PAYMENT GUIDELINES FOR THE ROCKIES AND CALIFORNIA

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By

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TABLE OF CONTENTS

I. INTRODUCTION 1
II. STATE BY STATE REVIEW ....
A. California 1
B. Colorado 2
i. Minimums
ii. Lease Provisions
iii. Statutory Exceptions
iv. Applicable to Royalty, Working Interest, etc.?
v. Notice Requirements/Response Deadlines
vi. Enforcement (Court or Commission?)
vii. Check Stub Requirements
C. Montana 4
i. Minimums
ii. Lease Provisions
iii. Statutory Exceptions
iv. Applicable to Royalty, Working Interest, etc.?
v. Notice Requirements/Response Deadlines
vi. Enforcement (Court or Commission?)
vii. Check Stub Requirements
D. New Mexico 5
i. Minimums
ii. Lease Provisions
iii. Statutory Exceptions
iv. Applicable to Royalty, Working Interest, etc.?
v. Notice Requirements/Response Deadlines
vi. Enforcement (Court or Commission?)
vii. Check Stub Requirements
E. Utah 6
i. Minimums
ii. Lease Provisions
iii. Escrow Account
iv. Statutory Exceptions
v. Applicable to Royalty, Working Interest, etc.?
vi. Notice Requirements/Response Deadlines
vii. Enforcement (Court or Commission?)
viii. Check Stub Requirements
F. Wyoming 8
i. Minimums
ii. Lease Provisions
iii. Escrow Account
iv. Statutory Exceptions
v. Applicable to Royalty, Working Interest, etc.?
vi. Notice Requirements/Response Deadlines
vii. Enforcement (Court or Commission?)
viii. Check Stub Requirements
III. CONCLUSION 10

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Most states in the Rocky Mountain Region have passed statutes regarding when royalty and other payments from oil and gas wells must be made. Division order personnel need to know the provisions of these statutes. Some of the statutes impose high interest rates if monies are not placed in an escrow account. One statute provides that interest must be paid at 18 percent per annum if the escrow account is not established. An interest rate of 18 percent per annum adds up quickly and will significantly increase a company's exposure to a claim for damages, especially when interest rates are low as they have been for the past 10 years. Some of these statutes have certified mail provisions and the company has a certain number of days to respond. Most of the statutes provide for attorneys' fees awards if a claimant wins, which again can significantly increase the amount owed to the royalty or other owner.

STATE BY STATE REVIEW

The attached chart shows the interest rates provided for in payment statutes for the Rocky Mountain states. The chart also shows the time deadline for payments which is set forth in these statutes. In a number of the states, the amount of interest or the question of whether interest is owed at all, depends on whether the company has a good "excuse" for nonpayment. A good "excuse" is a reason for nonpayment that falls within the statutory exceptions for the particular state. Most of these states have exceptions which recognize that in some instances payments cannot be made to the owner because of title defects or other reasons. In addition, a number of the states have "minimums" so a company is not required to pay if the total amount owed is less than, for example, $100.00. Thus, to understand what amount of interest would be owed, it is important to review the exceptions set forth in the individual state's statute.

The following sections will review each state's statutory provisions regarding minimums, whether lease provisions can override the statute, statutory exceptions, any notice requirements and response deadlines, and enforcement procedures. These more detailed provisions of the statutes are to be used along with the chart attached to this paper, which sets forth the interest rate, attorneys' fees provisions and other basic provisions of the statutes.

California

Unlike the other states discussed in this paper, California does not have a specific statute regarding payment of proceeds of production from oil and gas wells. Thus, the general rules regarding interest on money owed another party would apply. The California Constitution provides that the interest rate on a loan or forbearance of any money or on

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accounts after demand shall be 7% per annum unless the parties contract in writing for a higher rate of interest.

Colorado

Minimums

Payments may be made annually if the aggregate sum due a payee for 12 consecutive months is $100.00 or less.

Lease Provisions

The payor and payee may provide, in a valid lease or other agreement, for terms or arrangements for payment that differ from the time requirements for payments set forth in the statute.

Statutory Exceptions

The payment deadlines of the statute are suspended when payments are withheld for any of the following reasons:

1. A failure or delay by the payee to confirm in writing the payee's fractional interest in the proceeds after a reasonable request in writing by the payor for such conformation;

2. A reasonable doubt by the payor as to the payee's identity, whereabouts, or clear title to an interest in proceeds; or

3. Litigation that would affect the distribution of payments to a payee.

The effect of fitting within the statutory exceptions is that the payment deadlines of the statute are suspended. Also, the statute provides that interest is owed if payment is not made and the delay in payment was not caused by any of the reasons set forth above. Thus, it appears that interest is not owed if the reason for nonpayment falls within those reasons listed above.

