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### **Mining Law - Are Surface Lessees Surface Owners Entitled to Protection of Consent and Bonding Provisions of Wyoming's Environmental Quality Act - Belle Fourche Pipeline Co. v. State**

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**MINING LAW—Are Surface Lessees “Surface Owners” Entitled to Protection of Consent and Bonding Provisions of Wyoming’s Environmental Quality Act? *Belle Fourche Pipeline Co. v. State*, 766 P.2d 537 (Wyo. 1988).**

In 1967, Atlantic Richfield Company (ARCO) obtained a federal coal lease covering federal coal in a section of land (“Section 21”) in Campbell County, Wyoming.<sup>1</sup> Subsequently, Robert Deaver and Freda Dunlap, the owners of the surface estate in Section 21, conveyed to Eighty-Eight Oil Company (Eighty-Eight) a ninety-nine year lease of part of the surface estate in that section. Deaver and Dunlap also conveyed to Belle Fourche Pipeline Company (Belle Fourche) two rights of way across part of Section 21.<sup>2</sup> Belle Fourche built and operated two common carrier oil pipelines, which served a truck receiving station that Eighty-Eight operated within the section.<sup>3</sup> In 1976, ARCO obtained the surface estate of Section 21 by warranty deed from Robert and Evelyn Deaver; as a result, Belle Fourche and Eighty-Eight leased from ARCO.<sup>4</sup>

When ARCO applied to the Wyoming Department of Environmental Quality (DEQ) for a permit to mine Section 21, the DEQ issued a mining permit to ARCO, effective March 1979. ARCO transferred the permit to its wholly owned subsidiary, Thunder Basin.<sup>5</sup> In 1980, ARCO applied for modification of its existing permit; its application provided that all utilities, including oil and gas pipelines, would be relocated away from the mine site prior to beginning mining operations. The DEQ approved the requested modification, and in 1985, notice of the application was published and sent to owners of surface rights in the area, including Eighty-Eight and Belle Fourche.<sup>6</sup> Pursuant to the surface owner consent provision of the Wyoming Environmental Quality Act, Belle Fourche and Eighty-Eight objected to the permit, stating that ARCO’s proposed mining activities would either prohibit their operations or force them to move.<sup>7</sup>

The DEQ’s Environmental Quality Council (EQC) held a contested hearing on September 10, 1985. The EQC granted Thunder Basin a mining permit and concluded that Belle Fourche and Eighty-Eight were not entitled to protection<sup>8</sup> under the consent and bonding provisions of sections 35-11-406(b)(xii)<sup>9</sup> and 35-11-416 of the Wyoming Stat-

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1. *Belle Fourche Pipeline Co. v. State*, 766 P.2d 537, 540 (Wyo. 1988).

2. *Id.*

3. *Id.*

4. *Id.* The record did not disclose whether Freda Dunlap still had an interest in the surface of Section 21. *Id.*

5. *Id.* at 540-41.

6. *Id.* at 540. Modification of ARCO’s permit was required in order to bring ARCO within compliance of Wyoming’s permanent surface mining control program pursuant to the federal Surface Mining Control and Reclamation Act of 1977. *Id.*; WYO. STAT. § 35-11-401(d) (1988).

7. *Belle Fourche Pipeline*, 766 P.2d at 541.

8. *Id.*

9. WYO. STAT. § 35-11-406(b)(xii) (1988). The statute provides in pertinent part: (b) The application shall include a mining plan and reclamation plan. . . .

The mining plan and reclamation plan shall include the following:

utes.<sup>10</sup> Belle Fourche and Eighty-Eight petitioned for review of the EQC's decision in the District Court of the Sixth Judicial District for Campbell County. The district court granted the petitions for certification submitted by Thunder Basin and the EQC.<sup>11</sup> All parties agreed that Belle Fourche and Eighty-Eight would have to move; they disagreed on who should bear the costs.<sup>12</sup>

Belle Fourche and Eighty-Eight argued that they were "surface owners" within the consent and bonding provisions of the Environmental Quality Act.<sup>13</sup> The Wyoming Supreme Court disagreed, holding that holders of surface leases and easements are not "surface owners" or "surface landowners" entitled to the protection of the consent and bonding provisions.<sup>14</sup>

While mineral owners have traditionally enjoyed dominance over owners of the surface rights, the recent emergence of surface owner protection statutes has shifted the balance in favor of the surface owner. The Wyoming Supreme Court chose to limit this new protection to owners in fee of the surface. In order to ascertain the intent and purpose of surface owner consent provisions, this casenote examines the legislative purposes behind such provisions.

