

NATURAL RESOURCE NOTES

Oil and Gas Mechanics' Liens Revisited

by Kathryn H. Meyer and Philip G. Dufford

About the Authors

Kathryn H. Meyer is a paralegal with the Colorado U.S. Attorney's Office and third-year law student at the University of Denver College of Law. Philip G. Dufford is a partner in the firm of Welborn Dufford Brown & Tooley. Credit also is given to Donahue Kane at Gorsuch, Kirgis, Grover, Campbell & Walker. His research provided the initial insights to the conclusions reached here.

Nearly thirty years ago, a two-part article^(fn1) published in *Dicta* addressed the construction and application of the Colorado oil and gas mechanic's lien statute.^(fn2) Only two cases concerned with the proper application of the lien statute have come before Colorado's appellate courts since the article was printed--*Nation v. Chambers*^(fn3) and *Gearhart-Owen Ind. v. Panhandle Production*.^(fn4) These cases precipitate a reexamination of the analysis made and the opinion rendered so many years ago concerning the statute's construction.

Historical Review

Colorado's present oil and gas mechanic's lien statute (CRS § 38-24-101) was originally enacted in 1929, apparently in reaction to two 1928 Colorado Supreme Court opinions that construed the 1903 oil and gas lien law. In *Poudre River Corp. v. Carey*,^(fn5) the Colorado Supreme Court held that a party who furnishes labor is not entitled to a mechanic's lien against the contracting party-lessee's oil rig machinery and equipment. The court stated that the lien statute's provision for a lien on detached personal property such as machinery and equipment was only intended "to protect the party who had supplied such machinery and equipment for the job."^(fn6) The pertinent portion of the 1903 statute provided:

That any person or persons, company or corporation, who perform labor or furnish material or supplies for constructing, altering or repairing, or for the digging, drilling or boring, operating, completing or repairing of any gas well, oil well or any other well, by virtue of a contract with the owner or his authorized agent, shall

have a lien to secure the payment of the same upon such gas well, oil well or such other well, and upon the materials and machinery and equipment and supplies so furnished, and in case the contract is with the owner of the lot or land, then such lien shall also be upon the interest of the owner of the lot or land upon which the same may stand, and in case the contract is with the lease holder on the lot or land upon which the same may stand or in relation to which such material or supplies are furnished.(fn7)

The second case, *Terminal Drilling Co. v. Jones*,(fn8) again addressed whether a laborer was entitled to a mechanic's lien against personalty under the 1903 statute. In this case, the assignee of an oil and gas lessee contracted with Terminal Drilling Company to drill a well, apparently without also conveying an interest in real property. Terminal erected a standard derrick and then subcontracted to drill the well under Terminal Drilling's direction and supervision. Jones, a laborer hired by the subcontractor, filed a mechanic's lien against Terminal's derrick following the project's abandonment.

Acknowledging its prior decision in *Poudre River* that a lien on equipment is restricted to those who have furnished the equipment to the well, the Colorado Supreme Court nonetheless found the lien filed by Jones to be proper. The court stated that the derrick and drilling rig

with their stationary parts, are essential to the sinking of the well, and would also be useful in its operation. . . . [W]e agree with those decisions which hold such equipment to be a portion of the structure or improvement and of the oil well itself, for the purpose of the lien act.(fn9)

Reading the *Terminal Drilling* and *Poudre River* cases together, it would seem that the Supreme Court construed the 1903 mechanic's lien statute: (1) to include only that property that could be characterized as real property or property that has become a part of the oil well (affixed or installed personalty); and (2) to permit a lien on detached personal property, but only by the person supplying such property.

Thus, these two 1928 Colorado appellate decisions determined how the 1903 oil and gas mechanic's lien law should be construed, but only until the next legislative session. In 1929, the Colorado legislature adopted a new oil and gas mechanic's lien statute. This remains the law today.(fn10) CRS § 38-24-101 states:

