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# Colorado, North Dakota, and Wyoming Oil and Gas Update

**This webcast will begin promptly at 12:00 PM Eastern**

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# Today's Presenters



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**David R. Little**  
Denver, CO  
303-389-4370

[david.little@steptoe-johnson.com](mailto:david.little@steptoe-johnson.com)



**Deva A. Solomon**  
Denver, CO  
303-389-4362

[deva.solomon@steptoe-johnson.com](mailto:deva.solomon@steptoe-johnson.com)



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# Overview

- Regulatory, legislative, and case law developments affecting oil and gas operations in Colorado, North Dakota, and Wyoming
- Key trends impacting this update
  - Money and contracts are always a source of dispute
  - Fewer but more expensive and impactful wells change the economics of litigation
  - Continued concern about health, safety and orphaned wells and related facilities, especially at the state and local level



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# Colorado Case Update

- *Encana Oil & Gas (USA), Inc. v. Miller*, 2017 COA 112, 405 P.3d 488 (Colo. App. 2017)
  - Construing royalty class action settlement agreement
  - Certified class as defined in settlement agreement will be honored for life of the settlement agreement
  - Arbitration provision made a part of the original settlement agreement will continue to bind Encana and class members



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# Colorado Case Update

- *Oxy USA Inc. v. Mesa Cty. Bd. Of Commissioners*, 2017 CO 104, 405 P.3d 1142 (Colo. 2017)
  - Taxpayers, including this oil and gas company, may seek an abatement and refund for erroneously or illegally levied taxes resulting solely from taxpayer error



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# Colorado Case Update

- *Kinder Morgan CO<sub>2</sub> Co., L.P. v. Montezuma Cty. Bd. of Commissioners*, 2017 CO 72, 396 P.3d 657 (Colo. 2017)
  - Oil and gas is taxed on quantity and value
  - Assessor had authority to issue retroactive property tax assessments
  - Taxpayer and pipeline were related parties for purposes of transportation deduction



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# Colorado Case Update

- *Stockdale v. Ellsworth*, 2017 CO 109, 407 P.3d 571 (Colo. 2017)
  - Interpleader action filed by XTO Energy, Inc. to resolve disputed claims to proceeds
  - Single-person LLC was alter ego of claimant, warranting piercing of “corporate” veil



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# Colorado Case Update

- *Maralex Resources, Inc. v. Jewell*, 2017 WL 6033694 (D. Colo. 2017)
  - Federal Oil and Gas Royalty Management Act authorized Bureau of Land Management to conduct warrantless, unannounced inspections of oil and gas wells on fee lands



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# Colorado Case Update

- *Martinez v. Colo. Oil & Gas Conservation Comm'n*, 2018 WL 582105 (Colo. Jan. 29, 2018)
  - Colorado Supreme Court grants petition for writ of certiorari to review the decision of the Colorado Court of Appeals in Case No. 2016CA564, 2017 COA 142
  - Issue: whether the court of appeals erred in determining that the COGCC misinterpreted C.R.S. § 34-60-102(1)(a)(1) as requiring a balance between oil and gas development and public health, safety, and welfare
  - If supreme court rules, decision of court of appeals is no longer good law



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# Colorado Legislative Update

- Representative pending bills in the Colorado legislature
  - HB 18-1071 (requiring the regulation of oil and gas operations in a manner consistent with public health, safety and welfare; intended to codify *Martinez*)
  - HB 18-1098 (would allow COGCC to roll over and retain funds remaining at end of fiscal year in the environmental response fund)
  - HB 18-1150 (bans on hydraulic fracturing render a local government liable for damages to operators, mineral lessees and royalty owners)
  - SB 18-063 (requiring greater financial assurance to be posted by operators)



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# Colorado Regulatory Update

- Key event: Firestone explosion on April 18, 2017
  - Investigations by local fire department, COGCC and federal officials
  - Notice to Operators issued by COGCC on May 2, 2017
    - Required flowline inventories and inspections
- Flowline Rulemaking – new rules adopted February 13, 2018
  - 1100 series rewritten, but also changes made to the 100 series definitions and Rules 312, 313A, 313B, 317B, 328.d, 602, 711 and 907
  - New Form 44 (Flowline Report)
  - Goal: new cradle to grave rules for flowlines



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# Colorado Regulatory Update

