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Administrative Law - Broader Jurisdiction for the Wyoming Oil and Gas Conservation Commission - Gulf Oil Corp. v. Wyoming Oil and Gas Conservation and Story Oil Impact Committee

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CASE NOTES

ADMINISTRATIVE LAW—Broader Jurisdiction for the Wyoming Oil and Gas Conservation Commission. *Gulf Oil Corp. v. Wyoming Oil and Gas Conservation Commission and Story Oil Impact Committee,* 693 P.2d 227 (Wyo. 1985).

In early September 1983, appellant Gulf Oil Corporation (hereinafter Gulf) sought permission from the United States Department of the Interior Bureau of Land Management (BLM)[1] and the Wyoming Oil and Gas Conservation Commission (hereinafter Commission) to drill a wildcat oil well.[2] The proposed Granite Ridge 1-15-ID well was to be located in the NW 1/4 of Section 15, Township 53 North 1 Range 84 West in the Big Horn National Forest in Sheridan County, Wyoming.

Gulf's proposed access to the wellsite was a public road through the town of Story. To reach the site the road was to be extended from Section 12 through Sections 11 and 14. This extension, known as the southern route, would include new road construction for about 3.8 miles up a steep limestone cliff visible from the town of Story. Construction of the road would involve blasting the roadbed out of the cliff parallel to the existing Story-Penrose Trail, a popular access to the nearby National Forest and primitive areas for hikers and backpackers.[3]

Gulf's actions prompted the citizens of Story and its surrounding area to form the Story Oil Impact Committee (hereinafter STOIC). STOIC filed a formal protest with the Commission questioning the environmental and safety consequences of the southern access route. STOIC asserted that use of the southern route would violate Rule 326 of the Rules and Regulations of the Commission which provides in part: "The owner shall not pollute streams, underground water, or unreasonably damage the surface of the leased premises *or other lands. . . .*"[4] The Commission, on its own motion, raised the same concern and scheduled a hearing on the matter November 15, 1983.

During the hearing STOIC introduced into evidence an Environmental Assessment (EA) of the proposed Granite Ridge 1-15-ID well prepared by the BLM and the Forest Service.[5] The EA, along with testimony and

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1. Federal oil and gas leases are issued and administered pursuant to The Mineral Lands Leasing Act of 1920, 30 U.S.C. §§ 181-287 (1982); The National Environmental Policy Act of 1969, 42 U.S.C. §§ 4231-4370(a) (1982), and the Environmental Quality Improvement Act of 1970, 42 U.S.C. §§ 4371-4375 (1982).

2. Oil and gas exploration in Wyoming requires a drilling permit issued by the Wyoming Oil and Gas Conservation Comm'n pursuant to WYO. STAT. §§ 30-5-101 to -303 (1977).

3. A detailed explanation of the technical aspects of this road construction can be found in Bureau of Land Management, United States Department of the Interior, Environmental Assessment for the Proposed Gulf Granite Ridge 1-15-1D Oil and Gas Exploration Well 3-10 (1984) [hereinafter Environmental Assessment] (attached to Brief for Appellant at 27, Gulf Oil Corp. v. Wyoming Oil and Gas Conservation Comm'n and Story Oil Impact Comm., 693 P.2d 227 (Wyo. 1985) [hereinafter Appellant's Brief]).

4. WYOMING OIL AND GAS CONSERVATION COMM'N, RULES AND REGULATIONS § III, Rule 326 at 22 (promulgated 1951) (emphasis added).

5. Environmental Assessment, *supra* note 3, at 3-13.

other evidence introduced at the hearing, presented five potential access routes to the wellsite.[6]

On November 23, 1983 the Commission issued a conditional approval of Gulf's state drilling permit application. Permission to drill the well was granted as long as Gulf did not access the wellsite by the southern route. The Commission concluded that use of the southern route would cause unreasonable surface damage to the terrain north of Story, in violation of Commission Rule 326.

