

1996

Wyoming's Royalty Payment Act

Bradin Hay

Follow this and additional works at: https://scholarship.law.uwyo.edu/land_water

Recommended Citation

Hay, Bradin (1996) "Wyoming's Royalty Payment Act," *Land & Water Law Review*. Vol. 31 : Iss. 2 , pp. 823 - 838.

Available at: https://scholarship.law.uwyo.edu/land_water/vol31/iss2/26

This Special Section is brought to you for free and open access by Law Archive of Wyoming Scholarship. It has been accepted for inclusion in Land & Water Law Review by an authorized editor of Law Archive of Wyoming Scholarship.

Wyoming's Royalty Payment Act

Brandin Hay*

INTRODUCTION

Wyoming's Royalty Payment Act¹ was enacted by the Wyoming legislature effective June 1, 1982 to ensure the "proper payment of proceeds derived from production of oil, gas or related hydrocarbons" by "providing time limits within which payments must be made" and also by mandating "penalty interest to be paid on delayed payments" and shifting "payment of costs, penalties and attorney fees" to recalcitrant royalty payors.² Amendments to the Act in 1989³ provided definitions for key terms in the Act, mandated uniform payment reports to owners of royalties, and penalized payors of royalties for failing to make proper payment reports.⁴ The Royalty Payment Act is a "remedial statute" to be "liberally construed to achieve [its] remedial purpose."⁵ The Act's fairly harsh penalty provisions⁶ are intended to punish hydrocarbon producers who delay making royalty payments.⁷ The Act, however, does not apply retroactive-

* Brandin Hay is an associate attorney with the Cheyenne, Wyoming firm of Dray, Madison & Thomson, P.C. Mr. Hay grew up in Boise, Idaho, the son of Magistrate Judge Charles L. Hay. He attended the University of Utah in Salt Lake City, earning his bachelor's degree *summa cum laude* in geography in 1989. He attended law school at Drake University in Des Moines, Iowa, graduating valedictorian of his class in May, 1992. His practice in Wyoming has concentrated on corporate law and taxation; oil and gas law; employment law; and wills, trusts and estate planning.

1. WYO. STAT. §§ 30-5-301 to -305 (1983 & Supp. 1995). Though the Act as adopted by the Wyoming legislature was entitled "Payment for Oil and Gas Production Interest," 1982 Wyo. Sess. Laws ch. 27, the Wyoming Supreme Court in its first decision interpreting the Act called it the "Royalty Payment Act." *Independent Producers Mktg. Corp. v. Cobb*, 721 P.2d 1106, 1107 (Wyo. 1986). This nomenclature has continued through several of the Court's decisions since *Cobb* interpreted the Act. *State v. BHP Petroleum Co.*, 804 P.2d 671, 673 (Wyo. 1991) (Urbigkit, J., dissenting) (referring to the Act as "Stroock/Urbigkit Oil Royalties Non-Payment Act"); *Moncrief v. Harvey*, 816 P.2d 97, 104 (Wyo. 1991); *Cities Serv. Oil & Gas Corp. v. State*, 838 P.2d 146, 156 (Wyo. 1992); *Ferguson v. Coronado Oil Co.*, 884 P.2d 971, 979 (Wyo. 1994).

2. 1982 Wyo. Sess. Laws ch. 27, preamble.

3. 1989 Wyo. Sess. Laws ch. 255.

4. *Id.*

5. *Moncrief*, 816 P.2d at 105; see *Cities Serv.*, 838 P.2d at 156. In fact, in the Wyoming Supreme Court's first decision interpreting the Act, *Independent Producers Mktg. Corp. v. Cobb*, 721 P.2d 1106, 1110 (Wyo. 1986), the Court concluded bluntly that the legislature's "obvious intent" was to "stop oil producers from retaining other people's money for their own use."

6. The Act mandates 18% interest on late royalty payments and shifts costs and attorney's fees to mineral producers who unsuccessfully oppose the Act's application. WYO. STAT. § 30-5-303 (1983 & Supp. 1995).

7. See, e.g., *Moncrief*, 816 P.2d at 99; *Cities Serv.*, 838 P.2d at 147.

ly.⁸ Nor does it apply to noncontractual relationships between hydrocarbon producers and mineral interest owners.⁹ The Wyoming Supreme Court has consistently applied its well-settled principles of statutory construction¹⁰ to its several interpretations of the Act. In doing so, the Court has preserved the Act's effectiveness and carefully and correctly defined its scope.

This article explains the provisions of Wyoming's Royalty Payment Act and examines the Wyoming Supreme Court's several interpretations of the Act. Part II explains the nature of the property interests to which the Act applies. Part III sets forth the Act's principal components. Part IV explains the four key issues addressed by the Wyoming Supreme Court in its interpretations of the Act: (1) retroactivity; (2) operator knowledge of royalty nonpayments; (3) how the Act applies to a "typical" royalty non-payment situation; and (4) whether the Act applies to noncontractual claims for relief. Hopefully, this article will give Wyoming practitioners a clear understanding of when the Royalty Payment Act applies to a royalty question, and will also provide attorneys with practical knowledge of how the Act actually works.

OIL AND GAS ROYALTIES

The Royalty Payment Act applies to the "payment of proceeds derived from production of oil, gas or related hydrocarbons."¹¹ Generally, a "landowner may create three types of interests in oil and gas—leasehold interests, mineral interests, and royalty interests."¹² An oil and gas lease is a "right granted by the holder of the mineral estate giving one lessee the authority to search for oil and gas and to remove either if found."¹³ "[A mineral interest] is an estate in fee simple in and to the minerals."¹⁴ A royalty interest is less than a mineral interest; it gives the owner thereof a

8. *Cobb*, 721 P.2d at 1109-10.

