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Northern Rocky Mountain Region: Montana, Wyoming, and Idaho

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**NORTHERN ROCKY MOUNTAIN REGION:
MONTANA, WYOMING, AND IDAHO**

Stephen R. Brown[†]

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I. MONTANA

A. *Background*

In 2020, Montana produced nearly 19 million barrels of crude oil, down more than 17% from its 2019 production.¹ The state also produced 41.8 million cubic feet of natural gas.² Through October 2021, average monthly crude oil production in 2021 was approximately the same as the monthly average from 2020.³ In fiscal year 2019, the last year complete information is available, the state collected \$10.4 million in royalties from oil and gas leases on state lands.⁴

B. *Montana Supreme Court*

The Montana Supreme Court issued one unpublished opinion in an oil and gas case in 2021, but the case and some related state district court litigation illustrate ongoing tensions between split estate owners.⁵ The Supreme Court also issued a significant decision involving the environmental provisions of the Montana Constitution with potential implications for oil and gas projects.⁶

1. *Bye v. Somont Oil Company*

Somont Oil Company operates a number of oil and gas wells in north-central Montana on land where other parties hold rights to the surface.⁷ As is common in Montana, some of these surface owners run

1. *Crude Oil Production*, U.S. ENERGY INFO. ADMIN. (Dec. 30, 2021), https://www.eia.gov/dnav/pet/pet_crd_crpdn_adc_mbb1_a.htm [<https://perma.cc/J946-SH7P>]; 64 MONT. DEP'T OF NAT. RES. AND CONSERVATION: OIL AND GAS CONS. DIV. ANN. REV. 2020, at 1-1 to 3-1, http://bogc.dnrc.mt.gov/annualreview/AR_2020.pdf [<https://perma.cc/C75Q-Z6WY>].

2. *Montana Natural Gas Gross Withdrawals*, U.S. ENERGY INFO. ADMIN. (Dec. 30, 2021), <https://www.eia.gov/dnav/ng/hist/n9010mt2A.htm> [<https://perma.cc/YH96-EZ4K>].

3. *Montana Field Production of Crude Oil, Monthly*, U.S. ENERGY INFO. ADMIN., <https://www.eia.gov/opendata/qb.php?sdid=PET.MCRFPMT1.M> [<https://perma.cc/89L2-XZB3>].

4. 2019 MONT. DEP'T OF NAT. RES. AND CONSERVATION: MINS. MGMT. BUREAU ANN. REP. at 6, <http://dnrc.mt.gov/divisions/trust/docs/minerals-management/oil-and-gas/reports/FY2019MMBAnnualReport.pdf> [<https://perma.cc/DQ8V-R28R>].

5. *Bye v. Somont Oil Company*, No. DA 20-0492, 2021 WL 4876199, at *1 (Mont. Oct. 19, 2021).

6. *Park Cnty. Env't Council v. Mont. Dep't of Env't Quality*, 477 P.3d 288, 310 (Mont. 2020).

7. *Bye*, 2021 WL 4876199, at *1.

cattle on their land. To avoid conflicts, Somont historically fenced its oil, gas wastewater ponds, and other facilities.⁸

In 2019, a surface owner sued Somont, alleging that when it failed to maintain its fences the landowner's cows drank contaminated water.⁹ Drinking the contaminated water injured some of the cows and killed others. The landowner sued Somont and won after a jury found the company strictly liable for failing to maintain its fences.¹⁰

After losing the district court case, Somont evidently decided to remove the fences enclosing its oil and gas facilities rather than risk additional liability.¹¹ Somont sent letters to various landowners offering to transfer ownership of the fences if the landowner assumed liability.¹² A landowner named Scott Bye and several other neighboring surface owners sued, seeking an injunction to prohibit Somont from removing the fences.¹³ The district court issued the injunction, and Somont appealed to the Montana Supreme Court. In *Bye v. Somont Oil Co.*, the Court reversed the injunction on the grounds that the district court failed to make proper findings of fact and conclusions of law as required by Montana's injunction statute.¹⁴

