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## W.Va. Royalty Law Doesn't Apply Retroactively, Judge Rules

By **Morgan Conley**

*Law360 (August 26, 2021, 8:35 PM EDT)* -- A West Virginia state court judge ruled Thursday that EQT Corp. wasn't prohibited under state law from deducting post-production costs from oil and gas royalties because amendments to the statute don't apply retroactively to wells permitted before the law went into effect.

Twenty-Third Judicial Circuit Judge Michael Lorensen agreed with EQT that amendments made to a West Virginia law that prohibited deducting post-production costs from royalty payments don't apply to wells in Ritchie County permitted before the changes went into effect in May 2018. EQT, therefore, acted lawfully when it deducted post-production costs when calculating payments for oil and gas produced from wells drilled before the new rules went live, the court said.

The law, West Virginia Code § 22-6-8, is known as the "flat-rate statute" because it was intended to phase out leases that pay a standard royalty amount annually regardless of what was produced under the lease. In 2018, Senate Bill 360 amended the law to forbid new permits to be issued under "flat-rate" leases unless the lessee promises to pay volume-based royalties. Prior to the 2018 changes, the law mandated that royalties be calculated "at the wellhead," a distinction that allowed for post-production costs to be deducted from payments.

Royalty owners Philip K. Williams, Timothy A. Williams, Diana L. Weiss and Mahlon F. Harris argued that the 2018 changes to the statute made through Senate Bill 360 merely clarified the law that had been in effect since 1982 and thus controlled leases they entered with EQT in 2011 and 2013. They argued that EQT was therefore not permitted to deduct post-production costs from royalty payments.

But the court disagreed, stating that "while the initial version of the bill included a notation that the bill was intended to 'clarify' the royalty owed, that language was removed in the final version and it was replaced with a caption stating that Senate Bill 360 was 'modifying' the permit issuance prohibition."

And because the West Virginia Legislature "didn't clearly demonstrate an intent to apply the statute retroactively" through the language of the amendment, the court determined the amendments don't govern the EQT leases at issue.

EQT said in a statement sent to Law360 on Thursday that it is "pleased with the outcome and looks forward to proceeding with the case."

The current dispute is one of several suits alleging that EQT shorted oil and gas lease owners on royalty

payments through improper deductions that are playing out in West Virginia state courts.

Judge Lorensen took over the instant matter earlier this year after the West Virginia Supreme Court ordered Judge Timothy Sweeney disqualified from overseeing three of the lawsuits against EQT.

In another lawsuit that Judge Sweeney was disqualified from hearing, plaintiff Mary Farr Secrist lodges similar claims as the Williams plaintiffs. In May 2019, Judge Sweeney ruled in the Secrist matter that West Virginia Code § 22-6-8 was a clarification of existing law and therefore did apply to the EQT leases at issue in that matter.

Judge Sweeney ruled that EQT was prohibited from deducting post-production costs from natural gas royalties under flat-rate leases and ordered the company to repay the royalty owners for the deductions plus interest, according to that order.

The company had claimed that Judge Sweeney and another West Virginia state court judge both failed to disclose financial and personal interests in the outcome of royalty disputes they hear, claiming that both judges own oil and gas interests in a significant amount of land in the counties they preside over.

In September 2020, another judge who was disqualified from hearing separate royalty claims against EQT, Judge Jeffrey Cramer, similarly ruled that West Virginia Code § 22-6-8 controlled and ruled in favor of a group of oil and gas owners led by Marcus Huey.

In West Virginia federal court, EQT is currently urging U.S. District Judge John Preston Bailey to stop the plaintiffs in the matter before Judge Lorensen from pursuing their royalty claims in a state court lawsuit. EQT argues that the state court litigation is barred by a permanent injunction entered in a 2019 final order with respect to the settlement. Under the deal, EQT agreed to pay more than \$50 million to the class and pay future royalties based on a certain methodology, according to court filings.

Counsel for the royalty owners didn't immediately return requests for comment Thursday.

The Williams plaintiffs are represented by Rodney C. Windom and Scott A. Windom of Windom Law Offices PLLC.

EQT is represented by Lauren W. Varnado, David R. Dehoney and Jonathan H. Koppell of McKool Smith PC; and Jennifer J. Hicks and Mark K. Dausch of Babst Calland Clements & Zomnir PC.

The suit is Phillip K. Williams v. EQT Production Co., case number 20-C-23 in the Circuit Court of West Virginia, Ritchie County.

--Editing by Rich Mills.