Gulf filed a petition for judicial review of the conditional permit, and the District Court of Natrona County certified the case to the Wyoming Supreme Court. Arguments in the case centered around four issues: federal preemption of Commission authority, Commission jurisdiction over private property, whether the Commission's decision was based on substantial evidence, and mootness. The Wyoming Supreme Court restricted its decision to these issues and ruled in favor of the Commission and STOIC.[7]

Curiously, the majority opinion did not deal with the question of whether the Commission possessed the authority to adopt and enforce Rule 326.[8] Justice Rooney, joined in dissent by Justice Brown, raised this issue and concluded that the Commission had exceeded its statutory authority. Most troublesome to the dissenters was the majority's willingness to allow the Commission to regulate environmental impacts, on lands outside of the leased premises, by imposing conditions on drilling permits.

The *Gulf Oil* decision establishes that where the state is not preempted, a Wyoming administrative agency can regulate environmental damage resulting from exploration on federal oil and gas leases concurrently with the federal government. Unfortunately, this important holding is colored by the fact that the majority failed to consider the statutory authority granted to the Wyoming Oil and Gas Conservation Commission by the Wyoming legislature. This note will briefly discuss the court's position

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6. The five potential access routes to the 1-15-1D wellsite were:
   1. The southern route. *See supra* text accompanying note 3.
   2. A northern access route involving lengthening of an existing roadway to a Gulf well on private property in Section 9 over National Forest land part of which was then subject to Roadless Area Review and Evaluation by the U.S. Forest Service.
   3. A route over North Piney Creek useful only if an existing county bridge were improved.
   4. Directional drilling from private property.
   5. Helicopter mobilization.

Alternative 3 was impossible because the Sheridan County Commissioners denied Gulf permission to upgrade the bridge. Alternative 4 was geologically impossible due to large granite formations in the drilling path necessary to reach the formations under the 1-15-1D wellsite. Alternative 5 was very dangerous and probably cost prohibitive although physically possible. Alternative 2 was described by Gulf as impossible due to an arrangement they had entered into with a private landowner. Appellant's Brief, *supra* note 3, at 5-9.

7. Gulf Oil Corp. v. Wyoming Oil and Gas Conservation Comm'n and Story Oil Impact Comm., 693 P.2d 227, 241 (Wyo. 1985).

8. WYOMING OIL AND GAS CONSERVATION COMM'N, *supra* note 4.

on the preemption issue,[9] and then focus on the questionable validity of Rule 326.

BACKGROUND - FEDERAL PREEMPTION

The decision in *Gulf Oil* falls within an area of public lands law in which the recent trend has been toward stronger federal control over the public domain.[10] The leading case in this area is the United States Supreme Court decision in *Kleppe v. New Mexico.*[11] In *Kleppe,* while the holding focused on the superiority of the federal government over the states in the management of feral horses and burros,[12] dicta in the case suggested that the federal government possesses a "complete power"[13] when it regulates the public domain.[14] Although a broad interpretation of this dicta could effectively preempt any state regulation of federal lands within state borders,[15] such an extreme outcome has not been the result of the *Kleppe* decision.[16] Where state public land regulations govern an area not traditionally federal in nature, federal courts may be reluctant to interfere with state regulation in that area.[17]

In a situation like that in *Gulf Oil,* where a state is regulating an aspect of the public domain already extensively federally regulated, the applicable preemption tests are twofold. "Absent explicit preemptive language, Congress' intent to supercede state law altogether may be found from a 'scheme of federal regulation so pervasive as to make reasonable inference that Congress left no room to supplement it.' "[18] Absent this finding of congressional intent, "state law is still preempted to the extent it actually conflicts with federal law,[19] or where the state law stands as an obstacle to the accomplishment of the full purposes and objectives of Congress."[20]

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9. A more exhaustive analysis of the preemption issue as it arose in *Gulf Oil* and other recent cases can be found in Burling, *A Case History of National Interest: Granite Rock Company v. California Coastal Commission,* 21 LAND & WATER L. REV. (1986).

10. Wilkinson, THE FIELD OF PUBLIC LAND LAW: SOME CONNECTING THREADS AND FUTURE DIRECTIONS, 1 PUB. LAND L. REV. 1, 2-6 (1980).