## BACKGROUND

### *Historical Overview*

Traditionally, the owner of a mineral estate enjoyed dominance over the owner of a surface estate,<sup>15</sup> and the mineral interest holder had the right to use as much of the surface estate as was reasonably necessary for his operations.<sup>16</sup> The federal government, which originally reserved the mineral wealth of the nation, viewed the development of

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(xii) For any application filed after March 1, 1975, including any lands privately owned but not covered by the provisions of paragraph (b)(xi) of this section an instrument of consent from the surface landowner, if different from the owner of the mineral estate, to the mining plan and reclamation plan. If consent cannot be obtained as to the mining plan or reclamation plan or both, the applicant may request a hearing before the environmental quality council. The council shall issue an order in lieu of consent. . . .

10. WYO. STAT. § 35-11-416 (1988). The statute provides in pertinent part:
  - (a) In those instances in which the surface owner is not the owner of the mineral estate proposed to be mined by mining operations a permit shall not be issued without the execution of a bond or undertaking to the state, whichever is applicable, for the use and benefit of the surface owner or owners of the land.

11. *Belle Fourche Pipeline*, 766 P.2d at 541.

12. *Id.*

13. Brief of Appellant at 7, *Belle Fourche Pipeline Co. v. State*, 766 P.2d 537 (Wyo. 1988) (No. 86-144). The Wyoming Environmental Quality Act is codified at WYO. STAT. §§ 35-11-101 to 35-11-1304 (1988).

14. *Belle Fourche Pipeline*, 766 P.2d at 549.

15. *Kinney-Coastal Oil Co. v. Kieffer*, 277 U.S. 488, 504 (1928).

16. *Bourdieu v. Seaboard Oil Corp.*, 38 Cal. App. 2d 11, 100 P.2d 528, 532 (1940).

mineral resources as taking precedence over rights in the surface.<sup>17</sup> When the government opened up settlement of federal lands during the nineteenth and early twentieth centuries, it retained the reservation of the mineral wealth beneath the surface, to stimulate mineral development.<sup>18</sup>

The early acts permitting settlement of federal lands provided some protection for surface holders, but that protection was limited,<sup>19</sup> as was protection provided by the courts. For example, in 1928 the United States Supreme Court held that a prospector or miner was liable only for damage to surface agricultural improvements.<sup>20</sup> Thus, surface owners whose interests were non-agricultural did not enjoy the same protection as owners of agricultural enterprises.

Although the early land acts contemplated predominantly agricultural uses of the land, mineral development became increasingly important.<sup>21</sup> Yet with the growth in mining came surface damage and infringement on surface usage.<sup>22</sup> During the late 1960's and early 1970's, concern grew over harm to the surface and interference with surface uses as a result of surface coal mining.<sup>23</sup> The severance of coal interests from the surface resulted in surface interests becoming especially vulnerable to destruction of the land and of surface uses by surface coal mining.<sup>24</sup> As a result of this concern, Congress and several state legislatures prepared legislation to regulate surface mining and to protect land and surface interests.<sup>25</sup> Among the approaches taken to protect the holders of surface interests are surface owner consent laws. Under these laws, a mineral holder wishing to engage in surface mining must obtain the consent of the surface owner as a condition of obtaining a mining permit.<sup>26</sup> The Wyoming Legislature has enacted a surface owner consent statute; the scope of surface interests protected by the statute, however, is unclear.<sup>27</sup>

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17. Truhe, *Surface Owner vs. Mineral Owner or "They Can't Do That, Can They?"*, 27 S.D.L. REV. 376, 380, 384 (1982). The federal mineral reservation had its roots in the English common law, in which the mineral rights belonged to the surface owner with the exception of precious metals which were reserved to the sovereign. *Id.* at 380.

18. *Id.* at 380-81.

19. See, e.g., Stock-Raising Homestead Act, ch. 9, 39 Stat. 862 (1916) (repealed 1976).

20. *Kinney-Coastal*, 277 U.S. at 505.