- Oil and Gas Conservation Levy Rulemaking (February 12, 2018)
  - New levy set at \$0.0011 per dollar value effective on April 1, 2018
  - Oil and Gas Conservation and Environmental Response Fund would have been depleted by FY 2018-19 absent increase
- New COGCC Public Comment Policy and Docket Issues
  - Online sign-up required by noon on Friday before hearing
  - Commenters asked to refer to docket number or issue
  - Two hour presumptive time limit for comments
  - Less flexibility on the consent agenda



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# Colorado Regulatory Update

- COGCC Order No. 1-202 (Sept. 11, 2017)
  - Issue: whether the pooling provisions in C.R.S. § 34-60-116 require parties who have consented to participate in drilling wells to pay overriding royalty interests carved out of the interests of lessees who did not positively elect to pay costs during the statutory election period
  - COGCC: No, the phrase “royalty or other interest[s] not obligated to pay any part of the cost” of a well in C.R.S. § 34-60-116(7) does not include ORRI carved out of nonconsenting interests
  - COGCC: To hold otherwise would permit nonconsenting working interest owners to circumvent statutory penalties by assigning themselves ORRIs



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# Colorado Regulatory Update

- Local Government Issues: Crestone Peak Comprehensive Drilling Plan
  - Now set for hearing in July 2018
  - CDP under COGCC Rule 216 is a “newer” approach to working with local governments; COGCC “developing” processes for CDPs
  - More traditional approaches: get state permits first, enter into MOU, negotiate with local government before seeking state permits
- Local Regulations and Permits
  - Thornton (*Colo. Oil & Gas Ass’n v. Thornton*, Adams Cty. D. Ct. No. 2017-CV-31640)
  - Broomfield (*The Broomfield Way v. City & Cty. of Broomfield*, Broomfield Cty. D. Ct. No. 2017-CV-030213)
  - Erie (*Crestone Peak Resources Operating Co. v. Town of Erie*, Weld Cty. D. Ct. No. 2017-CV-030972)
  - Lafayette (new proposed rules announced in February)



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# Wyoming Case Update

- *Berenergy Corp. v. BTU Western Resources, Inc.*, 2018 WY 2, 408 P.3d 396 (Wyo. 2018)
  - Fight over a conflict between future oil and gas development versus coal development under BLM leases
  - No mine-through agreement negotiated or signed
  - Key issue: are the courts a forum when the federal government will not regulate or act on the conflict?
  - Supreme Court: BLM is probably the “decider” and is likely a necessary party
  - Remand required to assess whether exception to sovereign immunity would allow joinder of Secretary of the Interior and federal agencies



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# Wyoming Case Update

- *Lon V. Smith Foundation v. Devon Energy Corp.*, 2017 WY 121, 403 P.3d 997 (Wyo. 2017)
  - Whether will or admittedly incorrect probate process controls
  - Note that Devon admittedly had failed to deposit suspense funds in interest bearing account in a Wyoming financial institution as required by Wyo. Stat. Ann. § 30-5-302



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# Wyoming Case Update

- *Questar Exploration & Production Co. v. Rocky Mtn. Resources, LLC*, 2017 WY 10, 388 P.3d 523 (Wyo. 2017)
  - Court reversed approximately \$30M dollar verdict (consisting of unpaid overriding royalties)
  - Original lease ended by its terms in the 1970s and acreage was put out for “Wyoming Lottery” and released
  - Court determined that new lease was not a “replacement lease” and so ORRIs from original lease did not attach



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# Wyoming Case Update

- *Anadarko Land Corp. v. Family Tree Corp.*, 2017 WY 24, 589 P.3d 1218 (Wyo. 2017)
  - Anadarko’s predecessor was assessed taxes in 1911 for minerals in place; did not pay and did not redeem
  - In 2000s, Anadarko tried to attack tax as unconstitutional and argue Anadarko still owned minerals
  - Court held that taxation of minerals in place, while likely improper, was not enough to render tax sale void; therefore statute of limitations for attacking tax sale had run and tax sale would be honored



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# Wyoming Regulatory Update

- There have been several changes to the rules of procedure applicable to WOGCC filings and hearings
- Two new Commissioners on WOGCC
- Horizontal well issues dominate Commission agenda



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# North Dakota Case Update

- *Continental Resources, Inc. v. Counce Energy BC #1, LLC*, 2018 ND 10, 905 N.W.2d 768 (N.D. 2018)
  - Dispute over Counce's failure to pay costs to drill well
  - Court held that when the reasonableness of the costs of completing a well are in question, that dispute must be first resolved by the NDIC, not the courts