Applicable to Royalty, Working Interest, etc.?

The Colorado statute applies to payments to payees which includes any person legally entitled to payment from proceeds derived from the sale of oil, gas, or associated products from a well in Colorado, but shall not include interests owned by the State of Colorado. Thus, the Colorado statute is not limited to royalty, and would be applicable to working interests and other interests in oil and gas.

Notice Requirements/Response Deadlines

Prior to seeking relief under the statute for failure to make timely payments, the payee (i.e. owner) shall give the payor (i.e. operator or purchaser) written notice by

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certified mail of such failure and the payor shall have 20 days after receipt of the required notice in which to pay the proceeds, plus interest, or to respond in writing explaining the reason for nonpayment.

Enforcement (Court or Commission?)

The Colorado statute provides that if there is no bona fide dispute over the interpretation of a contract for payment, the Oil and Gas Conservation Commission has jurisdiction to determine when payments were due, whether one of the statutory exceptions or reasons for nonpayment exists and the amount of the proceeds and interest which is due. Case law in Colorado has held that a dispute turning on contract or lease interpretation is a matter to be determined by a court rather than by the Oil and Gas Conservation Commission. Grynberg v. Colorado Oil and Gas Conservation Commission, 1999 WL 1243320 (Colo. App. 1999). A petition has been filed requesting the Colorado Supreme Court to review this decision, but the Supreme Court has not yet decided whether to review the case.

Check Stub Requirements

The Colorado statute requires that payment of proceeds shall be accompanied by information that includes, at a minimum:

1. A name, number, or combination of name and number that identifies the lease, property, unit, or well or wells for which payment is being made;

2. The month and year during which the sale occurred for which payment is being made;

3. The total quantity of product sold attributable to such payment, including the units of measurement for the sale of such product;

4. The price received per unit of measurement, which shall be the price per barrel in the case of oil and the price per thousand cubic feet ("MCF") or per million British thermal units ("MMBTU") in the case of gas;

5. The total amount of severance taxes and any other production taxes or levies applied to the sale;

6. The payee's interest in the sale, expressed as a decimal and calculated to at least the sixth decimal place;

7. The payee's share of the sale before any deductions or adjustments made by the payor or identified with the payment;

8. The payee's share of the sale after any deductions or adjustments made by the payor or identified with the payment;

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9. An address and telephone number from which additional information may be obtained and questions answered.

If the payee makes a written request to the payor by certified mail, the payor shall provide to the payee within 60 days a written explanation of those deductions or adjustments over which the payor has control and for which the payor has information, whether or not identified with the payment. This requirement shall not preclude the payor from answering the inquiry by referring the payee to the royalty clause or payment provision in a lease or other agreement.

Failure to provide the check stub information set forth above or to respond to the inquiry described above makes the payor subject to penalties under § 34-60-121, C.R.S., which provides that any operator who violates these statutes is subject to a penalty of not more than $1,000.00 for each act of violation per day that the violation occurs. Any such penalty shall be imposed by the order of the Colorado Oil and Gas Conservation Commission after a hearing. The maximum penalty shall not exceed $10,000.00 except in certain circumstances which do not appear to apply to payment of proceeds of production.

Montana

Minimums

The Montana statute provides that the operator may remit semi-annually to a person entitled to royalties the aggregate of 6 months' royalties whenever the aggregate amount is less than $50.00 and annually whenever the aggregate amount is less than $10.00.

Lease Provisions

The Montana statute does not specifically state that a lease or other agreement can override the statute's provisions regarding the time for payment.

The Montana statute states that the obligation to pay oil or gas royalties is of the essence in the lease contract. General contract law provides that terms which are of essence of the contract, if breached, can result in termination of the contract.

Statutory Exceptions

The Montana statute provides simply that it is not applicable whenever there is a dispute as to the title of the minerals or entitlement to royalties, the outcome of which would affect distribution of royalty payments.

Applicable to Royalty, Working Interest, etc.?

The Montana statute is specifically applicable to royalties, so it would not apply to other interests such as the working interest. It is arguable whether or not an overriding royalty would be considered a royalty under this statute, and the Montana statute does not define royalties.