21. Lacy, *Conflicting Surface Interests: Shotgun Diplomacy Revisited*, 22 ROCKY MTN. MIN. L. INST. 731, 756-57 (1976).

22. See *Stewart v. Chernicky*, 439 Pa. 43, 266 A.2d 259, 263 (1970).

23. Haughey & Gallinger, *Legislative Protection of the Surface Owner in the Surface Mining of Coal Reserved by the United States*, 22 ROCKY MTN. MIN. L. INST. 145, 154-55 (1976).

24. *Id.* at 146-47.

25. *Id.* at 155, 164.

26. E.g., 30 U.S.C. § 1304 (1982); WYO. STAT. § 35-11-406 (1988).

27. The Wyoming Supreme Court has not previously determined the scope of the Wyoming surface owner consent statute. Therefore, in order to discern the scope of the statute, statutory interpretation is necessary. Whenever a court is engaged in the construction of a statute, its primary consideration is to discern the intent of the legislature. *State Board of Equalization v. Tenneco Oil Co.*, 694 P.2d 97, 100 (Wyo. 1985). That legislative intent should, if possible, be ascertained from statutory language. *Amoco Production Co. v. State Board of Equalization*, 751 P.2d 379, 381 (Wyo. 1988). When

*Wyoming Legislation*

In 1973, the Wyoming Legislature addressed the problems of surface mining by enacting the original version of the Environmental Quality Act (EQA).<sup>28</sup> One of the stated policies of the EQA was to lessen impairment of "domestic, agricultural, industrial, recreational and other beneficial uses" due to pollution of air, water, and land.<sup>29</sup> To this end, the EQA incorporated a permit procedure under which an owner or lessee of the mineral estate must obtain a mining permit from the state prior to beginning mining operations.<sup>30</sup> The permit procedure requires the consent of the surface owner and the posting of a bond for the surface owner's benefit.<sup>31</sup> The original version did not distinguish resident or agricultural landowners from other landowners.

The Wyoming Legislature amended the EQA in 1975 in order to distinguish between "resident or agricultural landowners" and all other surface landowners.<sup>32</sup> The amendment applied to "resident or agricultural landowners, if different from the owner of the mineral estate...",<sup>33</sup> as well as to surface landowners who were not resident or agricultural landowners.<sup>34</sup> The amendment followed Congressional consideration of surface mining regulation and surface owner consent provisions.<sup>35</sup> The language of the 1975 amendment has since remained unchanged.

This surface owner consent provision, section 35-11-406 of the Wyoming Statutes, consists of two paragraphs, paragraph 35-11-406(b)(xi) and paragraph 35-11-406(b)(xii). Paragraph (b)(xi) provides that an instrument of consent must be obtained from a *resident or agricultural landowner*, which the statute defines as a person who holds, or a corporation whose majority stockholder holds, legal or equitable title to the land surface and who either resides or conducts agricultural operations on the land.<sup>36</sup> Paragraph (b)(xii) provides that an application for a surface mining permit shall include "an instrument of consent from the *surface landowner*, if different from the owner of the mineral estate, to the mining plan and reclamation plan."<sup>37</sup> This para-

the statutory language is plain and unambiguous, the words usually should be accorded their plain and ordinary meaning. *Id.* However, when the language may be susceptible of more than one meaning, other sources, such as the legislative history of the statute, may be appropriate. *Tenneco Oil*, 694 P.2d at 100.

28. Wyoming Environmental Quality Act, ch. 250, 1973 Wyo. Sess. Laws 615.

29. WYO. STAT. § 35-11-102 (1988).

30. *Id.* § 35-11-405 (1988).

31. Wyoming Environmental Quality Act, ch. 250, § 35-487.33, 1973 Wyo. Sess. Laws 615.

32. *Id.*, ch. 198, § 35-502.24, 1975 Wyo. Sess. Laws 406, 408 (amended 1975). This amendment is presently codified at WYO. STAT. §§ 35-11-406(b)(xi) and 35-11-406(b)(xii) (1988).

33. Wyoming Environmental Quality Act, ch. 198, § 35-502.24(b)(xi), 1975 Wyo. Sess. Laws 406, 408 (amended 1975).

34. *Id.* § 35-502.24(b)(xii).