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# North Dakota Case Update

- *Hallin v. Inland Oil & Gas Corp.*, 2017 ND 254, 903 N.W.2D 61 (N.D. 2017)
  - Payment drafts accompanying executed leases are not properly considered by the court when they contradict clear and unambiguous leases
  - Outlining standards for construing oil and gas leases, assignments, and deeds



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# North Dakota Case Update

- *Mosser v. Denbury Resources, Inc.*, 2017 ND 169, 898 N.W.2d 406 (N.D. 2017)
  - Answers to certified questions from federal district court
  - Surface owner owns pore space absent a specific conveyance
  - Surface owner may be entitled to compensation for a mineral developer's use of the pore space for the disposal of salt water
  - The Oil and Gas Production Damage Compensation Act does not limit damages to diminution of market value; nor does it preclude recovery based on what others may be paying for saltwater disposal



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# North Dakota Case Update

- *Hokanson v. Zeigler*, 2017 ND 197, 900 N.W.2d 48 (N.D. 2017)
  - Reserved equitable title to disputed minerals ripened into full legal title relating back to the date of an installment contract for patent
  - Equitable title merges in the legal title when the terms of the contract for deed have been completed and the warranty deed is entered



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# North Dakota Case Update

- *Langved v. Continental Resources, Inc.*,  
2017 ND 179, 899 N.W.2d 267 (N.D. 2017)
  - Industrial Commission’s findings that proposed modification of oil and gas well spacing units would prevent waste and prevent the drilling of unnecessary wells and, in addition, protect correlative rights was supported by substantial evidence



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# North Dakota Case Update

- *Abell v. Gadeco, LLC*, 2017 ND 163, 897 N.W.2d 914 (N.D. 2017)
  - Fact issues precluding summary judgment existed concerning whether
    - lessee's preparatory activities qualified as operations sufficient to extend oil and gas lease into secondary term
    - whether lessor unlawfully frustrated lessee's efforts to drill a well in the primary term

# North Dakota Regulatory Update

- New regulations proposed to square the ND Admin. Code with statute and ensure that royalty statements include “information necessary for the royalty owner to be assured they have been properly compensated”
  - Need to contain: point of sale and weighted average price for oil, gas, and natural gas liquids, the amount and purpose of each deduction made, and the gross and net mineral acres in the spacing unit
- Regulations are not expected to have an impact in excess of \$50K since statute currently requires royalty statement to allow royalty owner to clearly identify the amount and purpose of each deduction made



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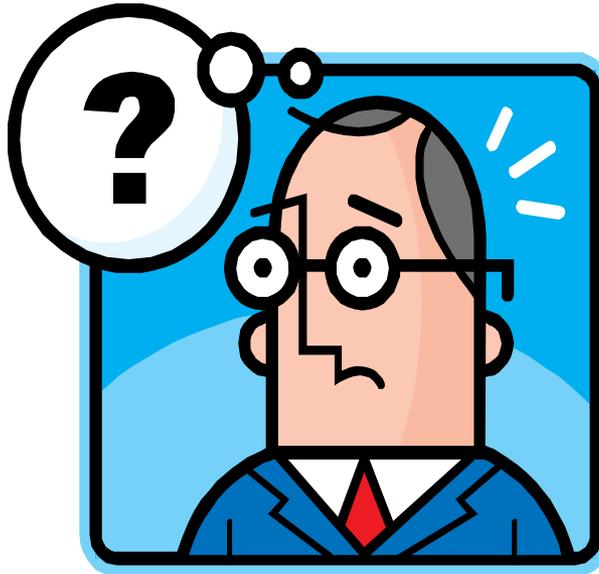


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# QUESTIONS?



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# ***Mark Your Calendars to Join Us On March 22***

For Our Next Energy Webcast:

***“Zoning, Ordinances, and Other Issues  
Affecting Pennsylvania Energy Operations”***

**Presenters:**

**Marcia DePaula and Kevin Gormly**



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# *Coming Up...*

## *Steptoe & Johnson Midstream Series*

- **April 11** - Midstream Cybersecurity Concerns And Emergency Response
- **May 9** - Eminent Domain
- **June 13** - FERC and the Trump Administration/Regulatory Issues
- **July 11** - Land Issues In Midstream Development

***Watch Your Inbox for Your Invitation!***



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# Thank You!



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**David R. Little**  
Denver, CO  
303-389-4370

[david.little@steptoe-johnson.com](mailto:david.little@steptoe-johnson.com)



**Deva A. Solomon**  
Denver, CO  
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