11. Kleppe v. New Mexico, 426 U.S. 529 (1976).

12. *Id.* at 533.

13. *Id.* at 540.

14. *Kleppe* stands for the proposition that congressional authority over the public domain is currently derived from the property clause, U.S. CONST., art. IV, § 3, cl. 2, rather than the more limiting jurisdiction clause, U.S. CONST., art. I, § 8, cl. 17. C. Wilkinson, *supra* note 10, at 13-15.

15. Wilkinson, *supra* note 10, at 12.

16. Instead, federal regulation of the public domain tends to be rationally tied to the development or preservation of federal lands and resources as suggested by C. Wilkinson, *supra* note 10, at 13. Cases in which this approach has been used include: Texas Oil and Gas Corp. v. Phillips Petroleum Company, 406 F.2d 1303 (10th Cir. 1969), *cert. denied,* 396 U.S. 829 (1969); State *ex rel.* Andrus v. Click, 97 Idaho 791, 554 P.2d 969 (1976); and State *ex rel.* Cox v. Hibbard, 31 Or. App. 269, 570 P.2d 1190 (1977).

17. New York State Department of Social Service v. Dublino, 413 U.S. 405, 413 (1973).

18. Pacific Gas and Electric Co. v. State Energy Resources Conservation and Development Comm'n, 461 U.S. 190, 204 (1983) *cited with approval in Gulf Oil,* 693 P.2d at 234.

19. Florida Lime and Avocado Growers, Inc. v. Paul, 373 U.S. 132, 142-43 (1963) *cited with approval in Gulf Oil,* 693 P.2d at 234.

20. Hines v. Davidowitz, 312 U.S. 52, 67 (1941) *cited with approval in Gulf Oil,* 693 P.2d at 234.

A state regulatory scheme which passes both of these tests is not preempted and may even operate concurrently with federal regulation.

THE PRINCIPAL CASE

In *Gulf Oil* the Wyoming Supreme Court held that Commission Rule 326 passed both of the preemption tests.[21] The court concluded that federal mining statutes,[22] federal agency regulations,[23] and case law[24] all failed to demonstrate a congressional intent or pervasive scheme to exclude state environmental regulation of activities on and around federal oil and gas leases. In fact, the court stated that federal regulations were designed to protect traditional state's rights. Further, the court asserted that the National Environmental Policy Act[25] and the Environmental Quality Improvment Act[26] expressly designate state and local governments as the principal protectors of the environment.[27] The majority cited *State ex rel. Andrus v. Click*[28] and *State ex rel. Cox v. Hibbard*[29] as examples of situations in which a state high court had upheld state environmental and zoning regulations which regulated activities on federal mineral leases concurrently with the federal government.[30]

Regarding direct conflict between state and federal law, the court differentiated between state regulations which prohibited an activity authorized by Congress and state regulations which set standards stricter than federal legislation, but still allowed the exercise of a congressionally authorized right. Citing *Ventura County v. Gulf Oil Corporation*[31] and *Brubaker v. Board of County Commissioners*,[32] the majority explained that where a state or local entity seeks to exercise a "local veto power" over activity authorized by Congress, such legislation or regulation is prohibited.[33] In contrast, the action taken by the Commission pursuant to Rule 326 in *Gulf Oil* was characterized as a state regulation enacted to guide, not prohibit, mineral development of federal mineral leases in Wyoming.[34]

Of particular interest in the majority's analysis was the way in which it analogized Rule 326 to the statutes and regulations at issue in *Andrus*[35] and *Cox*.[36] An extremely important fact in both of those cases was that

