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NATURAL RESOURCES

Aulston v. United States, 915 F.2d 584

Author: Judge Seymour

Beneath plaintiff Joe and Lola Aulston's land existed deposits of carbon dioxide gas. The land was originally granted under Federal land patents pursuant to the Agriculture Entry Act of 1914, 30 U.S.C. §§ 121-125 (the "Act"). The patents reserved to the United States rights to "gas" associated with the land. The Aulstons alleged that "gas" referred to combustible hydrocarbon gas only and not to carbon dioxide. The Department of Interior found that the term "gas" included carbon dioxide. The Interior Board of Land Appeals ("IBLA") upheld the Department's determination. The district court affirmed the IBLA, and the Aulstons appealed.

The Tenth Circuit affirmed the district court's judgment after making an in-depth review of the policy, history, and legislative intent behind the Act. It determined that Congress is silent on this precise question, but that the Interior Department, in its promulgated regulations concerning the word "gas," gave broad interpretations which included carbon dioxide. The court found such interpretations consistent with the policy of the Act and not in violation of legislative intent.

Bennion v. Shell Western E & P, Inc., 905 F.2d 324

Author: Judge Logan

Plaintiff, Bennion, brought suit against defendant, Shell Western E & P, Incorporated ("Shell"), for his share of the production proceeds from oil and gas wells in which he had an interest. Bennion also sought punitive damages for Shell's alleged willful and malicious failure to pay his proportionate share of production. The district court held that Bennion was not entitled to punitive damages as a matter of law. Bennion subsequently appealed.

The Tenth Circuit affirmed the district court's denial of punitive damages. The court explained that the action brought by Bennion sounded in contract. It is well settled in Utah that breach of a contract will not support punitive damages.

Howell Petroleum Corp. v. Samson Resources Co., 903 F.2d 778

Author: Judge Anderson

Plaintiff, Howell Petroleum Corporation ("Howell"), brought suit to collect royalties owed on oil and gas wells by defendant, Samson Resources Company ("Samson"). Although a three year statute of limitations period for recovery of royalties applied, Howell argued for the adoption of a different limitations period. It reasoned that the action was one for the imposition of a constructive trust. The district court

held, however, that Howell was not entitled to a constructive trust because that theory had not been pleaded. Accordingly, the court awarded Howell only those royalties which came due in the three years preceding the suit.

The Tenth Circuit reversed, construing a constructive trust as a remedial device employed by courts to enforce substantive rights. Moreover, the statute of limitations applicable to the underlying cause of action governs a constructive trust. Consequently, the court limited Howell's recovery to those royalties which came due in the three years preceding the suit. Further, the court awarded Howell statutory interest on the late royalty corresponding to the portion of its title which was marketable.

Natural Gas Pipeline Co. v. Federal Energy Regulatory Comm'n, 904 F.2d 1469

Author: Judge Brorby

Defendant, Federal Energy Regulatory Commission ("FERC"), ordered prospective elimination of the minimum bill provision in a gas supply contract between plaintiff, Natural Gas Pipeline Company of America ("NGPC") and Colorado Interstate Gas Company ("CIG"). FERC eliminated this provision because it was unnecessary under the rate redesign and because of its new policy toward minimum billing. After being denied rehearing on the order, NGPC appealed FERC's prospective, rather than retroactive, elimination of the minimum bill provision.

The Tenth Circuit held that FERC could only grant retroactive relief if the minimum bill provision fit within the narrow "integrality" exception to § 4 of the Natural Gas Act, 15 U.S.C. §§ 717(c) and (d). To fall within this exception, the minimum bill provision must be integrated with the proposed rate change, instead of the existing rate design. Since NGPC failed to do this, it was denied retroactive relief. Thus, the court affirmed FERC's ruling granting only prospective relief under § 5 of the Natural Gas Act.

Phillips 66 Natural Gas Co. v. Federal Energy Regulatory Comm'n, 903 F.2d 1310

Author: Judge Seth

Plaintiff, Phillips 66 Natural Gas Company ("Phillips"), attempted to collect power and fuel allowances for costs related to the operation of certain pipeline compressors. The Director of the Federal Energy Regulatory Commission ("FERC") stated that Phillips had no contractual power to collect the allowances as production related expenses. Phillips subsequently appealed, alleging that the director violated an earlier FERC mandate by stating that area rate clauses were insufficient authorization to collect the allowances.

The Tenth Circuit reversed and remanded the director's decision.

The court first noted the importance of intent in determining what production related expenses are recoverable. Further, the court ruled that the contracting parties mutually intended Phillips to collect allowances pursuant to the area rate clauses in question. The director and the FERC erroneously relied on the presumption of noncollectability of compression allowances under area rate clauses. Finally, the court stated that the director's approach was inconsistent with the general rule that the contracting parties decide who should bear the production related costs.