9. *ANR Prod. Co. v. Kerr McGee Corp.*, 893 P.2d 698, 705 (Wyo. 1995) ("The Act presupposes that the party who was responsible for the payment had a right and an obligation to sell the hydrocarbons for the party who was legally entitled to receive the proceeds."). See *infra* notes 123-47.

10. See generally *Parker Land & Cattle Co. v. Wyoming Game & Fish Comm'n*, 845 P.2d 1040, 1042-45 (Wyo. 1993), for an excellent discussion of the principles of statutory construction. See also Leonard R. Carlman, Casenote, *Wildlife-Private Property Damage Law*, 29 LAND & WATER L. REV. 89, 96-97 (1994).

11. 1982 Wyo. Sess. Laws ch. 27, preamble. On its face, the Act does not apply to hardrock minerals, trona, gravel, or other minerals produced in Wyoming.

12. Mark W. Gifford, *The Law of Oil and Gas in Wyoming: An Overview*, 27 LAND & WATER L. REV. 401, 404-05 (1982).

13. *Id.* at 405 (citing *Boatman v. Andre*, 12 P.2d 370 (Wyo. 1932)).

14. *Id.* (quoting *Picard v. Richards*, 366 P.2d 119 (Wyo. 1961)).

share of minerals severed from the estate, or of the proceeds from their sale.¹⁵ Unlike the owner of the entire mineral interest, the owner of a royalty interest does not have the right to go upon the premises to search for and recover minerals.¹⁶ Typically, the owner of the mineral interest executes an oil and/or gas lease with an oil company to produce hydrocarbons in exchange for a royalty interest in or based upon any production.¹⁷ The Royalty Payment Act was enacted to ensure that royalty interest owners are timely and correctly paid by hydrocarbon producers pursuant to oil and gas leases.¹⁸

THE ACT

As originally enacted in 1982, Wyoming's Royalty Payment Act, similar to legislation in several other states,¹⁹ had four principal components: (1) a time limit in which royalty payments had to be made "to persons legally entitled thereto" by the lessee, operator, or other person contractually obligated to make payments;²⁰ (2) an escrow provision by which the royalty payor could deposit royalties that could not be paid within the statutory time limit into an interest-bearing escrow account;²¹

15. *Id.* at 405 n.16 (quoting 1 H. WILLIAMS & C. MEYERS, OIL AND GAS LAW § 202.3 (1981)).

16. *Id.*

17. *See, e.g., Moncrief*, 816 P.2d at 100-01 (State of Wyoming as landowner executed oil and gas lease to individual who assigned lease to Texaco; State reserved to itself a one-eighth royalty interest in Texaco's production).

18. *Cobb*, 721 P.2d at 1110.

19. *See, e.g.,* ALA. CODE § 9-17-33 (Supp. 1995); ARK. CODE ANN. § 15-74-601 to -605 (Michie 1994); IND. CODE ANN. § 32-5-9-1 (Burns 1995); LA. REV. STAT. ANN. § 31-137 to -142 (West 1989 & Supp. 1996); MISS. CODE ANN. § 53-3-39 (Supp. 1995); MONT. CODE ANN. § 82-10-103 (1995); N.M. STAT. ANN. § 70-10-1 to -6 (1995); N.D. CENT. CODE § 47-16-39.1 (Supp. 1995); OKLA. STAT. tit. 52, § 570.10 (Supp. 1996); TEX. NAT. RES. CODE ANN. § 91.402 (West 1993 & Supp. 1996).

20. WYO. STAT. § 30-5-301(a) (1983):

The proceeds derived from the sale of production from any well producing oil, gas or related hydrocarbons in the state of Wyoming shall be paid to all persons legally entitled thereto, except as hereinafter provided, commencing not later than six (6) months after the first day of the month following the date of first sale and thereafter not later than sixty (60) days after the end of the calendar month within which subsequent production is sold, unless other periods or arrangements for the first and subsequent payments are provided for in a valid contract with the person or persons entitled to such proceeds. Payment shall be made directly to the person or persons entitled thereto by the lessee or operator or by any party who assumes such payment obligation under any legal arrangement.

21. *Id.* § 30-5-302:

Any delay in determining any person legally entitled to an interest in the proceeds from production shall not affect payments to all other persons entitled to payment. In instances where payment cannot be made for any reason within the time limits specified in W.S. 30-5-301(a), the lessee or operator, purchaser or other party legally responsible for payment

(3) a penalty interest provision mandating that untimely paid royalties bear eighteen percent annual interest until paid;²² and (4) a provision shifting attorney's fees and costs to the payor in the event royalty owners pursued successful litigation to compel royalty payments.²³ The escrow provision was intended to relieve royalty payors from the penalty provisions of the 1982 Act "in instances where payment cannot be made for any reason within the time limits specified in W.S. 30-5-301(a)."²⁴

The Wyoming legislature amended the 1982 Act in 1989 to define key terms, including "lessee,"²⁵ "lessor,"²⁶ "operator,"²⁷ and "royalty."²⁸ The 1989 amendments required payors to provide royalty owners a de-

shall deposit all proceeds credited to the eventual interest owner to an escrow account in a federally insured bank or savings and loan institution in Wyoming, using a standard escrow document form approved by the attorney general of Wyoming, which deposit shall earn interest at the highest rate being offered by that institution for the amount and term of such deposits. The escrow agent may commingle monies received into escrow from any one lessee or operator, purchaser or other party legally responsible for payment. Payment of principal and accrued interest from such accounts shall be paid by the escrow agent to all persons legally entitled thereto within thirty (30) days from the date of receipt by the escrow agent of final legal determination of entitlement thereto. Applicable escrow fees shall be deducted from the payments.

