at 18.

196. *Id.*

ering.”¹⁹⁷ This statute states that “gathering” is a nondeductible cost of production but also states the “reasonable and actual direct costs associated with transporting . . . the gas from the point of entry into the market pipeline” are deductible from a royalty owner’s payment.¹⁹⁸ However, the statute does not give an express definition of “gathering” or “market pipeline.” The meanings of the terms are to be determined by the court as a question of law.¹⁹⁹ If the statute is determined to be ambiguous, the court is to resort to general principles of statutory construction to determine legislative intent:

[T]he court must look to the mischief the act was intended to cure, the historical setting surrounding its enactment, the public policy of the state, the conditions of the law and all other prior and contemporaneous facts and circumstances that would enable the court intelligently to determine the intention of the lawmaking body . . . This court presumes that the legislature enacts statutes “with full knowledge of the existing condition of the law and with reference to it. They are therefore to be construed in connection and in harmony with the existing law, and as part of a general and uniform system of jurisprudence.”²⁰⁰

For the sake of illustration, a reasonable argument can be made that ambiguity permeates the meaning of “gathering.” There are so many different interpretations that the simple use of the word “gathering” in the statute cannot possibly be unambiguous.²⁰¹ This ambiguity exists due to the fact that “gathering” has different meanings in different contexts.²⁰² For example, there are pipeline facilities on a lease that transport oil and gas to and from lease equipment such as separators, heater treaters, compressors, and dehydrators.²⁰³ These same on-lease pipelines transport oil to storage tanks on the lease and transport gas off the lease.²⁰⁴ In contrast, the term “gathering” is also used to describe the facilities of certain transporters (usually the first transporters) of natural gas.²⁰⁵ These transporters use the term “gathering” to indicate that these facilities are exempt from federal regulation by the

197. WYO. STAT. ANN. § 30-5-304(a)(vi).

198. *Id.*

199. *See, e.g.,* *Petra Energy v. Dept. of Revenue*, 6 P.3d 1267, 1270 (Wyo. 2000) (stating that the interpretation of the Wyoming Royalty Payment Act with regards to severance tax is purely a question of law.); *Parker Land & Cattle v. Wyo. Game & Fish*, 845 P.2d 1040, 1042 (Wyo. 1993) (reiterating that statutory interpretation by the court is a question of law); *Indep. Producers Mktg. Corp. v. Cobb*, 721 P.2d 1106, 1108 (Wyo. 1986) (quoting “the interpretation of the Wyoming Royalty Payment Act is purely a question of law”).

200. *Parker Land & Cattle v. Wyo. Game & Fish*, 845 P.2d 1040, 1044 (Wyo. 1993) (quoting *Civic Ass’n of Wyo. v. Ry. Motor Fuels*, 116 P.2d 213, 238 (Wyo. 1941)).

201. Brief for Appellant at 14. *See also* Brief for Appellee at 8-16.

202. Brief for Appellant at 8.

203. *Id.*

204. *Id.*

205. *Id.*

Federal Energy Regulatory Commission (FERC) under the Natural Gas Act (NGA), which provides, "The provisions of this chapter shall apply to the transportation of natural gas in interstate commerce . . . *but shall not apply . . . to the production or gathering of natural gas.*"²⁰⁶

It is important to note that under the NGA, "gathering" is separate from "production" but both are exempt from this federal regulation.²⁰⁷ Ambiguity once again is obvious given the lack of a definition of "gathering" in section 30-5-304(a)(vi) and NGA's apparent separation of the gathering and production functions. The Wyoming legislature would not have intended the gathering, which is a production function, to coincide with the gathering that is exempt from the regulatory jurisdiction of FERC over the interstate transmission of gas.²⁰⁸

The distinction between "production" gathering and "post-production" gathering is illustrated by the decision of the Interior Board of Land Appeals (IBLA) with regards to *Enron Oil & Gas Co.*²⁰⁹ Right of way issues for certain pipelines on the lease were before the IBLA.²¹⁰ The IBLA recognized the distinction between production facilities kept on the lease and the transportation pipeline away from the lease.²¹¹ The IBLA stated:

We believe that a reasonable dividing point between "production" and "transportation" is the point at which the lease operator completes his final processing or storage of the product or, in the case of gas, the point of delivery to the transportation pipeline. Thus, "production facilities" include an operator's storage tanks and processing equipment, and oil and gas pipelines upstream from the operator's tanks and equipment or, in the case of gas, upstream from the point of delivery.²¹²

