



Are You Paying *Ad Valorem* Taxes to the Sand Hills Metropolitan District When They Have No Legal Right to Assess and Collect Them?

By: [Karen Spaulding](#)

On October 6, 2016, in *BBC, et al. v. Sand Hills Metropolitan District*, the Colorado Court of Appeals [ruled](#) that the Sand Hills Metropolitan District (the “*District*”) did not have the legal authority pursuant to the Special District Act (the “*Act*”) to collect *ad valorem* taxes from oil and gas produced by Bill Barrett Corporation, Bonanza Creek Energy, Inc., and Noble Energy, Inc. within the District at any time from 2009 to the present. While this decision only applies to these three operators, the District could be ordered to relinquish improperly collected *ad valorem* taxes from any other operator who challenges its authority to collect those taxes.

In 2004, Bob Lemke created Altamira District No. 6 (“*AD6*”), which was located solely within the town of Lochbuie. In 2004, *AD6*’s service plan envisioned financing improvements for the proposed 1496 homes and 70,000 square feet of commercial development in Lochbuie. Under the Act, the Town Board properly approved this 2004 service plan.

While this housing and commercial development never occurred in Lochbuie, *AD6* nonetheless approved and started collecting a mill levy of 51.118 mills for the District’s operating expenses in 2008. In 2009, *AD6*’s boundaries expanded to include Lemke’s 70 Ranch, LLC, which is located 30 miles north of Lochbuie in unincorporated Weld County. At that time, *BBC*, Bonanza Creek, and Noble became taxpayers of *AD6*, as they operated oil and gas wells located on 70 Ranch lands.

In 2011, *AD6* changed its name from the Altamira District No. 6 to Sand Hills Metropolitan District and excluded all Lochbuie lands from the newly created District. In 2013, the District prepared a revised service plan with the purpose of spending over \$19 million to construct water facilities and pipelines, and to repair lakes, among other things, although the 2013 service plan contained no requirement that these improvements actually be completed.

When the Altamira District was located solely within the Town of Lochbuie the Town had the authority to approve the 2004 Plan under the Act. However, the decisions to include the 70 Ranch lands within its boundaries in 2009 and to exclude the Lochbuie lands from the District’s boundaries in 2011, were material modifications to its service plan. Under the Act, only the Weld County Board of County Commissioners was legally permitted to approve such material modifications.

A special district only has taxing authority when it complies with the terms of the Act. Having failed to obtain the approval of the Weld County Board of County Commissioners in 2009 or 2011, or in 2013 when it revised the purpose of its service plan, the District had no legal authority to collect *ad valorem* taxes after 2009 under the Act.

One purpose of the Act is to protect a county from a special district imposing taxes on property located within the county without notice, which would be to its detriment. Further, in this case, the District's lack of notice to and approval from Weld County of its modified plans led to the District imposing its mill levy to generate taxes while providing no services whatsoever, which is another rationale for county oversight.

The Court found the District's boundary modifications in 2009 and 2011 to include lands in unincorporated Weld County and in 2013 to revise the service plan without notice and approval of Weld County Board of County Commissioners to be "*de facto* material modifications to the 2004 plan" which violated the Act. As such, the *ad valorem* taxes imposed upon and collected from BBC, Bonanza Creek, and Noble after April 2009 were not legally collected and must be returned to these litigants.

Sand Hills has until November 17, 2016 to file a petition for writ of certiorari with the Colorado Supreme Court if it does not file a petition for rehearing with the Court of Appeals. Given the undisputed facts and the express statutory requirements of the Special District Act it seems unlikely that the Supreme Court would grant certiorari in this case.

For questions regarding this decision and *ad valorem* taxes, please contact [Karen Spaulding](#).