Although the Court in *Bye* reversed the district court's injunction, it did so on procedural grounds. The case did not specifically hold that a mineral interest owner can avoid liability to a surface owner by removing fences that enclose wastewater ponds or other oil and gas facilities.¹⁵ Rather, the Court's opinion left open the possibility of an injunction preventing removal of fences if a district court makes proper findings and conclusions as to potential injuries to the landowners to support the injunction consistent with Montana's injunction statute.¹⁶

Importantly, *Bye* is an unpublished decision and does not stand for the proposition that oil and gas companies may avoid liability for failing to maintain fences that fence out livestock by simply removing

8. *Id.*

9. *Id.*

10. *Id.* (describing prior case). Montana law imposes liability for failing to maintain a fence. MONT. CODE ANN. § 81-4-103 (2021).

11. *Id.*

12. *Id.* Somont provided a copy of its letter to the Montana Board of Oil and Gas. See Letter from Somont Oil Co., Inc. to Wayne A. Gillespie (Nov. 1, 2019), Exhibit 8 http://bogc.dnrc.mt.gov/Hearings/2019/2019_12/2019_12_Exhibits.pdf [<https://perma.cc/B8FA-T4ST>].

13. *Bye*, 2021 WL 4876199, at *1.

14. *Id.* at *4.

15. *Id.*

16. *Id.* (citing MONT. CODE ANN. § 27-19-202).

the fence. The Court remanded the case to the district court to make additional findings to support an injunction.¹⁷ The case also does not undercut prior reported Montana Supreme Court precedent holding that oil and gas interest owners may be liable for significant property damages to surface owners by violating established standards governing the relationship between surface owners and mineral interest owners.¹⁸

2. *Park County Environmental Council v. Montana Department of Environmental Quality*

In 1972, Montana adopted a new state constitution.¹⁹ Among other revisions, the 1972 Constitution included environmental protection provisions.²⁰ As part of its declaration of rights, Article II, Section 3 guarantees Montanans “the right to a clean and healthful environment.”²¹ Article IX of the constitution includes a specific article addressing protection and improvement of the environment, imposing on the “state and each person” the obligation to “maintain and improve a clean and healthful environment in Montana for present and future generations.”²² Article IX also requires the state legislature to “provide for the administration and enforcement of this duty.”²³

As the Montana Supreme Court interprets these clauses, the right to a clean and healthful environment is a fundamental right.²⁴ That means certain actions by the state government implicating this right may be subject to strict scrutiny. For example, in 1999, the Court held in *Montana Environmental Information Center v. Montana Department of Environmental Quality* (“MEIC”) that the implementation of a statute purporting to exempt certain activities associated with a mineral development project from water quality nondegradation review was subject to strict scrutiny because it implicated the constitutionally-protected environmental right.²⁵

17. *Id.*

18. *See, e.g.,* McEwen v. MCR, LLC, 291 P.3d 1253, 1268 (Mont. 2012) (authorizing restoration damages that potentially exceed property value for breach of agreement between surface owner and mineral interest owner).

19. G. Alan Tarr, *The Montana Constitution: A National Experience*, 64 MONT. L. REV. 1, 6 (2003).

20. *Id.* at 17.

21. MONT. CONST. art. II, § 3.

22. MONT. CONST. art. IX, § 1(1).

23. MONT. CONST. art. IX, § 1(2).

24. *Mont. Env't Info. Ctr. v. Dep't of Env't Quality*, 988 P.2d 1236, 1246 (Mont. 1999).

25. *Id.* at 1244, 1246.