206. 15 U.S.C. § 717(b) (2000) (emphasis added). Cabot, in its argument that "gathering" was ambiguous, submitted three contracts with Mountain Gas Resources, Inc., Williams Field Services Company, and Questar Gas Management. Brief for Appellant at 4-5. These were third party transporters who transported the gas from the leased premises to the processing plants where they sold the gas. *Id.* Cabot and these third party transporters titled their transportation contracts with the intent to avoid FERC regulation. *Id.* Cabot argued that "even though the applicable agreements are labeled as 'gathering' agreements in order to identify a function which is exempt from the regulatory jurisdiction of FERC, transportation of the gas from the locale of production to distant delivery points where the gas is sold is a post-production function, costs of which are deductible pro rata from royalty payees." *Id.*

207. Brief for Appellant at 8.

208. Brief for Appellant at 14.

209. *Enron Oil & Gas Co.*, 122 IBLA 224 (1992). This decision and analysis pertained to Wyoming.

210. Brief for Appellant at 16. See *Enron Oil*, 122 IBLA at 224.

211. Brief for Appellant at 16. See *Enron Oil*, 122 IBLA at 224.

212. *Enron Oil*, 122 IBLA at 233.

The IBLA clearly distinguished between on-lease gathering and transportation off the lease in pipelines, which may be classified by FERC as gathering for purposes of NGA regulation.²¹³

The ambiguous nature of “gathering” is further amplified when considering the different definitions submitted by the Owners.²¹⁴ Owners claimed “gathering” was comprised of two functions: (1) collecting gas and (2) moving it to a point where it can be processed or transported to the user.²¹⁵ Owners claimed “gathering” does not pertain to a specific location, such as the lease, but rather is considered an activity that does not terminate until the gas has reached the ultimate consumer or a gas processing plant.²¹⁶ To support their position, Owners referred to definitions from treatise writers, the natural gas industry, federal judges, and federal agencies.²¹⁷ For example, Owners cite a treatise that defines “gathering” as an “[a]ctivity of collecting gas at the point of production and moving it to a collection point for further movement through a pipeline’s principal transmission system. It should be pointed out, however, that the flow of gas is continuous from the wellhead to the ultimate consumer.”²¹⁸ Another definition came from the Gas Processors Association (GPA). The GPA stated that:

213. Brief for Appellant at 16. In further support of its argument, Cabot pointed to the following IBLA statement in *Enron Oil*:

The function served by Enron’s lateral lines falls within this definition (of gathering), as they move lease production to a central accumulation point on each lease. That point (the point of delivery referred to at 233) is the interconnection with Northwest’s gathering system, where the lines meet other lateral lines from other wells on the lease.

Enron Oil, 122 IBLA at 236. The same issue came before the IBLA in Phillips Petroleum Co., 109 IBLA 4 (1989). In *Phillips*, the IBLA held:

Therefore, we set aside the Director’s decision to the extent he concluded that the costs of gathering and compression were non-deductible expenses incidental to the marketing of the gas and remand for a determination of the amount of those expenses which may be deducted as reasonable transportation costs.

Brief for Appellant at 17 (quoting *Phillips*, 109 IBLA at 13). Again, Cabot illustrated that “the ‘gathering and compression’ label placed on a transportation function does not dictate a conclusion that costs related to the transportation are not deductible *pro rata* in calculating payments to royalty owners.” *Id.*

214. Brief for Appellee at 8.

215. *Id.*

216. *Id.*

217. *Id.*

218. *Id.* (quoting HOWARD R. WILLIAMS & CHARLES J. MEYERS, OIL AND GAS LAW 451 (2002)). Owners submitted more than fifteen different definitions from various sources such as treatises, state common law, and the natural gas industry. For example, Owners submitted a definition of “gathering” derived from The American Petroleum Institute:

Gathering ends at the most downstream location of: the inlet of a gas processing plant; outlet of the first compressor station, excluding wellhead and production facility compressors; the outlet of equipment that makes the gas suitable for residential consumption; or the inlet of a storage facility, FERC designated transmission line, or line that transports gas suitable for residential consumers.²¹⁹