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Notice Requirements/Response Deadlines

The Montana statute does not address these questions.

Enforcement (Court or Commission?)

The district court for the county in which the oil or gas well is located has jurisdiction over any actions brought under the Montana statute.

Check Stub Requirements

No requirements as to check stub information are stated in the Montana statute.

New Mexico

Minimums

There is no minimum to avoid owing interest at the basic rate (the discount rate charged by the Federal Reserve Bank of Dallas to member banks plus 1-1/2% on the date payment is due). An operator can avoid payment at the higher penalty rate of 18% if the total amount of oil and gas proceeds in the possession of the payor owed to the owner of the oil and gas proceeds making claim to payment is less than $100.00 at the end of any month.

Lease Provisions

The statutory requirements for time of payment are not applicable if other periods or arrangements are provided for in a valid contract with the person entitled to such proceeds.

Statutory Exceptions

The New Mexico statute states that interest at 18% per year is owed, unless payment is excused by the happening of one or more of the following:

1. The payor fails to make payment in good-faith reliance upon a title opinion by a licensed New Mexico attorney making objection to the lack of good and marketable title of record in the party claiming entitlement to payment and furnishes a copy thereof to such party for curative action required thereby;

2. The payor receives information that in his good-faith judgment brings into question the entitlement of the person claiming the right to the payment to receive the payment or that has rendered the marketable title of record unmarketable or that may expose the payor to the risk of multiple liability or liability to third parties if the payment is made;

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3. The total amount of oil and gas proceeds in the possession of the payor owed to the owner of the oil and gas proceeds making claim to payment is less than one hundred dollars ($100.00) at the end of any month; or

4. The party entitled to payment has failed or refused to execute a reasonable division or transfer order acknowledging the proper interest to which he claims to be entitled and setting forth a mailing address to which payment may be directed.

If the operator shows that one of the reasons above is the reason for nonpayment, interest is owed at the lower rate stated in § 70-10-4, NMSA, rather than at the 18% rate stated in § 70-10-5, NMSA.

Applicable to Royalty, Working Interest, etc.?

The New Mexico statute is applicable to all payments derived from oil and gas production from any well located in New Mexico, whether royalty interest, overriding royalty interest, production payment interest or working interest, expressed as a right to a specified interest in the cash proceeds received from the sale of oil and gas, but excluding net profits interests and other types of interests the extent of which cannot be determined with reference to a specified share of proceeds from the sale of oil and gas.

Notice Requirements/Response Deadlines

The New Mexico statute does not address these matters.

Enforcement (Court or Commission?)

The New Mexico statute does not specifically state where cases are to be brought, but provides that the prevailing party shall recover all court costs, so appears that the courts are the place for enforcing the statute.

Check Stub Requirements

None are stated in the New Mexico statute.

Utah

Minimums

Payment shall be remitted to any person entitled to oil and gas proceeds annually for the aggregate of up to 12 months accumulation of proceeds, if the total amount owed is $100.00 or less.

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Lease Provisions

The statutory payment times do not apply if other periods or arrangements are provided for in a valid contract with the person entitled to the proceeds.

Escrow Account

The Utah statute requires payments to be deposited into an escrow account if they cannot be made within the time limits set forth in the statute. The proceeds shall be deposited in an escrow account in a federally insured bank or saving and loan institution using a standard escrow document form. The deposit shall earn interest at the highest rate being offered by that institution for the amount and term of similar demand deposits. The escrow agent may commingle money received into escrow from any one lessee or operator, purchaser, or other person legally responsible for payment. Applicable escrow fees shall be deducted from the payments.

Statutory Exceptions

If payments are withheld without "reasonable justification" the Board may require the operator to pay interest at 18% and to pay a penalty of up to 25%. The circumstances which constitute "reasonable justification" include, but are not limited to, the following:

1. The payor:

a. fails to make the payment in good faith reliance upon a title opinion by a licensed Utah attorney objecting to the lack of good and marketable title of record of the person claiming entitlement to payment; and

b. furnishes a copy of the relevant portions of the opinion to the person for necessary curative action;

2. The payor receives information which:

a. in the payor's good faith judgment, brings into question the entitlement of the person claiming the right to the payment to receive that payment;

b. has rendered the title unmarketable; or

c. may expose the payor to the risk of liability to third parties if the payment is made;

3. The total amount of oil and gas proceeds in possession of the payor owed to the person making claim to payment is less than $100.00 at the end of any month; or

4. The person entitled to payment has failed or refused to execute a division or transfer order acknowledging the proper interest to which the person claims to be entitled and setting forth the mailing address to which payment may be directed, provided the division or transfer order does not alter or amend the terms of the lease.