35. Haughey & Gallinger, *supra* note 23, at 154-64, 168-69. For a discussion of federal surface mining legislation, see *infra* notes 43-48 and accompanying text.

36. WYO. STAT. § 35-11-406(b)(xi) (1988).

37. *Id.* § 35-11-406(b)(xii) (emphasis added).

graph applies to any privately owned land not covered by paragraph (b)(xi), i.e., to land whose owner is not a "resident or agricultural landowner."<sup>38</sup>

Paragraph (b)(xii) further provides that "[i]f consent cannot be obtained as to the mining plan or reclamation plan or both, the applicant may request a hearing before the environmental quality council."<sup>39</sup> A permit may be issued in lieu of consent if the EQC finds, among other things, "[t]hat the use does not substantially prohibit the operations of the surface owner."<sup>40</sup> Unlike paragraph (b)(xi), whose coverage is limited to "resident or agricultural landowners" who hold title to the surface and live, farm, or ranch on the land,<sup>41</sup> paragraph (b)(xii) applies to all "surface landowners."<sup>42</sup> The statute does not define "surface landowner."

### *Federal Legislation*

Like Wyoming, Congress entered the arena of surface mining regulation with the Surface Mining Control and Reclamation Act of 1977 (SMCRA).<sup>43</sup> The act was designed to protect the rights of "surface landowners and other persons with a legal interest in the land or appurtenances thereto."<sup>44</sup> In order to fully effectuate the purposes of SMCRA, Congress granted to the states the authority to promulgate and enforce laws and regulations and to enforce even stricter controls than those called for by Congress.<sup>45</sup>

In enacting SMCRA, Congress considered surface mining regulation to protect surface owners and lessees.<sup>46</sup> Congress chose to bring

38. *Id.*

39. *Id.*

40. *Id.* The EQC must also find that the mining plan has been submitted to the surface owner for approval, the mining plan shows the full proposed surface use, the proposed plan calls for reclamation of the surface as soon as feasibly possible, and the applicant has the legal authority to conduct surface mining. *Id.*

41. WYO. STAT. § 35-11-406(b)(xi) (1988).

42. *Id.* § 35-11-406(b)(xii). The Land Quality Division of the Department of Environmental Quality interprets "surface owner" and "surface landowner" to include only freehold surface owners. Brief of Appellee, State of Wyoming, at 11, Belle Fourche Pipeline Co. v. State, 766 P.2d 537 (Wyo. 1988) (No. 86-144).

43. Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. §§ 1201-1328 (1982).

44. *Id.* § 1202(b).

45. *Id.* § 1235; 30 C.F.R. § 700.3 (1988). The state shall assume primary responsibility for coal regulation upon submission of a regulation program to the Secretary of the Interior. 30 C.F.R. § 701.4 (1988).

46. The push for a federal surface mining control act began in 1973, when the 93d Congress saw the genesis of what would eventually become SMCRA. That year, the House and Senate Committees on Interior and Insular Affairs each reported out bills pertaining to surface mining legislation. H.R. 11500, 93d Cong., 2d Sess. § 709 (1974). H.R. 11500 provided in pertinent part:

(b) In those instances where the mineral estate proposed to be mined by surface coal mining operations is owned by the Federal Government, and the surface rights are held pursuant to patent, the application for a permit shall include the written consent of the owner or owners of the surface lands involved.

about such protection by narrowly defining "surface owner" as a party holding legal or equitable title to the land surface and residing, farming, or ranching on the affected land.<sup>47</sup> Congress expressed concern that the original provision might lead to speculation, which hopefully would be prevented by narrowly defining "surface owner."<sup>48</sup> This narrow definition survives to this day as a manifestation of the federal intent to protect the interests of surface owners.