22. *Id.* § 30-5-303(a):

Any lessee or operator, purchaser or other party legally responsible for payment who violates the provisions of this article is liable to the person or persons legally entitled to proceeds from production for the unpaid amount of such proceeds, plus interest at the rate of eighteen percent (18%) per annum on the unpaid principal balance from the due date specified in W.S. 30-5-301(a).

23. *Id.* § 30-5-303(b):

The district court for the county in which a well producing oil, gas or related hydrocarbons is located has jurisdiction over all proceedings brought pursuant to this article and the prevailing party in any proceedings brought pursuant to this article shall be entitled to recover all court costs and reasonable attorney's fees.

24. *Id.* § 30-5-302; *Moncrief*, 816 P.2d at 105 ("[t]he payor needs merely to deposit the disputed proceeds in an escrow account to avoid paying penalty interest"). As soon as a royalty payor learns that payments are or will be disputed, it should immediately place the disputed amounts into a "federally insured" escrow account, "using a standard escrow document form approved by the attorney general of Wyoming," bearing the highest market interest possible. If the payor does so, it will not be required to pay 18% penalty interest in the event it loses its dispute with the royalty interest owner. WYO. STAT. § 30-5-302 (Supp. 1995).

25. WYO. STAT. § 30-5-304(a)(i) (Supp. 1995) ("'Lessee' means 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 a working interest. The lessee pays all costs of production out of his interest, the lessor's interest being free and clear of all those costs.").

26. *Id.* § 30-5-304(ii) ("'Lessor' means 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.").

27. *Id.* § 30-5-304(iii) ("'Operator' means a person engaged in the business of drilling and producing wells for oil and gas."). For convenience, this article will use the term "operator" to denote those persons and entities with the obligation to make royalty payments.

28. *Id.* § 30-5-304(vii) ("'Royalty' means the mineral owner's share of production, free of the costs of production.").

tailed statement of royalty payment information.²⁹ The 1989 amendments also added an additional \$100.00 per month penalty for payors who failed to supply this required report with royalty payments.³⁰ Finally, the 1989 amendments ensured that "division orders" of the Wyoming Oil and Gas Conservation Commission entered pursuant to sections 30-5-101 through 30-5-305 of the Wyoming Statutes could not "alter or amend the terms of an oil or gas lease or other contractual agreement."³¹ The Wyoming Supreme Court has yet to consider this aspect of the Act. (A minor amendment to the Act in 1993³² treats unclaimed escrow deposits as unclaimed property under Wyoming's Uniform Unclaimed Property Act.³³)

WYOMING SUPREME COURT DECISIONS INTERPRETING THE ACT

The Wyoming Supreme Court has considered the Royalty Payment Act on six occasions.³⁴ Generally, the decisions have focused on four different issues raised by the Act: (1) retroactivity;³⁵ (2) the operator's knowledge in failing to make royalty payments;³⁶ (3) the "nuts and bolts" application of the Act;³⁷ and (4) the Act's application to noncontractual relationships and claims for relief between producers and royalty interest payees.³⁸ Each decision has required the Court to interpret the Act and discuss the Wyoming legislature's intent in enacting it. The decisions demonstrate the Court's consistency in applying its principles of statutory interpretation³⁹ and its common sense understanding of the purpose and reach of the Act.

29. *Id.* § 30-5-305(b). The payment statements must include information identifying the amount of production; the price of hydrocarbons produced; the amount of state severance, ad valorem and other production taxes paid; the owner's interest in the total value of sales, expressed as a decimal; the royalty owner's share of total sales both before and after deductions; and an address to which the royalty owner may write the payor to seek additional information.

30. *Id.* § 30-5-303(c).

31. *Id.* § 30-5-305(a).

32. 1993 Wyo. Sess. Laws ch. 213; WYO. STAT. § 30-5-302 (Supp. 1995).

33. WYO. STAT. § 34-24-101 to -134 (Supp. 1995).

34. *Independent Producers Mktg. Corp. v. Cobb*, 721 P.2d 1106 (Wyo. 1986); *State v. BHP Petroleum Co.*, 804 P.2d 671 (Wyo. 1991); *Moncrief v. Harvey*, 816 P.2d 97 (Wyo. 1991); *Cities Serv. Oil & Gas Corp. v. State*, 838 P.2d 146 (Wyo. 1992); *Ferguson v. Coronado Oil Co.*, 884 P.2d 971 (Wyo. 1994); and *ANR Prod. Co. v. Kerr-McGee Corp.*, 893 P.2d 698 (Wyo. 1995).

35. *See, e.g., Cobb*, 721 P.2d at 1109; *Moncrief*, 816 P.2d at 106; and *Cities Serv.*, 838 P.2d at 146.

36. *See, e.g., BHP Petroleum Co.*, 804 P.2d at 673; *Moncrief*, 816 P.2d at 97; and *Cities Serv.*, 838 P.2d at 146.

37. *See, e.g., Moncrief*, 816 P.2d at 104-05.