In 2012, the Montana Supreme Court addressed these state constitutional provisions in the context of fossil fuel leasing in *Northern Plains Resource Council v. Board of Land Commissioners*.²⁶ *Northern Plains* involved a challenge to leases issued by the State Land Board.²⁷ The State Land Board is responsible for generating revenue from Montana's school-trust lands.²⁸ The plaintiffs challenged a provision in the state leasing statute exempting leases from review under the Montana Environmental Policy Act ("MEPA") so long as the lessee conducts the review at the permitting stage.²⁹ The plaintiffs argued this exemption was unconstitutional because it implicated the fundamental environmental right without satisfying strict scrutiny.³⁰ The Court disagreed, holding rational basis scrutiny applies when a statutory exemption at the leasing stage does not preclude later environmental review at the permitting stage.³¹

The state legislature structured the Montana Environmental Policy Act similar to the National Environmental Policy Act ("NEPA").³² Both statutes generally require environmental review when agencies take action with potential impacts to the environment.³³ In 2011, the Montana legislature amended Montana's statute to limit remedies available for violations.³⁴ The amendments specified that if a court found inadequate compliance with MEPA, the remedy "is limited to remand to the agency to correct deficiencies in the environmental review."³⁵ The amendments also barred courts from enjoining any "permit, license, lease, or other authorization issued" pending additional review on remand even if the court finds that the authorizing agency

26. *N. Plains Res. Council, Inc. v. Mont. Bd. of Land Comm'rs*, 288 P.3d 169, 172 (Mont. 2012).

27. *Id.* at 171.

28. MONT. CONST. art. X, § 4.

29. MONT. CODE ANN. § 77-1-121(2) (2021) (exempts the Land Board from compliance with the Montana Environmental Policy Act prior to issuing any lease as long as the lease is subject to "further permitting under any of the provisions of Title 75 or 82 [MCA]").

30. *Northern Plains Res. Council, Inc.*, 288 P.3d at 174.

31. *Id.* at 174–75. Montana's decisions under state law regarding the need for environmental review at the leasing stage without specifying the terms of the lease are somewhat inconsistent with requirements for environmental review at the leasing stage under the National Environmental Policy Act. *See, e.g.*, *Bob Marshall All. v. Hodel*, 852 F.2d 1223, 1226 (9th Cir. 1988) (requiring environmental impact statement when federal oil and gas lease on national forest land in Montana did not contain no surface occupancy restriction).

32. 42 U.S.C. §§ 4321–4370.

33. 42 U.S.C. § 4321.

34. MONT. CODE ANN. § 75-1-201(6)(c)(i) (2021).

35. S. Res. 233, 62nd Leg. § (Mt. 2011), 2011 Mont. Laws 1668.

violated the statute.³⁶ In *Park County Environmental Council v. Department of Environmental Quality*, a decision issued in late 2020, the Montana Supreme Court found these provisions unconstitutional under the environmental provisions of the Montana constitution.³⁷

Park County arose out of a dispute over a mining permit issued by the Montana Department of Environmental Quality (“MDEQ”) to conduct mineral exploration on private land.³⁸ After the plaintiff challenged the permit, MDEQ conceded that its MEPA analysis was flawed.³⁹ The district court remanded the decision to MDEQ for further analysis. The district court also vacated the permit on the grounds that the 2011 amendments limiting remedies violated the environmental provisions of the constitution.⁴⁰ Applying a strict scrutiny analysis, the Montana Supreme Court agreed.⁴¹ In reaching this conclusion, the Court distinguished its prior decision in *Northern Plains* on the grounds that waiting to conduct the environmental analysis until after actions are taken that potentially cause environmental harm is too late.⁴²

Even though *MEIC*, *Northern Plains*, and *Park County* did not involve oil and gas operations, the cases show potential implications of legislative tinkering with Montana statutes that provide environmental protection provisions. The Montana Board of Oil and Gas Conservation (“MBOGC”) regulates oil and gas operations in Montana,⁴³ and the State Land Board approves oil and gas leases on state trust lands.⁴⁴ When MBOGC exercises its jurisdiction over oil and gas wells on private and state-owned lands, it must comply with the MEPA.⁴⁵ *Park County*’s conclusion that the MEPA violation remedy constraint created by the 2011 legislature unconstitutional applies to challenges to all MEPA decisions, not just mining approvals.⁴⁶ Thus, the statutory barrier to injunctive relief that previously applied to

36. *Id.*

37. *Park Cnty. Env’t Council v. Mont Dep’t of Env’t Quality*, 477 P.3d 288, 311 (Mont. 2020).