21. *Gulf Oil*, 693 P.2d at 238.
22. Mineral Lands Leasing Act of 1920, 30 U.S.C. §§ 187-189 (1982).
23. 43 C.F.R. § 3809.2-2 (1984); 36 C.F.R. § 228.8(h) (1985).
24. Texas Oil and Gas Corp. v. Phillips Petroleum Company, 406 F.2d 1303 (10th Cir. 1969), *cert. denied*, 396 U.S. 829 (1969).
25. 42 U.S.C. § 4332 (1982).
26. 42 U.S.C. § 4371 (1982).
27. *Gulf Oil*, 693 P.2d at 235-36.
28. 97 Idaho 791, 554 P.2d 969 (1976).
29. 31 Or. App. 269, 570 P.2d 1190 (1977).
30. *Gulf Oil*, 693 P.2d at 236.
31. 601 F.2d 1080 (9th Cir. 1979), *aff'd* 445 U.S. 947 (1980).
32. 652 P.2d 1050 (Colo. 1982).
33. *Gulf Oil*, 693 P.2d at 237.
34. *Id.*
35. *Andrus*, 97 Idaho 791, 554 P.2d 969 (1976).
36. *Cox*, 31 Or. App. 269, 570 P.2d 1190 (1977).

the statutes and regulations in question contained express legislative intent empowering state officials to protect *environmental* values on state lands (emphasis added).[37] Apparently, the Wyoming Supreme Court assumed that the Wyoming Oil and Gas Conservation Act[38] contained the same kind of legislative intent. In any case, the court never analyzed the scope of the Act to see if it was as broad as Rule 326 would suggest.

Dissent

The majority's failure to consider the propriety of Rule 326 compelled Justice Rooney to dissent and Justice Brown to join him.[39] The dissenters argued that in the majority's rush to establish state environmental authority over federal oil and gas leases, it neglected to address the basic question which underlies the applicability of any substantive administrative rule: Does the rule regulate within the confines of the legislation under which it is promulgated?[40] If the rule does not, it is illegal and that is where the court's analysis should end. Justice Rooney argued that the legislature never intended to allow the Commission to engage in extensive environmental regulation. [41] He stated that the Commission's only job "is to 'conserve' oil and gas and protect correlative rights—nothing else."[42]

ANALYSIS

The basic premise under which all federal and state administrative bodies operate is that "[t]he powers of the administrative agency are statutory. [T]he general rule is that only those powers are granted which are expressly conferred."[43] The Supreme Court of the United States explained this principle in *Chrysler Corp. v. Brown*[44] when it said, "[t]he exercise of quasi-legislative authority by governmental departments and agencies must be rooted in a grant of such power by Congress."[45] Wyoming has statutorily recognized this principle as it relates to the adoption and revision of substantive[46] administrative rules.[47]

When review of a properly promulgated administrative rule is necessary, as would be the case in *Gulf Oil* had the issue been raised, it amounts to a collateral attack on the rule. Such an attack is not expressly authorized by the Wyoming Administrative Procedure Act.[48] This,

37. *See,* IDAHO CODE § 47-1317(j) (Supp. 1985); OR. REV. STAT. 541.615(i) (1971).
38. WYO. STAT. §§ 30-5-101 to -303 (Supp. 1985).
39. *Gulf Oil,* 693 P.2d at 241 (Rooney, J., dissenting).
40. B. SCHWARTZ, ADMINISTRATIVE LAW, § 4.4, at 154 (2d ed. 1984).
41. *Gulf Oil,* 693 P.2d at 241.
42. *Id.*
43. Continental Pipeline Co. v. Belle Fourche Pipeline Co., 372 F.Supp. 1333 (D. Wyo. 1974).
44. 441 U.S. 281 (1979).
45. *Id.* at 302.
46. Three categories of rules may be promulgated by an administrative agency: procedural rules, interpretative rules, and substantive rules. Procedural rules establish procedures for operation of the agency. Interpretative rules are clarifications of existing laws or regulations. Substantive rules are made pursuant to statutory authority and carry the force of law, just as the statute does. B. SCHWARTZ, *supra* note 40, at 158.
47. WYO. STAT. §§ 16-3-101 to -115 (1977 & Supp. 1985).
48. *Id.*

however, does not necessarily preclude judicial review of a rule when it obviously extends beyond the statute under which it was promulgated.[49] The availability of collateral attack is not settled in Wyoming[50] and there are persuasive statutory arguments which suggest that collateral rule review should be allowed in certain situations.[51]