Every person, firm, or corporation, whether as contractor, subcontractor, materialman, or laborer, who performs labor upon or furnishes machinery, material, fuel, explosives, power, or supplies for sinking, repairing, altering, or operating any gas well, oil well, or other well or for constructing, repairing, or operating any oil derrick, oil tank, oil pipeline or water pipeline, pump, or pumping station, transportation or communication line, or gasoline plant and refinery by virtue of a contract, express or implied, with the owner or lessee of any interest in real estate or with the trustee, agent, or receiver of any such owner, part owner, or lessee shall have a lien to secure the payment thereof upon the properties mentioned belonging to the party contracting with the lien claimants, and upon the machinery,

materials, and supplies so furnished, and upon any well upon and in which such machinery, materials, and supplies have been placed and used, and upon all other wells, buildings, and appurtenances, and the interest, leasehold, or otherwise, of such owner, part owner, or lessee in the lot or land upon which said improvements are located, or to which they may be removed, to the extent of the right, title, and interest of the owner, part owner, or lessee, at the time the work was commenced or machinery, materials, and supplies were begun to be furnished by the lien claimant or by the contractor under the original contract; and such lien shall extend to any subsequently acquired interest of any such owner, part owner, or lessee.

The previously mentioned article^(fn11) published in 1957 reviewed the legislative history of the 1929 oil and gas lien statute and the general lien law,^(fn12) as well as the opinions of the Colorado Supreme Court in the *Terminal and Poudre River* cases concerning the 1903 oil and gas lien statute. The article concluded that the 1929 oil and gas mechanic's lien statute should be construed more narrowly than its precursor to grant a lien right only against a real property interest, including affixed personalty, and not against detached personal property. This construction is consistent with that given the general mechanic's lien statute^(fn13) and recognizes that other remedies are available to one who furnishes equipment characterized as detached personal property to an oil and gas well.^(fn14) However, the article expressed dissatisfaction as to whether the 1929 statute actually repudiated the "result implied in *Poudre River* that a materialman would have a lien against the detached personal property which he has furnished."^(fn15)

Recent History and the Status Quo

The application of the lien statute to proceeds attributable to oil and gas production was an issue presented in 1971 to the Colorado Court of Appeals in *Nation v. Chambers*.^(fn16) There, the court held that because Colorado's statute did not expressly grant a mechanic's lien against the proceeds payable for production from a well, it could not be construed to extend to such proceeds.

[T]he statute severely restricts the classes of personalty which may be impressed with the lien it confers. The restriction lies not only against the types of personalty but also against the classes of persons who may assert their liens against personal property.^(fn17)

On certiorari,^(fn18) the Colorado Supreme Court agreed with the Court of Appeals: "If the proceeds of the sale of oil produced from the well are not included in the statute, the lien may not be extended to cover proceeds realized from extracted oil."^(fn19) Colorado's statute does not list such proceeds, and the court found the petitioner's lien to attach only to "such items of property as are specifically enumerated in the statute."^(fn20)

More recently, in *Gearhart-Owen Ind. v. Panhandle Production*,^(fn21) the Colorado Court of Appeals held that a mechanic's lien under the oil and gas statute could not be extended to oil tubular goods considered to be detached personal property.

Finding that the statute could be applied only to an interest in real property or affixed personalty, (fn22) the court stated:

The statutory phrase "properties mentioned" refers to "any gas well, oil well, or other well" and "any oil derrick, oil tank, oil pipeline or water pipeline, pump or pumping station, transportation or communication line, or gasoline plant and refinery." . . . [The phrase does not] refer to the words "machinery, material, fuel, explosives, power, or supplies." Such interpretation [would render] meaningless the phrase "and upon the machinery, materials, and supplies so furnished" which immediately follows these words. (fn23)

Additionally, the court held that the term "properties" could not be construed to include "unspecified items acquired by the debtor from third parties, which items have not become integral parts of the well" (fn24)---in this case, oil tubular goods removed from the well site.

A New Analysis

The oil and gas mechanic's lien statute is a single sentence containing no less than 253 words---and one semicolon. (fn25) That its proper construction is somewhat unsettled is not surprising. For purposes of analysis it is helpful to reduce and reorganize the statutory language as follows:

Every person . . . who performs labor upon or furnishes machinery, material, fuel, explosives, power, or supplies for sinking, repairing, altering, or operating any . . . well or for constructing, repairing, or operating any oil derrick, . . . tank, . . . pipeline, pump, or pumping station, transportation or communication line, or gasoline plant and refinery by virtue of a contract . . . with the owner [etc.] of any interest in real estate. . . shall have a lien. . .

[1] upon the properties mentioned belonging to the party contracting with the lien claimants,

[2] and upon the machinery, materials, and supplies so furnished,

[3] and upon any well upon and in which such machinery, materials, and supplies have been placed and used,

[4] and upon all other wells, buildings, and appurtenances, and the interest ... of such owner [etc.] in the lot or land upon which said improvements are located. . . .