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Applicable to Royalty, Working Interest, etc.?

The Utah statute applies to any person entitled to oil and gas proceeds derived from the sale of production from any well producing oil or gas in the state, so it would appear that it applies to all interests in production.

Notice Requirements/Response Deadlines

There are no specific notice requirements or response deadlines in Utah. However, the Utah statute sets up a procedure whereby an owner may file a petition with the Board of Oil, Gas and Mining to determine why proceeds have not been paid, and the Board will then set the matter for investigation and negotiation within 60 days.

Enforcement (Court or Commission?)

After the investigation described above, if the matter is not resolved by negotiation, the Board of Oil, Gas and Mining may set a hearing within 30 days. If the Board does not set a hearing, the information gathered during the investigation shall be given to the petitioner who then may seek a remedy in a court.

Check Stub Requirements

The Utah statute does not contain any provisions addressing information required to be given on a check stub.

Wyoming

Minimums

Payment shall be remitted annually for the aggregate for up to 12 months accumulation of proceeds if the total amount owed is $100.00 or less. However, on written request by the payee, payments shall be remitted within 60 days following receipt of the request, if the aggregation of the proceeds is $25.00 or more. In no case shall payments be made later than 12 months following the date of cessation of production or within 12 months following the date the payor is no longer responsible for the payments.

Lease Provisions

The statutory payment requirements do not apply if other periods or arrangements for the first and subsequent payments are provided for in a valid contract with the person or persons entitled to such proceeds. The Wyoming statutes provide that a division order may not alter or amend the terms of an oil or gas lease or other contractual agreement.

Escrow Account

The Wyoming statute requires that if payments cannot be made for any reason within the limits set forth in the statute, the lessee or operator, purchaser or other party

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legally responsible for payment shall deposit the proceeds in an escrow account in a federally insured bank or savings and loan institution in Wyoming, using a standard escrow document form approved by the attorney general of Wyoming, which deposit shall earn interest at the highest rate being offered by that institution for the amount and term of such deposits. The escrow agent may commingle monies received into escrow from any one lessee or operator, purchaser or other party legally responsible for payment. Applicable escrow fees shall be deducted from the payments.

Statutory Exceptions

The Wyoming statute does not have any exceptions relating to title or any other matters. Thus, failure to establish the escrow account required by the Wyoming statute appears to result in owing interest at 18% per annum, regardless of the reasons for nonpayment.

A Wyoming case states that the Act unambiguously requires payments to be made in accordance with the time set out in the statute or within a time frame established by the legal agreements between the parties. Failure to do so results in liability for the amount of the unpaid proceeds plus 18% per annum interest. "There are no exceptions." Ferguson v. Coronado Oil Co., 884 P.2d 971 (Wyo. 1994). Similarly, in Cities Service Oil & Gas Corp. v. State, 838 P.2d 146 (Wyo. 1992) the Court stated that there are no exceptions in the Act providing justification for royalty nonpayment.

Applicable to Royalty, Working Interest, etc.?

The Wyoming statute applies to payment of proceeds of production to all persons legally entitled to proceeds of production from any well in the State of Wyoming. Thus, the statutes appear to apply to working interests and other types of interests. However, several cases refer to the statute as the Royalty Payment Act, so an argument could be made that it does not apply to working interests.

Notice Requirements/Response Deadlines

An owner may request additional information pertaining to his or her interest. If information is requested by certified mail, an answer must be mailed by certified mail within 30 days of receipt of the request.

Enforcement (Court or Commission?)

The district court for the county in which a well producing oil, gas or related hydrocarbons is located has jurisdiction over all proceedings brought pursuant to the statute.