Courts tend to defer to the discretion and judgment of administrative agencies when ruling on challenges to substantive rules.[52] Such rules, however, must stay within the limits prescribed by the enabling statutes which create the agency. The United States Supreme Court has said that the courts will not "undermine the flexibility sought in vesting broad rulemaking authority in an administrative agency. . . ."[53] On the other hand, the courts will require that "[t]he effect of the regulation clearly implement[s] the objectives of the legislation,"[54] or alternatively, that the rule be reasonably related to the purposes of the enabling legislation.[55]

The decision in *Gulf Oil* establishes Wyoming's right to regulate the environmental effects of oil and gas exploration around federal oil and gas leases concurrently with the federal government. Unfortunately, the Wyoming Supreme Court should never have reached that issue. The legislation which created the Commission and gave it rulemaking authority simply does not grant the authority to police the environment outside of the boundaries of the lease involved. Rule 326, in two respects, is beyond the limits of the statutes which created the Commission. The rule is not the implementation of clear and express legislative objectives[56] and the rule is not reasonably related to those objectives.[57]

Intent

The Wyoming Oil and Gas Conservation Act does not expressly authorize an environmental protection rule as broad as Rule 326.[58] It is therefore necessary to look elsewhere to determine the legislature's intent.

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49. *See* Battle, *Administrative Law Wyoming Style,* 18 LAND & WATER L. REV. 223, 229 (1983). The standard mechanism for obtaining this type of review in federal courts is an action for injunction and declaratory relief. 4 K. DAVIS, ADMINISTRATIVE LAW TREATISE § 23:6, at 149 (2d ed. 1983).

50. Battle, *supra* note 49, at 230.

51. *Id.* at 231. *See also* Rocky Mountain Oil and Gas Ass'n v. Wyoming, 645 P.2d 1163, 1174 (Rose, C.J., dissenting).

52. Wyoming Hospital Ass'n v. Harris, 527 F. Supp. 551, 559 (D. Wyo. 1981), *aff'd* 727 F.2d 931 (10th Cir. 1984).

53. Mourning v. Family Publications Service Inc., 411 U.S. 356, 372 (1973).

54. *Id.*

55. Thorpe v. Housing Authority of City of Durham, 393 U.S. 268, 280-81 (1969).

56. See *infra* text accompanying note 54.

57. *Thorpe,* 393 U.S. at 280-81.

58. WYO. STAT. § 30-5-104(c), (d)(ii) (Supp. 1985) provides:

> (c) The commission shall make rules, regulations, and orders, and shall take other appropriate action, to effectuate the purposes and intent of this act.
>
> (d)(ii) To regulate, for conservation purposes:
>
> (A) The drilling, producing, and plugging of wells;
>
> (B) The shooting and chemical treatment of wells;
>
> (C) The spacing of wells;
>
> (D) Disposal of salt water, nonpotable water, and oil-field wastes;
>
> (E) The contamination or waste of underground water.

The original Act, enacted in 1951, was titled "Oil and Gas Conservation"[59] and was introduced in response to a growing need for more structured development of Wyoming's oil and gas resources.[60] It was described in part as:

> AN ACT *defining and prohibiting the waste of oil and gas* or the contamination of water in the State of Wyoming; creating an Oil and Gas Conservation Commission; defining its powers and duties *with respect to conservation of oil and gas. . . .*[61]

The express purpose of the Act was the conservation of oil and gas by the prevention of waste in exploration and production.[62] The House and Senate Journals contain no reference to any proposed modification to the original bill which would have expanded the Commission's authority beyond regulation of environmental damage at the wellsite itself.[63] Subsequent amendments to the Act have also failed to expand the Commission's authority beyond that in the original legislation.[64] While the Act does give the Commission authority to "prevent contamination of waste or underground water,"[65] a plain reading of the statute reveals that the legislature intended it to deal only with contamination at the wellsite or contamination from spills of "oil field wastes"[66] on the lease surface.[67] It contains no express language or obvious intent to regulate environmental impacts on lands surrounding a federal oil and gas lease.