First, the statute provides for a lien on the mentioned properties (fn26) belonging to the party contracting with the lien claimant. The statute seems to further specify that the property of the contracting party is subject to lien only where the contracting party has a real property interest. Such a construction would apparently avoid the results achieved in both the Terminal and Poudre River cases.

Significantly, the legislature did not add a proviso that the statute be limited to real property or affixed personalty.

Second, the language of the prior statute is incorporated in the second-numbered paragraph---upon the materials and machinery "so furnished." This was interpreted in *Poudre River*(fn27)to mean that the one who had furnished severable personalty to the job was entitled to place a mechanic's lien against that property. The legislature's decision not to alter the language following the decision in *Poudre River* is supportive of the court's interpretation in that case. Here again, the legislature chose not to modify the phrase to limit the scope to affixed personalty.

Third, the statute provides for a lien against the well where the machinery, materials and supplies have become a part of the well as affixed personalty. The fact that the legislature selected the language "upon and in which such . . . have been placed and used" indicates its intent to include affixed personalty generally and makes such omissions in other portions of the statute significant.

Fourth, the last phrase appears to be a catch-all provision encompassing other wells, buildings and real property interests of the contracting owner or lessee. As such, it would seem to extend greatly the reach of the oil and gas mechanic's lien statute.

By designating these four possible avenues of prosecuting a lien, the oil and gas mechanic's lien statute strikes a marked contrast with the general mechanic's lien statute.(fn28) This contrast, enhanced in the 1929 version, appears to reject the Supreme Court's limiting construction of the prior statute in the *Terminal and Poudre River cases*. Rules of statutory construction support this analysis.

When a statute is amended, it is presumed that the legislature intended the statute to have a meaning different from that accorded to it before the amendment . . . [citations omitted] . . . [C]ourts must therefore assume that revision of the prior law was intended to supply some want and to correct some deficiency in the existing legislation.(fn29)

Therefore, the 1929 statute seems to provide for a lien not only against the detached personalty provided by a lien claimant and to similar affixed personalty, but also to any of the mentioned properties(fn30) belonging to the contracting party--- an owner or lessee enjoying a real property interest---as well as any other real property interest of the contracting party.

This analysis is consistent with the rulings of the Colorado Supreme Court and the Court of Appeals in the *Chambers case*.(fn31) As both courts noted, the proceeds from the sales of the production are neither personalty specified in the statute nor subject to being characterized as real property. The Colorado Court of Appeals' opinion in *Gearhart-Owen*.(fn32) however, is contrary to the present analysis due to the court's restrictive interpretation of the phrase "properties mentioned" to include only some but not all of the properties specified in the statute. The court justified its limitation of the phrase on the theory that to include all of the properties specified in the statute within the ambit of the phrase "properties mentioned" would render meaningless the subsequent phrase, "and upon the machinery, materials, and supplies so furnished."

This article's analysis, however, clarifies what would seem to be the legislative intent and results in a construction that is consistent with the express statutory language. Thus, based on this analysis, oil tubular goods, which were held to be not lienable in *Gearhart-Owen*, should be considered to be lienable "materials" or "supplies" if owned by the contracting party having a real property interest.

"Staking" the Claim

Mechanic's lien laws are designed for the benefit of laborers and materialmen and therefore are construed liberally and comprehensively in favor of lien claimants. The rationale is simply that a party who has enhanced the value of property through his materials and labor is entitled to protection. Nonetheless, a claimant must necessarily establish that he falls within the law's ambit.

Since the underlying principal of our mechanic's lien law is to prevent unjust enrichment, it is usually liberally construed in favor of lien claimants . . . ; but the statutory remedy cannot be judicially extended so as to be applied to cases which do not fall within its provisions. . . . And where the object of a statute is to charge the property of one with the debt of another, persons claiming its benefits must bring themselves clearly within its purview as belonging to some class in whose favor the remedy is allowed.(fn33)

In addition to the specific language of the statute, the following three questions should be asked, answered and evaluated to determine the breadth of the mechanic's lien statute under the particular circumstances:(fn34) (1) how directly and exclusively did the labor or materials contribute to a particular drilling operation; (2) what is the geographic proximity of the labor or supplies to the operation; and (3) did the materials or labor supplied actually enhance the value of the real property or add to the wealth of the contracting party or owner? Where the contribution is direct and exclusive to the drilling operation, factors of proximity to the job and enhancement of the property decrease in relative importance.(fn35)