38. *Ferguson*, 884 P.2d 978-79 and *ANR Prod.*, 893 P.2d at 705-06.

39. *See, e.g., Parker Land & Cattle Co.*, 845 P.2d at 1042-45.

Retroactivity

In *Independent Producers Marketing Corp. v. Cobb*,⁴⁰ the Wyoming Supreme Court's first discussion of the Royalty Payment Act, the Court refused to apply the Act retroactively to nonpayment of royalties occurring prior to the Act's effective date, June 1, 1982.⁴¹ However, the Court did apply the Act to hydrocarbon production occurring prior to June 1, 1982.⁴² In *Cobb*, the royalty owner was not paid royalties by the operator of the lease until 1984, almost two years after the effective date of the Act.⁴³ She filed suit against the operator in June, 1985, seeking payment plus statutory penalties.⁴⁴ The royalty owner calculated her interest penalty "by adding the six-month withholding period of § 30-5-301(a) . . . to the effective date of the Act and applying the interest penalty of eighteen percent (18%) from that date (December 1, 1982) [until] the date she was finally paid (April 23, 1984)."⁴⁵ Admittedly, the unpaid royalties arose from production that occurred prior to the effective date of the Act.⁴⁶ The district court accepted the royalty owner's calculation and entered summary judgment against the operator for the unpaid royalties, penalty interest, and attorney's fees.⁴⁷

On the operator's appeal, the Wyoming Supreme Court affirmed the district court's decision.⁴⁸ The Court noted that "[t]he sole issue presented in this appeal is whether an interest penalty can be assessed against a payor who withheld royalty payments on oil or gas that was produced prior to the effective date of the Royalty Payment Act."⁴⁹ Initially, the Court rejected any retrospective application of the Royalty Payment Act; because the Act contained no "explicit retroactivity language," it could only be applied prospectively.⁵⁰ However, the Court concluded that the district court correctly applied the Act to *production* occurring before the enactment of the Act, if royalty payments based on that production were not timely made six months after the Act's effective date.⁵¹ Under section 30-5-303(a) of the Wyoming Statutes, penalty interest is calculated "from

40. 721 P.2d 1106 (Wyo. 1986).

41. 1982 Wyo. Sess. Laws ch. 27, § 2.

42. *Cobb*, 721 P.2d at 1109-10.

43. *Id.* at 1107-08.

44. *Id.* at 1008.

45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.* at 1110.

49. *Id.* at 1107.

50. *Id.* at 1109.

51. *Id.* at 1109-10.

the due date” for royalty payments specified in section 30-5-301. Under section 30-5-301, royalties must be paid no later than six months after the first day of the month in which the first actual sales of hydrocarbon take place. Therefore, the Court in *Cobb* concluded that calculation of penalty interest from a date six months after the effective date of the Act would not result in retrospective application of the Act.⁵² “The Act is not applied retroactively just because the proceeds happen to be generated by production that occurred prior to the Act’s effective date.”⁵³

The Court concluded that its interpretation of the Act in *Cobb* “ma[de] good sense.”⁵⁴ Otherwise, producers who withheld payments on production before 1982 would pay no penalties, while those who withheld payments only after the Act’s enactment would face penalty interest and attorney’s fees.⁵⁵ The Court’s interpretation of the Act was “consistent with the legislature’s obvious intent to stop oil producers from retaining other people’s money for their own use.”⁵⁶

Retroactivity issues were raised in two other Wyoming Supreme Court decisions interpreting the Royalty Payment Act.⁵⁷ In *Moncrief v. Harvey*,⁵⁸ sales of gas from a well in Natrona County commenced on January 13, 1981, and the operator of the well underpaid royalties on gas production from that date.⁵⁹ The trial court awarded the royalty interest owner eighteen percent penalty interest on production occurring during and after September 1982.⁶⁰ Relying on *Cobb*, the Wyoming Supreme Court determined that the operator of the well was similarly entitled to a six-month “grace period” following the effective date of the Royalty Payment Act with respect to unpaid royalties on production occurring before June 1, 1982.⁶¹ Thus, it reversed the trial court’s award of eighteen percent penalty interest under the Act from September 1982, and ruled that penalty interest under the Act began accruing on January 1, 1993.⁶²

52. *Id.* at 1110.

53. *Id.* at 1109.

54. *Id.* at 1110.

55. *Id.*

56. *Id.*

57. *Moncrief v. Harvey*, 816 P.2d 97 (Wyo. 1991); and *Cities Serv. Oil & Gas Corp. v. State*, 838 P.2d 146 (Wyo. 1992).

58. 816 P.2d 97 (Wyo. 1991).

59. *Id.* at 103, 105.

60. *Id.* at 106.

61. *Id.* (citing *Cobb*, 721 P.2d at 1109-10).

62. *Id.* Since production occurred on June 1, 1982, “six (6) months after the first day of the month following the date of first sale” is January 1, 1993. WYO. STAT. § 30-5-301(a) (1983).

