



## **Jury finds election to participate letter & AFE are a binding contract without a JOA**

On Friday, November 3, 2017, an eight-member jury in the United States District Court for the District of Colorado unanimously found that two election to participate letters and their attached authority for expenditures (“AFE”) prepared by Bill Barrett Corporation (“BBC”) are valid, binding contracts. As a result, the jury ordered YMC Royalty Company, LP (“YMC Royalty”)—the party that signed both election letters and AFEs—to pay its share of the costs to drill, complete, and operate the two oil and gas wells in which it elected to participate. Karen Spaulding and Andrew Glenn of Beatty & Wozniak, P.C. represented BBC and obtained complete relief for BBC.

The suit arose because YMC Royalty refused to pay its share of the costs to develop and operate the two wells once it became apparent that the wells were marginal producers. In order to avoid liability for its share of the costs, YMC Royalty mounted a full scale assault on the enforceability of the election letters and AFEs. YMC Royalty asserted, among other things, that the election letters and AFEs were too indefinite to constitute contracts, were procured by fraud, lacked sufficient detail regarding costs allocations, or were only valid if a joint operating agreement (“JOA”) was subsequently signed by the parties.

For its part, BBC relied upon the language in the election letters soliciting YMC Royalty’s participation, the detailed cost breakdown in the AFE, the delineation of each party’s share of the costs, and industry custom and practice regarding the use of such letters and AFEs. While electing to participate in a well may have an accepted meaning in Colorado’s oil and gas industry, establishing that the election letters and AFEs constitute valid and binding contracts has no legal precedent in this state.

Indeed, YMC Royalty attempted to use expert testimony to establish that without the execution of a JOA, there can be no contract for the joint development and operation of an oil and gas well. Mr. Glenn, however, precluded YMC Royalty’s proposed expert witness from testifying through a rigorous examination of that witness while on the stand. Based upon Mr. Glenn’s questioning and oral motion to exclude YMC Royalty’s witness, the Court concluded that the witness lacked expertise in oil and gas industry custom and practice and could not testify.

Despite YMC Royalty’s various attacks regarding the enforceability of the election letters and AFEs, BBC persuaded the jury that YMC Royalty’s election to participate in both wells obligated it to pay its proportionate share of the costs to drill, complete, and operate those wells. The jury’s verdict creates a limited precedent for oil and gas operators and non-operators within the State of Colorado. YMC Royalty does have an opportunity to appeal the case to the Tenth

Circuit Court of Appeals. But the jury's findings establish that the execution of an election to participate letter and an AFE constitute a binding agreement to share in the actual costs incurred in developing and operating an oil and gas well without a JOA.

For more information on this case, please contact [Karen Spaulding](#) or [Andrew Glenn](#).

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