The classes of persons who may assert such a lien pursuant to Colorado's statute may include the following:

Laborers: Within this general class are included operators and all members of a normal drilling crew, carpenters, repairmen, truck drivers, "cat men," and all persons whose direct and exclusive contribution to the well is that of physical labor. Fencing contractors should also be included within the statute because they often provide labor and materials for fencing in and protecting equipment necessary to "sinking" or "operating" the well.(fn36)

Drilling Contractors: The statute specifically includes the drilling contractor--- a contractor who performs labor upon or furnishes machinery for sinking or operating any well.

Common Carriers: Common carriers do not appear to be included within this statute; however, a separate, specific statute defines the rights of common carriers with respect to the prosecution of liens.(fn37)

Suppliers: Materialmen who furnish materials or supplies that are consumed during the drilling of the well clearly have a lien under the statute. In addition to the supplies and materials specifically mentioned in the statute are supplies such as water, drilling mud, lumber, cement, "fracing" and acidizing fluids, chemicals, lost circulation materials and other additives used exclusively in "sinking" or "operating" the well.(fn38)

The statute also should be construed to include suppliers of detached personalty, permitting a lien against the personalty provided by the lien claimant or against any specified real property interest of the contracting party or owner. Such suppliers enhance and directly contribute to the well and include those providing drilling machinery and parts, well equipment, service tools and rental equipment.(fn39)

Engineers, Geologists, Surveyors, Draftsmen and Other Personnel: Those providing what cannot be typically described as "labor" but rather a "service" to the well have generally been considered to be excluded under oil and gas mechanic's lien statutes unless the statute specifically permits a lien for "services."(fn40)Notwithstanding the contribution of such services to the success of the entire operation, the rationale for denying a lien is simply that if the legislature had intended to include these services, the statute would so state.(fn41)

In Colorado this argument is supported by the fact that the general mechanic's lien law, unlike the oil and gas lien statute, specifically includes

architects, engineers, draftsmen, and artisans who have furnished designs, plans, plats, maps, specifications, drawings, estimates of cost, surveys, or superintendence, or who have rendered other professional or skilled service. .
(fn42)

The fact that the oil and gas mechanic's lien statute is silent in this regard is therefore significant.

Whether a mechanic's lien is obtainable for "services" under oil and gas lien statutes remains unsettled in other jurisdictions.(fn43) However, to fall within Colorado's statute, those who provide professional or skilled services should at a minimum provide evidence of a "labor" or "materials" component.(fn44) Additionally, a claimant must be reminded to prosecute the lien deligitly. Failure to file the lien within the time required by statute renders the lien void and unenforceable.(fn45)

Conclusion

This analysis of Colorado's oil and gas mechanic's lien is intended to be a reexamination of the construction made by the 1957 article in *Dicta*. Although the conclusions reached here differ from those made nearly three decades ago, every attempt has been made to harmonize the Colorado statute with meager Colorado case precedent. It can be concluded that a laborer, drilling contractor, or supplier may pursue a lien against:

- 1) all "property" mentioned in the statute belonging to the party contracting with the claimant, where that party also enjoys an interest in real property;
- 2) the materials and machinery (severable personalty) provided to the operation by the claimant;
- 3) the well and affixed personalty; and
- 4) other wells, buildings and other real property interests of the contracting owner or lessee.

NOTES

-
1. Dufford and Helmick, "Mechanics' Liens Relative to Oil and Gas Operations," 34 *Dicta* 207 (1957); "Mechanics' Liens Relative to Oil and Gas Operations---Part II, 34 *Dicta* 373 (1957).
 2. CRS § 38-24-103.
 3. 29 Colo.App. 413 (1971), *aff' d*, *Chambers v. Nation*, 178 Colo. 124 (1972).
 4. 624 P.2d 355 (Colo.App. 1980), *cert. denied*, Feb. 17, 1981.
 5. 83 Colo. 419 (1928).
 6. *Id.* at 426. The contracting party-lessee had obtained a real property interest pursuant to the lease.
 7. Colo. Laws 1903, c. 141.
 8. 84 Colo. 279 (1928).
 9. *Id.* at 288. The court further held that Terminal was estopped from claiming that its derrick should be considered "detached personal property" and, hence, beyond