38. *Id.* at 292.

39. *Id.* at 300.

40. *Id.* at 302.

41. *Id.* at 309.

42. *Id.* at 307.

43. MONT. CODE ANN. § 82-11-103 (2021).

44. MONT. CODE ANN. § 77-3-401.

45. *Mont. Wildlife Fed’n v. Mont. Bd. Oil & Gas Conservation*, 280 P.3d 877, 881 (Mont. 2012).

46. *Park Cnty. Env’t Council v. Mont. Dep’t Env’t Quality*, 477 P.3d 288, 309 (Mont. 2020).

MBOGC decisions no longer exists for any resource development MEPA decision. Additionally, while *Park County* does not disturb the *Northern Plains* ruling, subjecting exemptions at the leasing stage to rational basis scrutiny, it indicates the heightened scrutiny analysis first recognized in *MEIC* remains in place for actions that authorize actual actions, such as issuance of a permit. The decision therefore could affect future legislative actions that attempt to create MEPA exemptions for authorizations involving oil and gas operations.

C. Legislation

The Montana legislature met for its regular, biannual session in 2021 and passed several bills related to the oil and gas industry.

1. Board of Oil and Gas Conservation Jurisdiction

Montana’s land use planning statutes authorize two types of zoning.⁴⁷ So-called “Part 1 zoning” allows citizens to initiate zoning.⁴⁸ Part 2 zoning allows county commissioners to initiate zoning.⁴⁹ Part 2 zoning precludes county commissioners from adopting zoning that prevents “the complete use, development, or recovery of any mineral” and other natural resources.⁵⁰ The statute governing Part 1 zoning did not contain a similar provision applicable to mineral development, although it did preclude citizen-initiated zoning that prohibited other types of agriculture and natural resource development.⁵¹ With the adoption of House Bill (“HB”) 498, the 2021 Legislature bolstered this provision by adding to it a provision preventing regulation of “the complete use, development or recovery of any mineral that is under the jurisdiction of the board of oil and gas conservation.”⁵² The new law goes further by adding a provision stating that Part 1 zoning “may not be construed to alter Montana law regarding the primacy of the mineral estate, to limit access to the mineral estate, or to limit development of the mineral estate.”⁵³

Other states have grappled with the issue of the extent to which local zoning may prevent fracking otherwise authorized by a state oil

47. MONT. CODE ANN. § 76-2-101 to -340 (2021).

48. § 76-2-101.

49. § 76-2-201.

50. § 76-2-209.

51. § 76-2-109 (amended 2021).

52. H.R. 498, 67th Leg. (Mont. 2021), 2021 Mont. Laws 2139.

53. *Id.*, codified at MONT. CODE ANN. §76-2-109(2)(a) (2021).

and gas commission.⁵⁴ Montana has not yet confronted the issue directly, but HB 498 was driven largely by an ongoing dispute in south-central Montana regarding citizen-initiated zoning aimed at oil and gas development.⁵⁵ Prior to the 2021 legislation, the denial of an earlier zoning petition reached the Montana Supreme Court, which allowed the filing of a revised petition.⁵⁶ A dispute then arose over whether mineral interest owners counted towards the requisite percentage threshold for a petition.⁵⁷ On September 1, 2020, a state district court ruled that mineral interest owners are not included in determining the threshold.⁵⁸ Ultimately, on March 10, 2021, the County Commissioners voted to not create the zoning district, which is a requirement for Part 1 zoning.⁵⁹ Despite this decision, the legislature adopted HB 498, which appears to be aimed at preventing similar future situations involving citizen-initiated zoning.⁶⁰

54. See, e.g., *In re Wallach v. Town of Dryden*, 16 N.E.3d 1188 (N.Y. 2014) (upholding ban); *Swepi, Ltd. P'ship v. Mora Cnty.*, 81 F. Supp. 3d 1075 (D.N.M. 2015) (invalidating county ban); *Robinson Twp. v. Commonwealth*, 83 A.3d 901 (Pa. 2013) (invalidating statute that prohibited local bans).