Cabot and Owners both submitted reasonable definitions from reputable sources. Thus, ambiguity exists in the term “gathering” as used in section 30-5-403(a)(vi).²²⁰ The court should have employed a general rule of statutory construction that requires the court to conform to:

The conditions of the law and all other prior and contemporaneous facts and circumstances that would enable the court to intelligently determine the intention of the lawmaking body [The statutes] are therefore to be construed in connection and in harmony with the existing law, and as part of a general and uniform system of jurisprudence.²²¹

Once ambiguity is established the court must apply the general rules of statutory construction to interpret the ambiguous statute.²²² In addition to the well-established common law, the court should look to the Wyoming statutes in force when the Act was adopted dealing with the same subject matter.²²³ This provides for consistency among the different statutes that contain the same subject matter. For example, the Act prohibits deductions of the defined “costs of production” but does allow for transportation on the market pipeline.²²⁴ Similar laws and statutes are to be read in *pari materia* with the Act.²²⁵ Prior to amendment, a related statute established the point at

[A] gathering system begins at the furthestmost production operation of a well and extends to one of the following five downstream endpoints, *whichever is farther*: the gas processing plant, the last gas treatment facility, the point of last commingling, the last compression station, and the point of delivery into the main pipeline. If the gas is used for a gas lift or injection system, then gathering extends instead to that system.

Brief for Appellee at 9 (emphasis added).

219. *Id.* at 10.

220. WYO. STAT. ANN. § 30-5-304(a)(vi) (LexisNexis 2004).

221. *Parker Land & Cattle v. Wyo. Game & Fish*, 845 P.2d 1040, 1044 (Wyo. 1993).

222. *Id.*

223. *Id.* This would help in determining at which point the production process for natural gas is complete.

224. WYO. STAT. ANN. § 30-5-304(a)(vi).

225. Brief for Appellant at 18. *See also* *Petra Energy v. Dept. of Revenue*, 6 P.3d 1267, 1270 (Wyo. 2000).

which the production process is completed for purposes of tax valuation of mineral products:

The mining or production process is deemed completed when the mineral product is removed from the pit, shaft, mine or well, and prior to any beneficiation or further processing is placed in storage prior to transportation to market, or in the case of natural gas, in the pipeline for transportation to market.²²⁶

Cabot submitted an opinion from the Office of the Attorney General (AG) that reviewed this statute.²²⁷ This opinion provided further guidance as to the point at which this production process is complete in regards to a mineral product.²²⁸ The AG opinion stated that:

This is particularly true in the case where the mineral is placed . . . in the case of natural gas in the pipeline for transportation to market. If the legislature had intended to provide that the mining or production process would be complete upon removal from the pit, shaft, mine or well, it would have [constructed the statute differently].²²⁹

To further clarify the completion point, the AG added:

As mentioned above, the production of natural gas may involve gathering, dehydration, separation, and/or compression at the lease or unit *prior* to being placed in a pipeline for transportation to the processing plant or the marketplace. If the legislature intended to provide that production of natural gas was complete at the wellhead, then the additional wording is mere surplusage In the case of natural gas, the production process is deemed complete when the natural

226. Brief for Appellant at 19 (citing WYO. STAT. ANN. § 39-2-202(b)). Even after the revision of section 39-2-202(b), the legislature remained consistent in its policy as shown in Chapter 54, 1990 Session Laws:

The production process for natural gas is completed after extracting from the well, gathering, separating, injecting and any other activity, which occurs before the outlet of the initial dehydrator. When no dehydration is performed, other than within a processing facility, the production process is completed at the inlet to the initial transportation related compressor, custody transfer meter or processing facility, whichever occurs first.

WYO. STAT. ANN. § 39-14-203(b)(iv).

227. Brief for Appellant at 19.

228. *Id.*

229. 89-001 Op. Att'y Gen. 3 (1989).

gas is removed from the well and is placed in the pipeline for transportation to market.²³⁰

Cabot showed this guidance influenced the legislature "to move the point at which the production process was complete downstream, from the wellhead to the point where the gas enters the market pipeline, *after* any gathering, separation, dehydration, compression and transportation taking place in the locale of the lease or unit."²³¹ The Wyoming Legislature had access to this information at the time the 1989 amendment section 30-5-304(a)(vi) came under consideration.²³² No evidence exists the Wyoming Legislature intended to deviate from the well-established common law at that time.²³³ Furthermore, no evidence indicates the Wyoming Legislature intended to treat private royalty and overriding royalty owners better than the state treated itself for tax purposes.²³⁴