In *Cities Service Oil & Gas Corp. v. State*,⁶³ the Wyoming Supreme Court again modified a trial court's award of eighteen percent penalty interest to give an operator the benefit of the "six-month 'grace period' recognized in *Cobb* and [*Moncrief*] for production and sales which predated the effective date of the Royalty Payment Act."⁶⁴ *Cities Service* contains the clearest statement by the Court of the method of calculating eighteen percent penalty interest to avoid retroactive application of the Act:

[R]oyalty payments which [the operator] owed the State [of Wyoming] under [its] Lease . . . for production and sales prior to and immediately following the effective date of the Royalty Payment Act (for production and sale from January 1, 1981 through October 31, 1982) began accruing interest on January 1, 1983. Additional royalty payments for production (under [the] Lease . . .) from November 1, 1982 through December 31, 1984 began accruing interest not later than sixty calendar days after the end of the calendar month within which sales were made. (For example, sales made during November, 1982 began accruing royalty penalty interest on January 30, 1983.).⁶⁵

The *Cities Service* decision with respect to retroactivity is completely consistent with the Royalty Payment Act's mandated payment periods.⁶⁶ It is also completely consistent with *Cobb* and *Moncrief* with respect to unpaid royalties on production occurring prior to June 1, 1982. Though practitioners today may not ever need to calculate Royalty Payment Act penalty interest with retroactivity in mind, *Cobb*, *Moncrief*, and *Cities Service* demonstrate exactly how such calculations need to be made.

The Operator's Knowledge of Nonpayment of Royalties

In several cases the Wyoming Supreme Court has grappled with the issue of the operator's knowledge of its nonpayment or underpayment of royalties. Since the Royalty Payment Act is punitive, the Court has consistently required proof that the operator has some knowledge of its "culpable" conduct before it will apply the Act's penalty provisions.

In *State v. BHP Petroleum Co.*,⁶⁷ the State held a royalty interest in production by BHP from a federal oil and gas unit in Natrona and

63. 838 P.2d 146 (Wyo. 1992).

64. *Id.* at 157.

65. *Id.*

66. WYO. STAT. § 30-5-301(a) (1983).

67. 804 P.2d 671 (Wyo. 1991).

Fremont Counties.⁶⁸ In January 1987, BHP tendered to the State unpaid royalties for production between October 1979 and June 1982.⁶⁹ It also tendered penalty interest for late payments dating from December 1982 through January 1987.⁷⁰ BHP's royalty underpayments resulted from its own production audit, and not from any demands for payment by the State.⁷¹ Nonetheless, the State contended it was entitled to interest on delayed royalty payments for the period before June 1982.⁷² The State argued it was entitled to interest at seven percent⁷³ based upon the principle of "unjust enrichment."⁷⁴ The district court disagreed, granting BHP's motion for summary judgment on this issue.⁷⁵

On the State's appeal, the Wyoming Supreme Court affirmed.⁷⁶ Unlike the situation in *Cobb*, the operator in *BHP* paid royalties plus penalty interest for delayed payments after December 1, 1982. The State agreed that the Royalty Payment Act's eighteen percent penalty provision could not apply retrospectively.⁷⁷ The Court rejected the State's attempt to obtain seven percent interest because it had not demanded payment of BHP's underpaid royalties at any time before BHP tendered those payments.⁷⁸ Without either a statute in place to require penalty interest, or a demand from the royalty owner for payment, there could be no "unjust enrichment" of the producer. This result is consistent with the general rule that prejudgment interest begins to run upon conversion of personal property only after a demand for payment has been made by the plaintiff.⁷⁹

In contrast to *BHP*, the operator in *Moncrief v. Harvey*⁸⁰ was well aware of a royalty payment demand from the royalty interest owner, yet "held back his money, thereby reaping the benefit of possession of money."⁸¹ Thus, under ordinary principles of conversion,⁸² the royalty payee

68. *Id.* at 671.

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.* at 672.

73. *Id.* The State's argument was based upon the Wyoming Supreme Court's decisions in *O's Gold Seed Co. v. United Agri-Products Fin. Servs., Inc.*, 761 P.2d 673 (Wyo. 1988), and *Rissler & McMurry Co. v. Atlantic Richfield Co.*, 559 P.2d 25 (Wyo. 1977).

74. *Id.*

75. *Id.*

76. *Id.* at 673.

77. *Id.* at 672.

78. *Id.* at 673 (applying *Rissler & McMurry Co. v. Atlantic Richfield Co.*, 559 P.2d 25, 31-34 (Wyo. 1977)).

79. *Rissler & McMurry Co.*, 559 P.2d 25, 34 (Wyo. 1977).

80. 816 P.2d 97 (Wyo. 1991).

81. *Id.* at 105.

82. See *Rissler & McMurry*, 559 P.2d at 34 (Wyo. 1977) and *supra* notes 78-9.

in *Moncrief* was entitled to interest at seven percent on underpaid royalties from the date of the well's initial production.

Finally, in *Cities Service*,⁸³ the Wyoming Supreme Court replaced the "demand" for payment requirement borrowed from tort law with an affirmative "knowledge" requirement by the operator of its nonpayment or underpayment of royalties. In *Cities Service*, the operator paid to the State royalties based upon a different determination of the amount of hydrocarbon production than the operator's determination of production for royalties paid to the federal government.⁸⁴ Yet the oil and gas leases at issue required the operator to determine production in the same manner for both State and federal royalty payment purposes.⁸⁵ In applying the Royalty Payment Act to the operator's royalty underpayments, the Wyoming Supreme Court determined that the operator "knew" it had underpaid royalties when it made disparate calculations of production.⁸⁶ The Court explicitly recognized that the Act only applies to those "operators" or "lessees" who "knowingly" fail to pay royalties.⁸⁷ "The Royalty Payment Act takes effect at such time as the lessee becomes aware of a royalty payment deficiency."⁸⁸ The Court's decision in *BHP* was distinguished from *Cities Services* by the fact that the operator in *Cities Service*, unlike the operator in *BHP*, knew it had underpaid royalties.⁸⁹