*Rights of Surface Occupants, Herein of Lessees*

As previously noted, mineral holders traditionally had free use of the surface estate to the extent reasonably necessary for their operations. However, the trend is away from observing the dominance of the mineral estate and toward granting greater rights to surface occupants.<sup>49</sup> This is due in large part to the destructive effects of surface mineral development. As surface mining may destroy the surface estate, the old rules regarding mineral development do not apply to surface mining.<sup>50</sup> The mineral developer's traditional common-law rights are greatly limited.<sup>51</sup>

In light of the trend toward limiting mineral developers' rights and extending the rights of surface occupants, an examination of the property rights of lessees is appropriate. During the term of the lease, the lessee has the exclusive right to the use and enjoyment of the property;<sup>52</sup> the lessor has the duty not to interfere with the lessee's right

(c) In those instances where the mineral estate proposed to be mined by surface coal mining operations is owned by the Federal Government and the interest in the surface is in the nature of a lease or permit, the application for a permit shall include

(1) the written consent of the permittee or lessee of the surface lands involved to enter and commence surface coal mining operations on such land.

The House noted that the consent of the surface fee owner should be an absolute requirement, while a lesser standard should apply for holders of surface leases from the federal government. H.R. Rep. No. 1072, 93d Cong., 2d Sess. 112 (1974). The Senate version, meanwhile, proposed to protect the surface by prohibiting all leasing of federal coal beneath non-federal land. S. Rep. No. 402, 93d Cong., 2d Sess. (1974).

47. S. 425, 93d Cong., 2d Sess. § 716(g) (1974). S. 425 suffered a presidential veto, as did its successor in the 94th Congress. The 95th Congress finally succeeded in enacting a surface mining control law. H.R. 2, 95th Cong., 1st Sess. (1977). In 1977, the Surface Mining Control and Reclamation Act finally became law with President Carter's signature. The surface owner consent provision is codified at 30 U.S.C. § 1304 (1982).

48. H.R. Rep. No. 1522, 93d Cong., 2d Sess. 81-82 (1974).

49. Truhe, *supra* note 17, at 390-91.

50. *Skivolocki v. East Ohio Gas Co.*, 38 Ohio St.2d 244, 313 N.E.2d 374, 377 (1974).

Time-honored rules of law, meant to insure the mutual enjoyment of severed mineral and surface estates, cannot be blindly applied to resolve a question involving the right to strip mine. This is true, not because those rules lack present vitality, but because they are dependent upon presumptions wholly irrelevant to strip mining.

*Id.*

51. Truhe, *supra* note 17, at 416.

52. *See, e.g., King v. White*, 499 P.2d 585, 590 (Wyo. 1972).

of possession.<sup>53</sup> Additionally, the lessor's interest during the term of the lease is limited to a reversion.<sup>54</sup>

Not only do lessees have rights of use and enjoyment, but also in several jurisdictions, a leasehold for a term for years is tantamount to actual ownership.<sup>55</sup> Furthermore, at least one commentator argues that lessees have a valid interest worthy of protection under a surface owner consent provision such as Wyoming's.<sup>56</sup> Thus, lessees may have a legitimate interest in the protection of the surface, an interest no less worthy than that of fee ownership. The question remained whether surface lessees should enjoy the benefit of Wyoming's surface owner consent provisions. This was the question faced in *Belle Fourche Pipeline Co. v. State*.

#### PRINCIPAL CASE

In *Belle Fourche Pipeline*, a case of first impression, the Wyoming Supreme Court declared that holders of interests constituting less than fee ownership are not "surface owners" within the consent and bonding provisions of the Environmental Quality Act.<sup>57</sup> The unanimous opinion by Justice Thomas first attempted to discern the intent of the legislature in enacting the provisions, using common statutory analysis.<sup>58</sup> The opinion relied upon the dictionary definition of "owner" to ascertain the meaning of "surface landowners" in the statute. Since the term "owner" is limited to the holder of title, the court held that a surface owner is the owner in fee of the surface estate.<sup>59</sup>

Next, the court considered whether a lessee is the equivalent of an owner in fee. The court acknowledged that a leasehold is an interest

53. *Diamond Cattle Co. v. Clark*, 52 Wyo. 265, 296, 74 P.2d 857, 866 (1937).

54. *Wing v. Martin*, 107 Idaho 267, 688 P.2d 1172, 1177 (1984); *Ferguson v. District Court of Oklahoma County*, 544 P.2d 498, 499 (Okla. 1975).