In addition to looking to similar statutes, the court must look to the mischief the act or amendment was intended to cure.²³⁵ The Wyoming Supreme Court stated in *Wold* that Wyoming is unique and expressly detached it from any adherence to the marketable-product approach.²³⁶ Therefore, given Wyoming's uniqueness, it would follow that it does not adhere to the well-head valuation approach either.²³⁷ Thus, it appears the legislature intended, by adoption of section 30-5-304, to preclude any contention that the production process with respect to natural gas is completed when the gas is severed from the ground at the wellhead.²³⁸ To harmonize the amendment with the law existing at the time of its enactment, the amendment should be construed to permit a sharing of costs incurred in transporting the gas from

230. *Id.* at 4 (emphasis added). The AG also noted that "[w]ith regards to natural gas, we conclude that the production process is deemed complete when the natural gas is placed in the pipeline for transportation to market. The gathering, separation, dehydration and compression of natural gas at the lease or unit is part of the production process." *Id.* at 6.

231. Brief for Appellant at 20.

232. *Id.* The 1989 amendment (section 30-5-304) was approved March 9, 1989, two months after the date of the AG's opinion. *Id.* See also 1989 Wyo. Sess. Laws ch. 255.

233. Matlock, *supra* note 121, at 8.

234. *Id.* Owners argue the non-deductible production function ends when the gas enters the off-lease processing plant. Brief for Appellee at 1. This argument ultimately gives the individual royalty owner more money in the end because Cabot cannot deduct such transportation costs from the lease to the off-lease processing plant from the royalty owed to the Owners. The State for tax purposes indicates the production function ends when the mineral leaves the lease. 89-001 Op. Att'y Gen. 3 (1989). The State could potentially generate more tax revenue for itself if it made the production end point an off-lease processing plant as argued by Owners in *Cabot Oil*. Matlock, *supra* note 121, at 8. Thus, it is not logical that the Wyoming Legislature would treat private royalty and overriding royalty owners better than the state treats itself for tax purposes. *Id.*

235. *Parker Land & Cattle v. Wyo. Game & Fish*, 845 P.2d 1040, 1042 (Wyo. 1993).

236. *Wold v. Hunt Oil*, 52 F. Supp. 2d 1330, 1336 (D. Wyo. 1999).

237. *Id.*

238. Brief for Appellant at 20.

the fields where produced to distant markets.²³⁹ The amendment did not express an intention to change the law in clear and unequivocal terms.²⁴⁰ It is therefore presumed that no change was intended.²⁴¹ Hence, *Cabot Oil's* interpretation of "gathering" under the second method of statutory construction, an application of general principles of statutory construction to an ambiguous statute, is clearly erroneous.

The current *post-Cabot Oil* law is that the cost of transportation from the lease to a processing plant is nondeductible.²⁴² Where does one go from here? Many contracts and state statutes are either silent as to the apportionment of expenses or ambiguous as to what exactly constitutes a certain nondeductible cost of production or a deductible *post*-production procedure.²⁴³ One apparent solution or mitigating strategy to this particular issue would be more detailed and tailored oil and gas contracts that expressly state what constitutes gathering and transportation and how these costs are to be allocated.²⁴⁴ Parties are always free to allocate these costs as desired.²⁴⁵ When leasing or granting/reserving an overriding royalty, parties should expressly provide, using specific language, the terms of quantity, value, and what is and is not deductible from the lessor's royalty.²⁴⁶

Another solution would be to lobby the Wyoming Legislature for an amendment to section 30-5-304. This amendment would have to expressly delineate and define "gathering" and the "market pipeline." A good policy would be to draft and treat all statutes dealing with the same subject matter (i.e., oil and gas) in similar fashion. An amendment would provide greater consistency and efficiency, and would promote judicial economy in the form

239. *State of Wyo. v. Davis Oil Co.*, 728 P.2d 1107, 1109 (Wyo. 1986) (stating that the "royalty compensates the lessor for the value . . . of the gas after the lessee fulfills its obligations under the lease to produce gas at the surface, but before the lessee adds to the value of this gas by . . . transporting it"). See also *Kretni Dev. Co. v. Consol. Oil Corp.*, 74 F.2d 497 (10th Cir. 1934) (holding that royalty was due on the value of the gas at the pipeline connection field, not the value at the Casper terminus of a ninety mile pipeline laid by the lessee).