the scope of the lien statute. Terminal had given no notice to the employees hired by the subcontractor that it claimed the right to hold its equipment free of liens,

but exacted from its subcontractor indemnity on account of such liens, and permitted the lien claimants to perform labor, presumably upon the credit of the well as equipped. Under these circumstances we think that Terminal Company is estopped to assert that the derrick and rig should now be treated as detached personal property, and not as portions of the oil well and lienable structure. *Id.* The dissent argued that an oil derrick should not be considered to be attached personalty, and, in most cases, the mobility of a derrick supports its consideration as detached personal property.

10. But compare the 1953 and 1963 versions (CRS 1953, § 86-5-1 with CRS 1963, § 86-5-1), paying close attention to punctuation.

11. *See*, note 1, *supra*.

12. CRS § 38-22-101 provides, in pertinent part, that every "person who supplies machinery . . . and all persons . . . performing labor . . . shall have a lien upon the property upon which they have supplied machinery . . . or bestowed labor. . . ." This statute has been construed to apply solely to machinery, materials and labor used in the construction of the structure so as to become part of it when completed. *Brannon v. Santa Fe*, 138 Colo. 314, 317 (1958); *Farmers' Irrigation Co. v. Kamm*, 55 Colo. 440, 443 (1913).

13. *Id.*

14. Dufford and Helmick, *supra*, note 1 at 378.

15. *Id.*

16. *Supra*, note 3. The court also considered the issue of whether a purchase money security interest in property takes precedence over a preexisting mechanic's lien. The court found that the lien was subordinate.

17. *Id.* at 417.

18. *Chambers v. Nation*, *supra*, note 3.

19. *Id.* at 130.

20. *Id.*

21. *Supra*, note 4.

22. *Id.* at 357-358.

23. *Id.* at 357.

24. *Id.* at 357-358, citing Dufford and Helmick, Part II, *supra*, note 1.

25. CRS § 38-24-101.

26. Note the limited definition of "properties" adopted in *Gearhart-Owen Ind.*, *supra*, note 4, presented in text at note 23.

27. *Supra*, note 5 at 426.

28. *Supra*, note 12, CRS § 38-22-101.

29. *Ridge Erection Co. v. Mountain States Telephone & Telegraph*, 37 Colo.App. 477, 480, 481, 549 P.2d 408 (1976).

30. The phrase "properties mentioned" should be construed to mean all of the properties specifically mentioned: "machinery, material, fuel, explosives, power, or supplies . . . gas well, oil well, or other well . . . oil derrick, oil tank, oil pipeline or water pipeline, pump, or pumping station, transportation or communication line, or gasoline plant and refinery. . . ."

31. *Supra*, note 3.

32. *Gearhart-Owen*, *supra*, note 4. *See*, note 30, *supra*.

33. *Supra*, note 29.

34. 6 *American Law of Mining* § 204.02[3] (2d ed. 1984).

35. *Id.*

36. Dufford and Helmick, Part II, *supra*, note 1 at 388.

37. CRS § 38-20-105.

38. *Supra*, note 1.

39. *Id.*; Kite and Cook, "Enforcing and Defending Against Liens on Mineral Interests: Reliance vs. Reality," 29 *Rocky Mt. Min. L.Inst.* 111, 119(1983).

40. Drew, "Current Developments in the Law of Materialmen's Liens on Oil and Gas Leases," 21 *Rocky Mt. Min. L.Inst.* 307, 317 (1975). *See*, *Lindemann v. Belden Consolidated Mining and Milling Co.*, 16 Colo.App. 342, 347, 65 P. 403 (1901).

41. Kite and Cook, *supra*, note 39 at 119-120; Drew, *supra*, note 40. *See*, *Mountain States Resources, Inc. v. Ehlert*, 636 P.2d 868 (Mont. 1982).

42. CRS § 38-22-101.

43. A surveyor has been considered to be so necessary to the "sinking" of the well that his contribution has been included under oil and gas lien statutes. Kite and Cook, *supra*, note 39 at 118.

44. *Id.*

45. Drew, *supra*, note 40 at 313-314; *Permian Corp. v. Armco Steel Corp.*, 508 F.2d 68, 77 (10th Cir. 1974); CRS §§ 38-24-104 and 38-24-105.