55. *E.g.*, *People v. Hardt*, 329 Ill. App. 153, 67 N.E.2d 487, 489 (1946) (while an injured party must have an interest in property to be protected by the Illinois malicious mischief statute, a leasehold is sufficient; legal title is unnecessary); *Offutt Housing Co. v. County of Sarpy*, 160 Neb. 320, 70 N.W.2d 382, 390 (1955) (seventy-five year lease treated as equivalent of absolute ownership); *Yrisarri v. Wallis*, 76 N.M. 776, 418 P.2d 852, 854 (1966) (lessee's interest equivalent to absolute ownership during life of lease); *Ferguson*, 544 P.2d at 499 (estate of lessor is limited to reversion).

56. Beck, *Surface Owner Consent Laws: The Agricultural Enterprise Versus Surface Mining for Coal*, 1977 S. ILL. U.L.J. 303, 310-11.

57. *Belle Fourche Pipeline*, 766 P.2d at 549. The court also held that Chapter IV, Section 3.k. of the Land Quality Division Rules and Regulations, requiring surface mine operators to minimize disruption of facilities in the permit area, was not unlawful. *Id.* at 550.

58. *Id.* at 542.

59. *Id.* at 542-43 (citing BLACK'S LAW DICTIONARY at 996). BLACK'S LAW DICTIONARY begins its treatment of "owner" by defining it as the title holder but goes on to state that the word's meaning is to be derived from context. BLACK'S LAW DICTIONARY 996 (5th ed. 1979). An "owner" of land is usually the owner of the fee, but the term may also apply to a holder of a possessory right to the land. *Id.* It may even apply to a tenant for years. BALLENTINE'S LAW DICTIONARY 707 (3d ed. 1969).



in realty but stated that a leasehold is not a freehold.<sup>60</sup> Since its own definition of "surface owner" was limited solely to freeholders of the surface, the court concluded that Eighty-Eight, as a lessee, was not protected under the statute.<sup>61</sup>

To further justify its holding, the court also considered Wyoming legislative history in the context of traditional mining law and the legislative history surrounding SMCRA. It recalled the mineral estate's traditional dominance and private individuals' acquisition under the early land acts of public lands.<sup>62</sup> The court observed that the land acts used a variety of terms equating to "ownership" of the surface.<sup>63</sup> It, however, did not go beyond the language of the acts when determining that the acts protected owners of the fee. The court then noted the increasing diversity of land uses, including surface mining, and the need for mining control and reclamation legislation to protect the environment and to lessen damage to agricultural lands.<sup>64</sup> It decided that the Wyoming Legislature, in enacting the EQA, intended to protect fee owners only. The court reasoned that, because SMCRA took a narrow definition and the legislature probably had access to drafts of the early versions of SMCRA, the legislature must have intended only a narrow definition of "surface owner."<sup>65</sup>

Lastly, the court predicted that if lessees were entitled to protection, the development of surface mining would "indeed be limited."<sup>66</sup> It expressed concern that if all "owners of surface rights" were protected, holders of "insignificant rights to the surface" might be able to veto coal development or even commit extortion.<sup>67</sup> The court concluded that the legislature could not have intended to hinder surface mining; rather, the intent was to permit mining while protecting both the land surface and a narrow class of landowners.<sup>68</sup>

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60. *Belle Fourche Pipeline*, 766 P.2d at 543 (citing *King*, 499 P.2d at 589). In *King*, White, a lessee of certain school lands, claimed ownership of the water rights on those lands. He contended that he was entitled to payment for the water rights according to statute. *Id.* at 586. The statute at issue provided that when a lessee has made improvements upon, or acquired the water rights on, state lands, the lessee may be paid the value of the improvements or water rights when the land is sold. WYO. STAT. § 36-9-105 (1977). The Wyoming Supreme Court held that, since White's lease made no mention of the water rights and he had not paid for them, he was not entitled to ownership of or compensation for the rights. *King*, 499 P.2d at 588. The court noted that White, as a lessee, lacked title to the water rights and was "not such owner as [was] contemplated by the statute relied upon." *Id.* at 589-90.

61. *Belle Fourche Pipeline*, 766 P.2d at 543-44. By a similar analysis, the court also determined that an easement holder was not protected by the surface owner consent statute. *Id.* at 543.

62. *Id.* at 544-45.

63. *Id.* at 545.

64. *Id.* at 546.

65. *Id.* at 546-47.

66. *Id.* at 548-49.