55. Matt Hudson, *Petition to Regulate Oil, Gas Development in South-Central Montana was Unfairly Denied, Landowners' Lawsuit Claims*, BILLINGS GAZETTE (Feb. 27, 2018), https://billingsgazette.com/news/state-and-regional/montana/petition-to-regulate-oil-gas-development-in-south-central-montana-was-unfairly-denied-landowners-lawsuit/article_7abd9042-dba1-585d-8f44-43dd581b04cb.html [<https://perma.cc/D7KR-BD33>].

56. *Martinell v. Bd. of Cnty. Comm'rs*, 373 P.3d 34, 39 (Mont. 2016).

57. Mikaela Koski, *Petition Deemed Invalid, Possible Lawsuit Against County in The Works*, STILLWATER CNTY. NEWS, (Feb. 01, 2018, 10:47 AM), <http://stillwater.server265.com/news/petition-deemed-invalid-possible-lawsuit-against-county-works>. [<https://perma.cc/3F9K-MGQ4>].

58. Order on Motions for Summary Judgment at 17, *Beartooth Front Coal. v. Bd. of Cnty. Comm'rs*, No. DV 18-12 (Stillwater Cnty. Ct. 2020), <https://beartooth-frontcoalitionorg.files.wordpress.com/2020/09/beartooth-front-coalition-et.al.-vs.-board-of-county-commissioners-stillwater-county-et.-al.-dv-18-12-order-on-motions-for-summary-judgment.pdf>. [<https://perma.cc/2S6H-HQNM>].

59. STILLWATER COUNTY BD. OF CNTY. COMM'RS, BEARTOOTH FRONT ZONING DECISION (Mar. 10, 2021), <https://www.stillwatercountymt.gov/wp-content/uploads/BeartoothFrontDecisionLetter.pdf> [<https://perma.cc/VL43-6LW4>]; MONT. CODE ANN. § 76-2-106 (2021).

60. Ironically, in *Robinson Township v. Commonwealth*, the Pennsylvania Supreme Court cited the environmental rights provision of the Montana Constitution, which contains parallels to the Pennsylvania constitution, in its decision to invalidate a state law that prohibited local natural resource development limits. 83 A.3d 901, 962 (Pa. 2012).

2. General Revision of Natural Resource Laws

The state legislature passed House Bill 648 to generally revise Montana's natural resource laws.⁶¹ Most of the legislation addresses issues at coal-fired electric power plants.⁶² However, the legislation also includes a provision directing the Montana Bureau of Mines and Geology to "establish a hydrocarbon and geology investigation program to determine the existence of oil and gas deposits in the state."⁶³ The legislation calls for both an investigation of improvements to production in existing fields and the location of new fields containing oil and gas resources.⁶⁴ The legislation asks the bureau to focus on counties with historical production, which primarily involve counties in eastern Montana.⁶⁵

3. Other Bills

In addition to these bills, the 2021 Legislature also passed bills clarifying the taxation of small stripper wells⁶⁶ and imposing penalties for trespassing on or damaging critical infrastructure.⁶⁷ The later bill includes a variety of industrial facilities, including pipelines and "aboveground portions of a mineral or metal mining facility," provided they are properly fenced or signed.⁶⁸

II. WYOMING

A. Background

In 2020, Wyoming produced more than 89 million barrels of crude oil, which was about 87% of its 2019 production.⁶⁹ Wyoming also produced 48.5 million cubic feet of natural gas.⁷⁰

61. *H.B. 648: Generally revise natural resource laws*, CAPITOL TRACKER (updated June 22, 2021, 6:26 PM), <https://apps.montanafreepress.org/capitol-tracker-2021/bills/hb-648> [<https://perma.cc/L86B-KSWG>].