Reasonable Relation

Despite the Act's lack of clear and express legislative intent to regulate environmental damage, Rule 326 could still be valid if it is reasonably related to the objective of conserving oil and gas.[68] The courts have not yet specifically addressed whether or not environmental protection of the lands around a federal oil and gas lease is reasonably related to that specific conservation objective. The central problem with the Act, in this regard, is its lack of a statutory definition for the term "conservation." "Conservation," as it is used in the oil and gas industry, refers to the prevention of "waste" of oil and gas.[69] The Act specifically defines "waste":

> (a)(i) The term "waste" means and includes:
> (A) Physical waste, *as the term is generally understood in the oil and gas industry. . . .*[70]

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59. WYOMING H.R.J., 31st Leg. 163 (1951).
60. *Id.* at 31.
61. *Id.* at 307.
62. WYO. STAT. § 30-5-101(a)(i)(A) (1977). *See infra* text accompanying note 71.
63. WYOMING H.R.J., *supra* note 60 at 162, 187, 307, 338, 384, 539, 541, 583, 588, 628; WYOMING S.J., 31st Leg. 342, 404, 431, 448, 478, 487, 511, 551 (1951).
64. 1969 Wyo. Sess. Laws, ch. 126 § 1; 1971 Wyo. Sess. Laws, ch. 6 §1, ch. 10 §§ 1-2, ch. 11 §§ 1-7, ch.21 §§ 1-3, ch. 102 §§ 1-18; 1984 Wyo. Sess. Laws, ch. 3 §§ 1-2.
65. WYO. STAT. § 30-5-104(d)(ii) (Supp. 1985).
66. *Id.*
67. *Gulf Oil,* 693 P.2d at 241.
68. *See supra* text accompanying note 55.
69. 18 H. WILLIAMS & C. MEYERS, OIL AND GAS LAW: MANUAL OF TERMS 955 (1985).
70. WYO. STAT. § 30-5-101(a)(i)(A) (1977) (emphasis added).

There can be little question that the legislature intended the term "waste" to carry a specific narrow statutory meaning in the Act. "Waste" is nowhere defined, under the Act, as the waste of environmental resources.[71]

Even though defining "conservation" in terms of preventing waste of oil and gas would appear to effectuate the purpose of the Act, the Wyoming Supreme Court has never clearly adopted such a definition. To the contrary, the court's usage of "conservation" in other cases has been vague.[72] In *Inexco Oil Co. v. Oil and Gas Conservation Comm'n*,[73] the court failed to address Inexco's assertion that the Commission could not restrict production "[i]n the broad interest of conservation,"[74] despite the specific definition of waste in the statute.[75] This decision led commentators to complain that "[t]he legislature has specified what constitutes waste and what the Commission may do about it and yet the Supreme Court of Wyoming seems to grant carte blanche authority in the interest simply of conservation in the general sense."[76]

In *Gulf Oil* the court has allowed the Commission to take the already broadened meaning of "conservation" and hopscotch it into the entirely different context of general environmental protection. This holding completely ignores the plain limits the Act places on the definition of "waste," and the related meaning of "conservation." Other courts have used the broad definition of "conservation" only where the pertinent statutory law has expressly dealt with "conservation" of the environment as well as of oil and gas resources.[77] Wyoming's oil and gas conservation statutes are not analagous to those statutes and, therefore, cannot support the definition of "conservation" implied by the court in the *Gulf Oil* case. Consequently, without "reaching beyond the stars,"[78] there is no reasonable relation between the Wyoming Supreme Court's application of Rule 326 and the purposes and objectives of the Act under which it was promulgated.

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71. *Id.*

72. Williams & Porter, *Practice Before the Wyoming Oil and Gas Conservation Comm'n*, 10 LAND & WATER L. REV. 352, 386 (1975).

73. 490 P.2d 1065 (Wyo. 1971).

74. *Id.* at 1068.