67. *Id.* at 549.

68. *Id.*

## ANALYSIS

In *Belle Fourche Pipeline*, the Wyoming Supreme Court determined that the words "surface owner" and "surface landowner" in the EQA consent and bonding provisions were not intended to encompass lessees. In construing statutory language, the court viewed the language in light of its intent and purpose. The court's analysis, however, is superficial and sheds little insight into what actually motivated the Wyoming Legislature to enact the provision. In particular, the court failed to consider the rights of lessees and the state's power under SMCRA to enact more stringent and broader-reaching legislation than SMCRA itself.

While the supreme court noted correctly that when statutory language is unambiguous there is no need for construction,<sup>69</sup> it failed to consider the ambiguities inherent in the term "owner" when citing the dictionary entries that define "owner" as holder of title.<sup>70</sup> Since context must dictate the meaning of "ownership" in a given situation, and since "landowner" may include a tenant for years,<sup>71</sup> the court erred in treating the term "owner" as unambiguously meaning the holder of the fee. As a result, the court's simplistic approach collapses with regard to lessees. The dictionary definition of "owner" includes leaseholders as potential landowners.<sup>72</sup>

Furthermore, while the court cited *King* for the proposition that a leasehold is not a freehold,<sup>73</sup> its concern in *King* was with whether a lessee had sufficient "ownership" rights to be compensated on transferring them; the court concluded that a lessee was "not such owner as [was] contemplated" by the statute governing transfer of state lands.<sup>74</sup> In contrast, the court's concern in *Belle Fourche Pipeline* was with consent to mine the surface, not with the "ownership" of a particular commodity. As the overarching purpose of the EQA is to protect surface interests from the harmful effects of surface mining,<sup>75</sup> rather than merely to regulate "ownership" interests, the court's reliance on *King* was misplaced in this context.

Not only did the court ignore the import of the very authorities on which it purported to rely, it disregarded its own prior decisions concerning lessees' rights. A lessee has the right to the use and enjoyment of the leasehold during the term of the lease.<sup>76</sup> Furthermore, the lessee has the right to *quiet enjoyment* of the leased property: the lessor *must not interfere* with the lessee's right to possession.<sup>77</sup> ARCO breached the duty it owed to Eighty-Eight when it planned to mine the surface

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69. *Id.* at 542.

70. *Id.*

71. BLACK'S LAW DICTIONARY at 996; BALLENTINE'S LAW DICTIONARY at 707.

72. *Id.*

73. *Belle Fourche Pipeline*, 766 P.2d at 543 (citing *King*, 499 P.2d at 589).

74. *King*, 499 P.2d at 588.

75. WYO. STAT. § 35-11-102 (1988).

76. *See King*, 499 P.2d at 590.

77. *Diamond Cattle*, 52 Wyo. at 296, 74 P.2d at 866.

of Section 21 without Eighty-Eight's consent and without paying Eighty-Eight's moving expenses; by denying Eighty-Eight the protection of the surface owner consent law, the supreme court tacitly authorized ARCO's breach of duty.

The court also disregarded authority from other jurisdictions holding that, for all practical purposes, a long-term leasehold equates to absolute ownership.<sup>78</sup> Although the injured party must have an interest in the property, the party need not hold legal title; a leasehold is sufficient.<sup>79</sup> Thus, a surface lessee whose interest is jeopardized by imminent surface mining should have the same right to issue—or withhold—consent as a fee owner. Furthermore, as the lessor has only a reversion,<sup>80</sup> the lessee has a greater immediate interest in the protection of the surface than does the lessor. Despite ARCO's ownership of the fee reversion, Eighty-Eight, the holder of a ninety-nine year lease, had more to lose in its immediate future—its very business. Yet the court failed to consider Eighty-Eight's rights and needs.

Having unduly narrowed the meaning of the statutory language through its reliance on a constrained reading of dictionary definitions and its disregard of lessees' rights, the court chose to test its result on the legislative history of the statutes involved. Its preoccupation with the protection of agricultural interests provided by the early land acts, however, resulted in the court failing to take into account the expanding of land uses to include industrial as well as agricultural uses. Yet the EQA itself was a response to one of the most deleterious effects of that expansion, the harm done to surface lands and surface land interests by coal mining.