62. H.B. 648, 67th Leg., Gen. Sess. (Mont. 2021), 2021 Mont. Laws 2303.

63. *Id.*

64. *Id.*

65. *Id.*

66. H.B. 661, 67th Leg., Gen. Sess. (Mont. 2021), 2021 Mont. Laws 2326.

67. H.B. 481, 2021 Leg., 67th Sess. (Mt. 2021), 2021 Mont. Laws 2128.

68. *Id.*, codified at MONT. CODE ANN. § 82-1-601 (2021).

69. *Wyoming's Oil & Gas Facts*, WYO. STATE GEOLOGICAL SURV., <https://www.wsgs.wyo.gov/energy/oil-gas-facts.aspx#:~:text=In%202020%2C%20Wyoming%20ranked%20ninth,1.6%20billion%20Mcf%20in%202019> [<https://perma.cc/H9HL-NEPR>].

70. *Id.*

*B. Wyoming Supreme Court**1. EME Wyoming, LLC v. BRW East, LLC*

In its sole 2021 decision involving oil and gas issues, the Wyoming Supreme Court clarified the limits of an oil and gas company's private rights of eminent domain. In *EME Wyoming, LLC v. BRW East, LLC*, the Court held that one seeking to exercise condemnation rights must hold the rights to develop landlocked minerals that it cannot access absent condemnation.⁷¹

Wyoming law authorizes the state Oil and Gas Conservation Commission ("Commission") to "provide a comprehensive regulatory program which prevents the waste of Wyoming's oil and gas resources and protects the correlative rights of property owners."⁷² As part of this authority, the Commission requires an oil and gas owner or operator intending to drill on any private, state, or federal land to file an application for a permit to drill ("APD") and receive approval from the Commission.⁷³ The Commission's rules require a fair amount of detail about the drilling project as part of the application.⁷⁴ Once the Commission approves an application, it does not permit other drilling on the same unit.⁷⁵ This leads to what sometimes is referred to as a "race to permit" between rival operators.⁷⁶

EME Wyoming involved a situation where an oil and gas operator ("EME") attempted to use Wyoming's condemnation law to access about 52,000 acres of land in Goshen County, where it lacked surface access, in order to collect information.⁷⁷ EME requested access from the surface owners, but they declined.⁷⁸ EME then sued, contending it sought access to evaluate the property's suitability for condemnation, a permissible purpose under Wyoming's condemnation statute.⁷⁹ The surface owners argued EME was really seeking access to collect data it could then use to file APDs with the Commission.

71. *EME Wyo., LLC v. BRW E., LLC*, 486 P.3d 980, 989–90 (Wyo. 2021).

72. *Union Pac. Res. Co. v. Texaco, Inc.*, 882 P.2d 212, 223 (Wyo. 1994).

73. WYO. OIL & GAS CONSERVATION COMM'N, RULES & REGULATIONS Ch. 3, § 8(a) (2022).

74. *Id.* at § 8(c).

75. *Id.* at § 8(m)(v).

76. *Devon Energy Prod. Co., LP v. Grayson Mill Operating, LLC*, 458 P.3d 1201, 1203 (Wyo. 2020).

77. *EME Wyo., LLC v. BRW E., LLC*, 486 P.3d 980, 982 (Wyo. 2021).

78. *Id.* at 982.

79. *Id.* at 986.

Similar to other states, Wyoming allows private condemnation for various purposes deemed to be in the public interest.⁸⁰ The condemnation statute provides a “condemnor” a right of entry to property owned by third parties.⁸¹ EME argued that because it is an oil and gas company with rights to condemn, it fell within the definition of the term “condemnor” and therefore could access the property to collect information.⁸² After a hearing, the district court allowed access on the condition that EME could not use information collected to support an APD without further authorization from the court. The district court then permanently barred EME from using the information to support APDs.⁸³ Both sides appealed.