The Court's recognition of the Act's "knowledge" requirement harmonized its earlier decisions, which had formerly relied upon the "demand for payment" element of conversion claims to distinguish unwitting royalty underpayments (as in *BHP*) from "knowing" underpayments (as in *Moncrief*). By divorcing tort concepts from statutory interpretations, the Wyoming Supreme Court made the Royalty Payment Act fully workable for practitioners. A royalty interest owner must demonstrate the payor's knowledge of nonpayment of full royalties. The interest owner can demonstrate this knowledge with proof of a demand for payment (as in *Moncrief*) or with proof of differing calculations of royalties depending upon the royalty payee (as in *Cities Services*). Once such knowledge is demonstrated, the Royalty Payment Act is fully applicable.

83. 838 P.2d 146 (Wyo. 1992).

84. *Id.* at 149.

85. *Id.* at 150-55.

86. *Id.* at 157.

87. *Id.* at 156.

88. *Id.*

89. *Id.* at 157.

"Nuts and Bolts" Application of the Act

The Wyoming Supreme Court's most detailed interpretation of the Royalty Payment Act occurred in *Moncrief v. Harvey*.⁹⁰ The Court explained a number of "nuts and bolts" issues relating to the Act's application. In *Moncrief*, the royalty interest owner, Harvey,⁹¹ brought suit under the Royalty Payment Act against the lessees and operators⁹² of a well in Natrona County, seeking underpaid royalties, penalty interest, and attorney's fees.⁹³ The operator contended that the Act did not apply to payment disputes concerning the *amount* paid under a royalty agreement.⁹⁴ On summary judgment, the trial court found for Harvey, awarding him seven percent ordinary interest, eighteen penalty interest, and attorney's fees amounting to nearly \$260,000.⁹⁵ A separate summary judgment was entered against the lessee.⁹⁶

On the lessee's and operator's appeals, the Wyoming Supreme quoted the Royalty Payment Act and correctly applied it to royalty payments delayed "for any reason."⁹⁷ The operator had argued that "the Act does not apply . . . in this instance because it is intended to apply to disputes over *who* should receive production proceeds rather than disputes over the *amount* payable."⁹⁸ The Court made short shrift of this argument. Emphasizing the Act's "remedial purpose," the Court construed it "liberally" to achieve the legislature's intent.⁹⁹ The Court wrote: "The words 'any reason' in the statute and escrow provisions establish a clear intent to include disputes over the correct *amount* of payment to be made as well as a dispute over the correct *payee*."¹⁰⁰ The Court emphasized that the operator could have placed the disputed amounts in an escrow account to avoid paying penalty interest.¹⁰¹ Its failure to do so made it liable to Harvey pursuant to the Act.¹⁰²

90. 816 P.2d 97 (Wyo. 1991).

91. Harvey and the State of Wyoming were the original plaintiffs, but the State settled its claims with Moncrief. *Id.*

92. The lessee had contracted with the operator for the latter to drill the well and to make royalty payments. *Id.* at 100-01, 107-09.

93. *Id.*

94. *Id.* at 100.

95. *Id.*

96. *Id.*

97. *Id.* at 104-05 (quoting WYO. STAT. § 30-5-302 (1983)).

98. *Id.* at 104 (emphasis in original).

99. *Id.* at 105 (citing *In re Bighorn River Sys. Adjudication*, 753 P.2d 76, 114 (Wyo. 1988), *aff'd* 492 U.S. 406 (1989)).

100. *Id.*

101. *Id.*

102. *Id.*

Next, the Wyoming Supreme Court applied the so-called "United States rule"¹⁰³ allocating partial payments on debts to interest first, and then to principal, in the absence of any agreement allocating payments.¹⁰⁴ The Court noted that the operator had a contractual obligation to make royalty payments to Harvey.¹⁰⁵ The Court concluded, based on *Rissler & McMurry Co. v. Atlantic Richfield Co.*,¹⁰⁶ that the operator's notice of its contractual obligations to Harvey, coupled with the "liquidated" character of the royalty debt,¹⁰⁷ resulted in an interest-bearing debt to which the "United States rule" applied.¹⁰⁸ Because the trial court did not apply the operator's partial royalty payments first to the interest owing on Harvey's remaining unpaid royalties,¹⁰⁹ its decision was reversed.¹¹⁰

Third, the Wyoming Supreme Court reversed the trial court's entry of judgment against the lessee.¹¹¹ Interestingly, the Court had little difficulty in applying the 1989 definition amendments to the Royalty Payment Act retroactively to conclude that the lessee had no obligation to timely pay royalties under the Act because it was not an "operator" of the well drilled on Harvey's lease.¹¹² The Wyoming Supreme Court wrote in *Moncrief*, "[w]e apply these definitions retroactively to this case, because they shed light on the intent of the legislature."¹¹³ The Court found that, under the lessee's contractual agreement with the operator with respect to the well on Harvey's lease, the lessee was neither an "operator" nor a "lessee" pursuant to the 1989 definitions.¹¹⁴ Thus, the lessee could not be liable for the payment of penalty interest.¹¹⁵ The Court's retrospective application of new definitions to old statutes is consistent with general principles of statutory construction.¹¹⁶ Presumably the Court would not

103. "[S]o called because it comes from the federal commercial common law." *Id.* at 106.

104. *Id.*

105. *Id.* at 107.