One purpose of the EQA is to protect beneficial uses of the surface, encompassing not only residential and agricultural uses but also industrial uses.<sup>81</sup> Limiting the statute's coverage to fee owners does not satisfy this purpose, when lessees also engage in the very uses the statute was designed to protect. Eighty-Eight's truck receiving station, as an integral part of the oil and gas industry, was just such an industrial use. Were Eighty-Eight the owner of the fee, its interest would be protected; the mere fact that Eighty-Eight's interest happened to be a *ninety-nine year lease* should not preclude Eighty-Eight from receiving the same protection as a fee owner engaged in the same uses. Furthermore, were Eighty-Eight a resident or agricultural landowner who happened to hold *equitable* title, ARCO would need its consent to begin mining operations.<sup>82</sup> To grant the protection of the surface owner con-

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78. *Offutt Housing*, 418 P.2d at 854.

79. *Offutt Housing*, 160 Neb. at \_\_\_\_, 70 N.W.2d at 390; *Yrisarri*, 418 P.2d at 854; *Ferguson*, 544 P.2d at 499. While these cases are not binding on Wyoming, they indicate the trend in other jurisdictions.

80. *Wing*, 688 P.2d at 1177; *Ferguson*, 544 P.2d at 499. The lessee's interest, during the lifetime of the lease, equates to absolute ownership. *Yrisarri*, 418 P.2d at 854.

81. WYO. STAT. § 35-11-102 (1988).

82. *See id.* § 35-11-406(b)(xi).

sent provisions to a holder of equitable title while denying that same protection to a ninety-nine-year leaseholder, whose interest is tantamount to absolute ownership, is to create a distinction without a difference.

Rather than considering the EQA's stated purpose, the court decided that, because Congress was contemplating surface mining regulations—SMCRA—at the time the Wyoming Legislature amended the EQA to differentiate among the various owners of the surface, the legislature must have responded to Congress' narrow definition of "surface owner."<sup>83</sup> Congress designed its definition of "surface owner," limiting the protection to resident or agricultural landowners holding title for at least three years,<sup>84</sup> to extend some protection to owners of surface interests while alleviating the possibility of speculators taking undue advantage of the provisions and thereby reaping a windfall.<sup>85</sup>

The Wyoming Legislature, however, was not restricted to the Congressional definition, as Congress extended to the states the authority to enact surface mining laws going beyond SMCRA.<sup>86</sup> Thus, the legislature was free to pass surface owner consent legislation extending protection to holders of interests other than the fee. In fact, in enacting section 35-11-406(b)(xii), the Wyoming Legislature extended protection beyond the resident and agricultural landowners encompassed by SMCRA. This indicates the legislature's intent to extend protection beyond Congress's definition.

Furthermore, in light of the Congressional desire to control rampant speculation in surface lands, the court's concern with holders of "insignificant interests" ransoming coal development was misguided. The provision in section 35-11-406(b)(xii) of the Wyoming Statutes allowing for issuance of a permit in lieu of consent if certain criteria are met<sup>87</sup> provides adequate protection against both speculation and extortion; the statute need not be read to exclude valid, significant interests solely in the interest of preventing evils against which the statute itself already protects.

#### CONCLUSION

In *Belle Fourche Pipeline Co. v. State*, the Wyoming Supreme Court held that holders of surface leases were not entitled to the protection provided by the consent and bonding provisions of the Environmental Quality Act. Yet by attempting to evaluate the legislative intent of the EQA solely through dictionary definitions, the court undermined its own principle of viewing statutory language in light of its object and purpose. Furthermore, in its consideration of the legislative intent

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83. *Belle Fourche Pipeline*, 766 P.2d at 548.

84. *Id.*

85. H.R. Rep. No. 1522, *supra* note 48, at 81-82.

86. 30 U.S.C. § 1235 (1982); 30 C.F.R. § 700.3 (1988).

87. WYO. STAT. § 35-11-406(b)(xii) (1988).

of the statute through the history of the early land acts, the court gave short shrift to the object and purpose of current surface mining legislation. That purpose is to protect surface lands and valuable uses, including industrial uses, of the surface while guarding against speculation. The Environmental Quality Act's surface owner consent provision carries out its purposes without limiting its protection to owners of the fee.

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