



Utah Supreme Court Issues Significant Condemnation Decision

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The Utah Supreme Court recently issued a significant decision regarding whether a provision in Utah's condemnation statute is applicable to oil and gas properties in *Marion Energy, Inc.; State of Utah, School and Institutional Trust Lands Administration v. KFJ Ranch Partnership* (2011). In this decision, the Court narrowly construed Utah's condemnation statute, finding that it did not apply to oil and gas deposits.

The Court confirmed the district court's dismissal of a condemnation action brought by Marion Energy, Inc. (Marion) and the Utah School and Institutional Trust Lands Administration (Trust) based on a narrow interpretation of Utah Code Ann § 78B-6-501(6)(a)(2008) (Section 501(6)(a)). The sole question before the court was whether the term "mineral deposits" in the statute was intended by the legislature to encompass oil and gas deposits.

Ignoring a century of Utah legal precedent, the Court found that oil and gas are not considered "mineral deposits" within the meaning of the condemnation statutory provision, Section 501(6)(a). The Court found that the language of the statute is ambiguous and, therefore must be strictly construed against the condemning party.

Background

The State of Utah owns oil and gas interests throughout the state. The Trust is charged with management of much of the state's oil and gas interests to benefit the state's schools and institutions. Marion is the lessee of two State of Utah Oil, Gas and Hydrocarbon leases collectively covering in excess of 3,000 acres in Carbon County, Utah. Marion proposed to drill two wells, one on each of the State leases, on surface owned by KFJ Ranch Partnership

(KFJ). Marion's well sites were near existing roads. Because of topography, Marion could not access the Trust's oil and gas deposits without crossing surface, and underlying fee minerals, owned by KFJ. Marion attempted unsuccessfully to negotiate easements for surface access with KFJ. When negotiation failed, Marion and the Trust brought a condemnation action in the district court seeking to condemn approximately fifteen acres of KFJ property to construct an approximately four-mile long road to access the proposed well locations.

Utah Code Ann. § 78B-6-501 provides that the right of eminent domain may be exercised for certain specified public purposes including:

(6)(a) **roads**, railroads, tramways, tunnels, ditches, flumes, pipes and dumping places **to facilitate** the milling, smelting, or other reduction of ores, or **the working of** mines, quarries, coal mines, or **mineral deposits** including minerals in solution; (emphasis added).

KFJ moved to dismiss the action based on its contention that section 501(6)(a) does not grant the power of eminent domain to condemn land to build roads to access leased oil and gas deposits. The district court examined the plain language of the text, and noted that oil and gas are not included among "substances for which land can be condemned for roads." The Court further determined that the "fact that oil and gas are specifically mentioned in [section 501(6)(d) ¹] shows that the legislature purposefully intended to exclude oil and gas from [Section 501 (6)(a)]." On this basis the district court granted KFJ's motion to dismiss. Marion and the Trust appealed, arguing that the plain language of Section 501(6)(a) and over one hundred years of precedent demonstrate that the phrase "mineral deposits" includes oil and gas, and that any other interpretation would create an absurd result.

Supreme Court's Analysis

Noting that the goal of statutory interpretation is to determine the "true intent

¹ Utah Code § 78B-6-501(6)(d) authorizes the use of eminent domain for: gas, oil or coal pipelines, tanks or reservoirs, including any subsurface stratum or formation in any land for the underground storage of natural gas, and in connection with that, any other interests in property which may be required to adequately examine, prepare, maintain, and operate underground natural gas storage facilities.

and purpose of the Legislature,” the Court first examined the plain language of the statute and found it ambiguous. When statutory language is ambiguous, subject to two or more reasonable interpretations, the Court resorts to other modes of statutory construction and seeks guidance from legislative history and other accepted sources. In some specific contexts, however, the Court applies “unique rules that guide our construction of ambiguous terms.” Among them, “we have stated that any ambiguity in statutory language purporting to grant the power of eminent domain must be strictly construed in favor of the property owner and against the condemning party.” Thus, Marion would only be authorized to condemn KFJ’s property if such authority were expressly granted, or clearly implied, by the plain language of Section 501(6)(a).

The majority was unconvinced by a recitation of a century of Utah cases that have consistently held that “oil and gas” are indeed “mineral” or “mineral deposits.” The court additionally found it “highly relevant” that subsection (6)(d) specifically includes oil and gas while subsection (6)(a) does not. As noted in Justice Lee’s well-reasoned dissent, it is inconsistent that a party could condemn land for a pipeline, but not a road to access the pipeline.

The Court examined a series of statutes that specifically include, or exclude, oil and gas within the definition of “mineral” or “mineral deposits” and noted that the term “may be used in a variety of ways and must be interpreted based on the context in which it is used.”

The Court determined that a narrow interpretation of Section 501(6)(a) would not create an absurd result. Marion and the Trust argued that a narrow interpretation which excludes oil and gas from “mineral deposits” in the context of the eminent domain statute would result in Trust minerals being stranded because lease holders would not be able to access those minerals. In response, the Court relied upon Utah Code § 53C-1-103(4), the School and Institutional Trust Lands Act (SITLA) and explained:

While a narrow interpretation of the phrase “mineral deposits: may deprive Marion of one means of accessing its leased oil and gas deposits, Marion still has other available means of accessing and exploiting them – including a statutory right to access the surface land over its leased deposits. Indeed Part 4 of SITLA- which governs the minerals leased by Marion – expressly provides that “[a] mineral lessee ... has the right *at all times*

to enter upon the leasehold for prospecting, exploring, developing, and producing minerals and *shall have reasonable use of the surface.*”

The same section also provides specific means of gaining access to privately owned property such as “securing the written consent or waiver of the surface owner or lessee” or “execute[ing] ...a...bond.” Thus, while Marion may not have authority to permanently deprive KFJ of its property through condemnation, Marion has a statutory right to enter KFJ’s property so long as it complies with the requirements contained in Part 4 of SITLA. (emphasis in original)

However, in this case the lands which Marion sought to condemn are private surface, overlying private, unleased, minerals. The Trust’s minerals, leased by Marion, are not contiguous, but separated from the existing roads by the fee surface owned by KFJ. The Court appears not to recognize the distinction, or its implications.

Any petition for rehearing must be filed by July 29. The parties are currently evaluating their options in this regard.

For more information, please contact [Relma Miller](#).

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