



Beatty & Wozniak secures Tenth Circuit decision concluding that an election letter and AFE constitute a binding contract

Today, the Court of Appeals for the Tenth Circuit confirmed that the execution of an election letter and authorization for expenditure (“AFE”) may constitute a binding contract. *Bill Barrett Corp. v. YMC Royalty Co.*, No. 18-1067. The decision reflects a shift in the oil and gas industry in the Western United States away from the use of joint operating agreements (“JOAs”) for the joint development of oil and gas wells. And it also demonstrates that executing an election letter and AFE may obligate the executing party to pay its share of the well costs without a JOA.

This case arose from a dispute over the payment of the costs for two oil and gas wells in Weld County, Colorado. YMC Royalty Company, LP (“YMC”) claimed that although it participated in the wells by executing election letters and AFEs, it was not contractually obligated to pay its share of the well costs because the parties had not executed a JOA.

YMC’s position rested on two essential points. First, YMC asserted that the election letters and AFEs lacked the necessary terms to form a binding contract. Next, it claimed that election letters and AFEs are not considered binding contracts in oil and gas industry custom and practice. Rather, according to YMC, only a JOA constitutes a binding agreement in the industry.

The Tenth Circuit rejected both contentions. The court determined that the election letters and AFEs contained all of the necessary terms to form a contract. Although those documents are brief, it found that the letters and AFEs solicited YMC’s agreement to pay its share of the costs for both wells. And that YMC unequivocally accepted those offers by executing the election letters and AFEs. The court also held that the evidence of industry custom and practice that Plaintiff admitted at trial supports the conclusion that a JOA is unnecessary for a party to assume responsibility for its share of the well-development costs. Indeed, the district court prohibited the expert witness proffered by YMC from testifying because it found that the witness lacked the requisite expertise.

The Tenth Circuit’s decision reflects the shift in industry practice towards the use of election letters and AFEs to secure a party’s participation in a well. It also stands in opposition to a decision from the Court of Appeals for the Fifth Circuit from the 1980s suggesting that an AFE will not qualify as a binding contract. Operators and non-operators may now look to today’s decision as providing some certainty regarding the existence of a binding contractual relationship provided the documents they execute are similar to the documents executed in this case.

For more information, please contact [Andrew Glenn](#) or [Karen Spaulding](#). The decision may be found [here](#).