106. 559 P.2d 25 (Wyo. 1977).

107. *Id.* at 31-32 for a discussion of what constitutes "liquidated" damages. Basically, "a claim is considered liquidated when it is readily computable by simple mathematical computation." *Id.* at 31. A dispute about the amount actually due on a debt does not necessarily render the debt "unliquidated." *Id.* at 32.

108. *Moncrief*, 816 P.2d at 106-07.

109. Interest owing under the Royalty Payment Act (after January 1, 1983) and because *Moncrief* converted Harvey's royalties by only paying them in part (prior to 1983). *Id.*

110. *Moncrief*, 816 P.2d at 107.

111. *Id.* at 108-09.

112. *Id.* at 109.

113. *Moncrief*, 816 P.2d at 109.

114. *Id.*

115. *Id.*

116. Amendments to statutes that only supply definitions for key terms in those statutes are "remedial" because they do not "create new or take away vested rights." 73 AM. JUR. 2D *Statutes* §354 (1974). As such, they do not fall afoul of the general rule against the retrospective operation of statutes. *Id.*

have applied the 1989 reporting requirement, and its attendant penalty provisions, retroactively.

Finally, the Wyoming Supreme Court in *Moncrief* affirmed the trial court's award of nearly \$260,000 in attorney's fees to Harvey.¹¹⁷ The Court approved the use of a two-part test to determine the reasonableness of any claim for attorney's fees under the Act.¹¹⁸ First, a trial court must determine a "lodestar" amount for attorney's fees, defined as "the product of reasonable hours times a reasonable rate."¹¹⁹ Next, a court must "make discretionary adjustments to the lodestar amount" using eleven separate factors.¹²⁰ The Court upheld the trial court's fee award in *Moncrief* because sufficient evidence in support of the "lodestar" amount existed in the record.¹²¹

To date, *Moncrief* represents the Wyoming Supreme Court's most thorough analysis of the Royalty Payment Act. The Court addressed and applied the broad public policy in favor of prompt royalty payments which underlies the Act and answered a variety of questions concerning the Act's practical application. Practitioners now know that royalty underpayments are applied first to penalty interest accrued under the Act, and then to principal. They know that the Act applies only to those parties to royalty payment contracts who have an obligation to pay royalties. Attorneys now know how to calculate attorney's fee awards under the Act. *Moncrief* remains the most important case interpreting the Royalty Payment Act, and must be among the very first decisions reviewed by Wyoming attorneys first confronting the Act in their practices.

Noncontractual Relationships and Claims for Relief Under the Act

In *Ferguson v. Coronado Oil Co.*¹²² the Wyoming Supreme Court applied the general tort principles of conversion outlined previously¹²³ to an operator's overcharges for operating expenses and consequent failure to pay a "net profits interest" under an oil and gas lease. The operator, Ferguson, significantly overcharged an oil company, Coronado Oil Co.

117. *Moncrief*, 816 P.2d at 109-10.

118. *Id.*

119. *Id.* at 109 (quoting *UNC Teton Exploration Drilling, Inc. v. Peyton*, 774 P.2d 584, 595 (Wyo. 1989)).

120. *Id.* (citing *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 718-19 (5th Cir. 1974)).

121. *Id.* at 110.

122. 884 P.2d 971 (Wyo. 1994).

123. *See supra* notes 78-82.

("Coronado"), for Ferguson's operating expenses.¹²⁴ Coronado brought suit against Ferguson for breach of contract and conversion, and the jury awarded Coronado \$611,138.00 in tort damages and \$600,000.00 in exemplary damages.¹²⁵ The trial court awarded an additional \$107,891.34 in prejudgment interest.¹²⁶ The trial court did not award interest pursuant to the Royalty Payment Act.¹²⁷

On Ferguson's appeal, the Wyoming Supreme Court affirmed the jury's verdict that Ferguson converted Coronado's "net profits interest."¹²⁸ In its cross-appeal, Coronado contended that the Royalty Payment Act applied to Ferguson's conversion of Coronado's interest.¹²⁹ The Wyoming Supreme Court agreed:

The [Royalty Payment Act] unambiguously requires the party who has the legal obligation to pay any proceeds from the production of an oil or gas well to make payments in accordance with either the time set out in the statute or within a time frame established by a legal agreement between the parties. Failure to do so results in liability for the amount of the unpaid proceeds plus 18 percent per annum interest. There are no exceptions.¹³⁰

Because Coronado's unpaid "net profits" interest constituted "proceeds derived from the sale of production from any well producing oil,"¹³¹ it was entitled to eighteen percent penalty interest on all unpaid amounts.¹³²

In *Coronado*, the Wyoming Supreme Court permitted a "royalty" payee under a written contract to proceed in tort under general principles of conversion against a delinquent payor. However, the Court also applied the Royalty Payment Act's penalty interest provisions, based on unpaid contractual obligations,¹³³ to Coronado's tort damages. At first blush, the Court seemed to have scrambled tort and contractual remedies. However, the *Coronado* decision is consistent with the express terms of the Royalty Payment Act. Pursuant to his contract with Coronado, Ferguson was

124. *Ferguson*, 884 P.2d at 974.

125. *Id.* at 975.

126. *Id.*

127. *Id.*

128. *Id.* at 979.

129. *Id.* at 973.

130. *Id.* at 979 (citing *Cities Servs.*, 838 P.2d at 156).

131. *Id.* (quoting WYO. STAT. § 30-5-301(a) (1983)).