240. *State v. Stovall*, 648 P.2d 543, 548 (Wyo. 1982).

241. *Id.*

242. *Cabot Oil & Gas Corp. v. Followwill*, 93 P.3d 238, 242 (Wyo. 2004).

243. *Garman v. Conoco, Inc.*, 886 P.2d 652, 657 (Colo. 1994).

244. Anderson, *supra* note 48, at 591-93. Drafting of more detailed royalty provisions may settle many of the potential complications with respect to prospective deals. *Id.* However, it would have little, if any, effect on the thousands of already existing relationships governed by traditional lease forms that may remain in effect for decades. *Id.* Amending the existing lease is doubtful because lessees have generally been reluctant for fear the lessors will drive harder bargains. *Id.* Also, a common belief is that most lessors will not bother to identify royalty payment issues or bother to challenge the lessee's royalty calculations even if lessors identify the issues. *Id.* See also *Southland Royalty Co. v. Pan American Petroleum Corp.*, 378 S.W.2d. 50 (Tex. 1964) (attempting to avoid higher legal costs, the parties adopted archaic language from antiquated leases that did not anticipate the problems or complexities of the modern gas industry).

245. *Garman*, 886 P.2d at 657.

246. Matlock, *supra* note 121, at 12.

of reduced litigation over who gets what deduction. Numerous different amendment constructions could serve as an appropriate amendment to the Act. A suitable amendment would add a specific definition of "gathering" and "market pipeline" in the definitions portion of section 30-5-304. For example "gathering" could be defined as "the activity of collecting gas at the furthestmost production operation of a well and moving it to a central collection point on a lease or unit for further movement through a pipeline's principal transmission system."²⁴⁷ A "market pipeline" definition would further clarify when the gathering function ends because according to the statute, where "gathering" ends, "market pipeline" begins.²⁴⁸ One suitable definition of "market pipeline" would be "a pipeline running from the lease or unit to market, a processing plant, or a distant point of sale."²⁴⁹

These proposed definitions would better reflect the common law of shared transportation expenses.²⁵⁰ It would conform to the remedial purpose of the Act and not inject the "arbitrariness that the legislature intended to defeat by enactment of the Act."²⁵¹ It would give simple and specific delineations regarding where "gathering" begins and ends. This specific beginning and ending point to "gathering" would enable lessees and lessors to accurately calculate their share of the proceeds. Furthermore, this proposed amendment would go hand in hand with the Wyoming tax statutes and other statutes governing oil and gas.²⁵² Again, why would the Wyoming Legislature treat private royalty and overriding royalty owners better than the state treats itself for tax purposes?²⁵³

CONCLUSION

Cabot Oil, with little justification and no clear reasoning, erroneously reversed decades of common law with regards to Wyoming's allocation of gas transportation costs. The first method of statutory construction, a plain language reading of the unambiguous section 30-5-304, would have logically led the court to adhere to the common law prior to when the court decided *Cabot Oil*. The second method of statutory construction, an application of general principles of statutory construction to the ambiguous section 30-5-304, would also have led the court to adhere to the well-established pre-*Cabot Oil* law. Both methods of statutory construction show how the Wyoming Supreme Court's interpretation of the term "gathering" was erroneous. For now, parties must expressly define their rights and obligations in the royalty contract. However, in the long term, an amendment to Wyoming

247. TXO Prod. Corp. v. State Comm'r of Land Office, 903 P.2d 259, 262 (Okla. 1994).

248. WYO. STAT. ANN. § 30-5-304(a)(vi) (LexisNexis 2004).

249. See, e.g., Brief for Appellant at 17.

250. State of Wyo. v. Davis Oil Co., 728 P.2d 1107, 1109 (Wyo. 1986).

251. Cabot Oil & Gas Corp. v. Followwill, 93 P.3d 238, 242 (Wyo. 2004).

252. WYO. STAT. ANN. § 39-2-202(b).

253. Matlock, *supra* note 121, at 8.

Statutes Annotated section 30-5-304 is needed to correctly portray and codify Wyoming's unique approach to shared transportation costs from the lease or unit to a processing plant or distant point of sale.

RICKEY TURNER