On appeal, the Wyoming Supreme Court read the Wyoming condemnation statute narrowly to only authorize condemnation as necessary to gain access to property.⁸⁴ The Court quoted extensively from the district court record and could not find evidence that EME needed to condemn a right of access to landlocked mineral interests.⁸⁵ The Court looked to the language of the statute and declined to expand condemnation rights beyond what is necessary to gain access, not to collect information. Since the evidence did not support this specific use, the Court held the district court should not have granted access to the property to collect information that EME would ultimately use to support an APD.⁸⁶ *EME Wyoming* shows that while courts in Wyoming will continue to recognize that private condemnation rights extend to oil and gas owners and operators, they can only exercise those rights in carefully circumscribed limits.

C. Wyoming Legislature

The 2021 Wyoming Legislature did not pass any substantive legislation directly relating to oil and gas. However, the legislature did pass a resolution relating to oil and gas leasing on federal land in Wyoming.⁸⁷ In early 2021, the federal executive branch issued an executive order that “pause[d] new oil and natural gas leases on public lands or in offshore waters pending completion of a comprehensive review

80. WYO. CONST. art. I, § 32; WYO. STAT. ANN. § 1-26-509 (2021); EOG Res., Inc. v. Floyd C. Reno & Sons, Inc., 468 P.3d 667, 673 (Wyo. 2020).

81. WYO. STAT. ANN. § 1-26-506(a) (2021).

82. *EME Wyo., LLC*, 486 P.3d at 987.

83. *Id.* at 982.

84. *Id.* at 989.

85. *Id.* at 989–90.

86. *Id.* at 990.

87. S.J. Res. 3, 66th Leg., Gen. Sess. (Wyo. 2021), 2021 Wyo. Sess. Laws 538.

and reconsideration of Federal oil and gas permitting and leasing practices.”⁸⁸ On April 6, 2021, the Wyoming Legislature responded with a resolution requesting that the President “rescind, reverse or repeal executive orders that suspend or pause permitting, leasing, extensions or authorizations of oil and gas development and to rescind, reverse or repeal any agency orders or actions that negatively impact responsible energy development in Wyoming.”⁸⁹

The 2021 Wyoming Legislature also passed House Bill 166, a presumption against early fossil fuel retirements.⁹⁰ The bill is primarily aimed at the electric power generation sector and requires utilities to take additional steps before they can receive approval from the Wyoming Public Service Commission to retire aging coal or natural gas plants.⁹¹ The bill prevents the Commission from approving plant closures unless the utility can overcome a rebuttable presumption against closure by evidence of cost savings, lack of diminished capacity to Wyoming, and lack of adverse effect to electric service reliability.⁹²

III. IDAHO

In comparison to its neighboring states, Idaho does not have significant developed oil and gas resources. In 2020, Idaho produced approximately one thousand barrels of crude oil, which was down significantly from its 2019 production of about 22 thousand barrels.⁹³ The Idaho Supreme Court did not issue any oil and gas decisions in 2021, nor did the Idaho legislature pass any laws directly affecting the industry.

88. Exec. Order No. 14008, 86 Fed. Reg. 7619 (Feb. 1, 2021).

89. Wyo. S.J. Res. 3. The executive order was enjoined by a federal district court on June 15, 2021. *Louisiana v. Biden*, No. 2:21-CV-00778, 2021 U.S. Dist. LEXIS 112316, at *65–66 (W.D. La. June 15, 2021).

90. *See generally* H.B. 166, 66th Leg., Gen. Sess. (Wyo. 2021), 2021 Wyo. Sess. Laws 483.

91. *Id.*

92. *Id.* (to be codified at WYO. STAT. ANN. § 37-2-134(c)).

93. *Petroleum & Other Liquids: Crude Oil Production*, U.S. ENERGY INFO. ADMIN. (Jan. 31, 2022), https://www.eia.gov/dnav/pet/pet_crd_crpdn_adc_mbb1_a.htm [https://perma.cc/JF3D-3L9L].