132. Ferguson's payments to Coronado ceased in 1985, after the Royalty Payment Act's effective date, so there was no question of the Act's retroactive application. *Id.* at 974.

133. See *ANR Prod. Co. v. Kerr-McGee Corp.*, 893 P.2d 698, 705-06 (Wyo. 1995).

obligated to pay Coronado its "net profits" interest. Ferguson failed to pay. Whether Coronado had recovered in tort or contract, Ferguson would have been obligated to pay eighteen percent penalty interest on unpaid royalties. The royalty owner, like any other litigant, is entitled to proceed on whatever theories of recovery he or she can plead and prove.

Finally, in *ANR Production Co. v. Kerr-McGee Corp.*,¹³⁴ the Wyoming Supreme Court answered the question left unanswered in *Coronado*: whether the Royalty Payment Act applies to all tort claims alleging conversion of hydrocarbons. In *ANR*, the operator of a unitized¹³⁵ oil and gas field alleged claims sounding in conversion, trespass, breach of contract, and strict liability against a unit lessee, ANR, which had drilled and "fracked"¹³⁶ a well in the unit and then drained hydrocarbons from the unitized field through the new well.¹³⁷ The operator also sought punitive damages and penalty interest and attorney's fees under the Royalty Payment Act.¹³⁸ The district court, after a bench trial, concluded that the lessee had trespassed against the operator and converted more than 132,000 barrels of oil and more than 932,000 million cubic feet of natural gas.¹³⁹ The court awarded over \$6,000,000.00 in damages, including prejudgment interest at seven percent, but declined to award either punitive damages or attorney's fees and penalty interest under the Act.¹⁴⁰

On ANR's appeal and the operator's cross-appeal, the Wyoming Supreme Court affirmed the decision of the district court in all respects.¹⁴¹ With respect to the Royalty Payment Act, the Court, "applying . . . well-known rules of statutory interpretation,"¹⁴² concluded that the "[l]egislature's intent, as expressed in the plain language of the statutory

134. 893 P.2d 698 (Wyo. 1995).

135. "Unitization" involves an agreement among all lessors with interests in a particular hydrocarbon field to permit a single operator to coordinate production for maximum recovery. Gifford, *supra* note 12, at 425-27. Unitization optimizes production by permitting the entire field to be exploited through such efforts as field pressure maintenance and coordinated secondary operations. *Id.* Such efforts would be impossible if separate lessors were permitted to recover hydrocarbons simultaneously. *Id.* See generally Mineral Leasing Act, 30 U.S.C. §§ 181-287 (1994) and WYO. STAT. §§ 30-5-101 to -305 (1983 & Supp. 1995).

136. "Fracking" an oil and gas well generally involves detonating explosives in the well and then pumping tiny particles of a crush-resistant material into the fractures created in the explosion to keep the fractures open, stimulating hydrocarbon flow through the fractures and into the well. See, e.g., *Totah Drilling Co. v. Abraham*, 328 P.2d 1083, 1089 (N.M. 1958).

137. *Id.*

138. *Id.*

139. *ANR Production*, 893 P.2d at 701.

140. *Id.*

141. *Id.* at 706.

142. *Id.* at 705 (citing *Halpern v. Wheeldon*, 890 P.2d 562, 564-65 (Wyo. 1995) (reciting the rules for statutory interpretation)).

provisions, was to limit the Act to cases where a preexisting legal obligation for payment of the proceeds of the sale of hydrocarbons exists.”¹⁴³ The Court found that the “[l]egislature’s repeated use of the term ‘legally’ indicates that the Act was intended to apply only in cases where the parties had a prior legal relationship.”¹⁴⁴ Because ANR and the operator “had no prior relationship which would have entitled ANR Production to produce or sell unitized . . . hydrocarbons,” the operator was not entitled to penalty interest and attorney’s fees pursuant to the Royalty Payment Act.¹⁴⁵

The Wyoming Supreme Court’s decision in *ANR* limiting the application of the Royalty Payment Act to contractual royalty obligations is sensible and consistent with the Act. The Wyoming legislature plainly did not intend to create an additional statutory claim for relief every time hydrocarbons are converted. As the Court noted in *ANR*, its decision was consistent with all prior cases interpreting the Act: all of the parties to those cases had a “preexisting legal relationship for the sale of the hydrocarbons.”¹⁴⁶ The Wyoming Supreme Court’s decision in *ANR* continued the Court’s careful and accurate interpretation of the Royalty Payment Act and kept the Act within its intended contractual setting.

CONCLUSION

The Wyoming Royalty Payment Act remains a remarkably effective example of remedial legislation, largely because the Wyoming Supreme Court has interpreted it fairly and correctly. The Act was intended to punish those producers of hydrocarbons who fail to timely remit royalty payments. The Act was not intended to constitute an additional claim for relief against persons not already contractually bound to pay royalties. Nor was it intended to apply retroactively. The Wyoming Supreme Court’s decisions interpreting the Act have consistently and correctly applied the Act to the situations for which it was intended. The Court’s decisions provide practitioners with clear guidance as to when the Act should and should not be applied. Those decisions also demonstrate how penalties are actually calculated and assessed against operators who do not pay or who underpay royalties. After studying the Act and the Wyoming Supreme Court’s decisions interpreting the Act, attorneys representing both royalty payors and recipients should have a clear understanding of the Act’s purpose, scope, and application.

143. *Id.*

144. *Id.*

145. *Id.* at 706.

146. *Id.* at 705.