75. WYO. STAT. § 30-5-101(a)(i)(A) (1977).

76. Williams & Porter, *supra* note 72, at 386.

77. An excellent example of this is found in the Brief for Appellee at 26, (Gulf Oil Corp. v. Wyoming Oil and Gas Conservation Comm'n and Story Oil Impact Comm.), 693 P.2d 227 (Wyo. 1985), where the Commission asserted that "[t]he term 'conservation' means the conservation of all natural resources," citing Michigan Oil Co. v. Natural Resources Comm'n, 406 Mich. 1, 7, 276 N.W.2d 141, 147 (1979). What the Commission failed to disclose, however, was the specific definition of "waste" in the applicable Michigan statute which gave the Michigan Natural Resources Commission statutory authority to protect the environment in general. The statute, MICH. COMP. LAWS § 319.2(*l*)(2) (1973) reads in part:

> "Surface waste," as those words are generally understood in the oil business, and in any event to embrace . . . (2) *the unnecessary damage to or destruction of the surface, soils, animals, fish or aquatic life or property from or by oil and gas operations;* (emphasis added).

The definition of "waste" in WYO. STAT. § 30-5-101 (1977) does not contain a similar specific definition of "surface waste" and, therefore, any analogy drawn using *Michigan Oil Co.* is not accurate.

78. *Gulf Oil*, 693 P.2d at 241 (Rooney, J., dissenting).

The Extent of State Regulation

The majority achieved two things in upholding the application of Rule 326 in *Gulf Oil.* First, the court established Wyoming's ability to regulate environmental impact on federal lands in the state.[79] Second, the court remedied what it apparently considered to be a weakness in the regulatory powers of state agencies to prevent environmental damage to federal lands in Wyoming.

If one accepts the premise that the Commission lacks authority to protect environmental resources on federal lands surrounding federal oil and gas leases, then only one other state agency, the Department of Environmental Quality (DEQ), possesses that authority.[80] DEQ, however, has chosen not to regulate oil and gas exploration to that extent.[81]

The DEQ's voluntary exclusion of oil and gas exploration from environmental regulation[82] raises the question whether or not the state needs to regulate this aspect of oil and gas development at all. The *Gulf Oil* case was an example of the state and federal governments regulating an oil and gas project in exactly the same manner using the same environmental assessment information gathered and compiled by BLM. Had the Commission simply granted the drilling permit to Gulf unconditionally, federal agencies still retained discretionary authority to address the environmental consequences of the access route.[83] The BLM had already spent considerable time and energy on its EA of the proposed well and was aware of the local public's objections to Gulf's preferred access route.[84] The BLM is well suited to evaluate and direct oil and gas exploration on federal land through the application of national environmental protection legislation.[85] In contrast, the Commission is neither structured nor funded to do the thorough environmental studies necessary to resolve this type of controversy. This is not to say that the state should not be able to concurrently regulate environmental resources surrounding federal oil and gas leases. It only suggests that if the state truly perceives a need to concurrently regulate in this area, the legislature and not the judiciary, should direct the DEQ to do so or fund and structure the Commission so that it can handle the task properly.

CONCLUSION

The Wyoming Supreme Court has set an important precedent in *Gulf Oil.* The case stands for the premise that Wyoming may regulate the environmental effects of oil and gas development on lands outside of federal

79. *Id.* at 238.
80. WYO. STAT. §§ 35-11-102, -112(a)(i) (Supp. 1985).
81. LAND QUALITY DIVISION, WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY, RULES AND REGULATIONS ch. XV, § 6 at 139 (1983).
82. *Id.*
83. Shapiro, *Energy Development on the Public Domain: Federal-State Cooperation and Conflict Regarding Environmental Land Use Control,* 9 NAT. RES. LAW. 397, 401 (1976).
84. Environmental Assessment, *supra* note 3, at 22.
85. 42. U.S.C. §§ 4321-4370(a) (1982).

oil and gas lease boundaries. The problem with this holding, however, is that *Gulf Oil* was the wrong case in which to set that precedent. The Wyoming Oil and Gas Conservation Act does not grant the Commission broad enough authority to regulate as they did, even if such regulation is not preempted at the federal level. While the court may have perceived a need to vest the Commission with this broad authority, it should leave such decisions to the state legislature or leave this type of regulation in the hands of the appropriate federal agency.

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