Check Stub Requirements

The Wyoming statute provides that the following information shall be included on the check stub or an attachment, unless the information is otherwise provided on a regular monthly basis:

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1. The lease, property or well name or any lease, property or well identification number used to identify the lease property or well;

2. The month and year during which sales occurred for which payment is being made;

3. The total number of barrels of oil or thousands of cubic feet of gas sold;

4. The price per barrel of oil or the price per thousand cubic feet of gas;

5. The total amount of state severance, ad valorem and other production taxes;

6. An itemized list of any other deductions or adjustments;

7. The net value of total sales after deductions;

8. The owner's interest in sales from the lease, property, or well expressed as a decimal;

9. The owner's share of the total value of sales prior to any deductions;

10. The owner's share of the sales value less deductions; and

11. An address where additional information pertaining to the owner's interest in production may be obtained and questions answered. If information is requested by certified mail, an answer must be mailed by certified mail within thirty (30) days of the receipt of the request.

Failure to provide this information to a royalty, overriding royalty or other non-working interest owner results in liability in the amount of $100.00 per month that complete reporting is not provided.

CONCLUSION

Most of the Rocky Mountain states have passed statutes regarding payment of oil and gas proceeds. However, there are substantial differences among the statutes, so division order managers and analysts need to know the provisions of these statutes. In some of the states, such as Wyoming, title defects do not automatically excuse nonpayment. Instead, an escrow account must be established, regardless of the reason for nonpayment. In other states, such as New Mexico, interest is owed even if a title defect exists, but at a lower rate than if the reason for nonpayment fits within the statutory exceptions. Thus, these statutes and their individual provisions are important to division order personnel, in order to avoid owing penalties and interest at a high rate, which can substantially and quickly increase the amount owed to a royalty owner.

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State	Time to 1st Payment	Subsequent Payments	Interest Rate	Trigger for Interest	Attorneys' Fees	Statute Cite
NM	6 months after the first day of the month following first sale	45 days after the end of the calendar month in which payor receives payment	The discount rate charged by the Federal Reserve Bank of Dallas to member banks plus 1-1/2% on the date payment is due; or 18% penalty rate if not excused by reasons in the statute (see paper)	Non-payment	Prevailing party shall be entitled to reasonable attorneys' fees	§ 70-10-2, N.M.S.A.
UT	180 days after the first day of the month following first sale	30 days after the calendar month in which payment is received by payor	Escrow required (see paper); pay interest from escrow account; the Board may impose interest of 1-1/2% per month (18% per annum) if not deposited in escrow account and a penalty of 25%	Non-payment results in escrow rate interest; penalty rates apply if statutory reasons for non-payment are not met (see paper)	No statutory provision	§ 40-6-9, U.C.A.
WY	Six months after the first day of the month following first sale	60 days after the end of the calendar month in which production is sold	Escrow required; pay interest from escrow account; 18% per annum if not deposited in escrow account	Non-payment results in escrow rate interest or interest is at 18% if escrow account not established	Prevailing party shall be entitled to reasonable attorneys' fees	§ 30-5-301, W.S.A.

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PAYMENT STATUTES - ROCKY MOUNTAIN STATES AND CALIFORNIA

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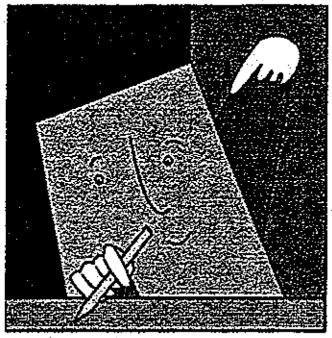
State	Time to 1st Payment	Subsequent Payments	Interest Rate	Trigger for Interest	Attorneys' Fees	Statute Cite
CA	There is no California statute specifically addressing payment of proceeds of production from oil and gas wells		The California Constitution provides for interest on forbearance of any money or on accounts after demand at the rate of 7% per annum unless the parties have contracted in writing for a different rate			Article 15, § 1, Ann. Cal. Const. (Constitution of the State of California, Article XV, Usury)
CO	6 months after end of month in which production is first sold	60 days for oil and 90 days for gas after the end of the calendar month in which production is sold	Two times the discount rate at the Federal Reserve Bank of Kansas City on January 1 of the year(s) in which proceeds were withheld	Non-payment, unless caused by reasons in statute (see paper)	The Commission may award attorneys' fees to the prevailing party	§ 34-60-118.5, C.R.S.
MT	120 days after initial oil or gas produced from the lease is marketed	60 days for oil and 90 days for gas	Maximum rate authorized under § 31-1-107 (the greater of 15% or an amount 6 percentage points per annum above the prime rate of major New York banks, as published in the Wall Street Journal)	Non-payment, unless caused by reasons in statute (see paper)	Prevailing party is entitled to reasonable attorneys' fees	§ 82-10-103, M.C.A.



Notes!