

802.2(c)
802.3(a)

Verne, B. Michael

From: [REDACTED]
Sent: Tuesday, October 22, 2013 10:58 AM
To: Verne, B. Michael; Walsh, Kathryn
Subject: Carbon-Based Mineral Reserves / Unproductive Real Property Exemptions

Mike and Kate,

I have a question about the interplay of 802.2(c) and 802.3(a) in an asset acquisition of oil and gas reserves. Company A proposes to purchase certain producing and non-producing oil and gas reserves (the "Assets") from Company B in an asset acquisition. The Assets consist primarily of (i) developed and producing oil and gas reserves; and (ii) non-producing oil and gas reserves. The developed and producing oil and gas reserves, as well as associated exploration and production assets related to such properties, will be valued in excess of the \$500 million exemption limit for carbon based mineral reserves set forth in §802.3(a). Thus, those producing assets are not exempt, and a filing will be triggered here.

A certain portion of the Assets comprised of non-producing oil and gas reserves may be adjacent to the developed and producing oil and gas reserves. These non-producing oil and gas reserves have either not generated any historical revenues or have generated less than \$5 million in revenues over the preceding 36 months. We understand that the PNO Staff has previously provided advice that non-producing oil and gas reserves – provided that they otherwise meet the requirements of §802.2(c) – would be exempt as unproductive real property even if they are adjacent to producing reserves that are part of the same transaction, in response to a hypothetical where the adjacent producing reserves qualify for the carbon based mineral reserves under §802.3(a). See, for example, point 3 in opinion 1207002, dated July 9, 2012. Can you please confirm that in calculating the size of transaction in a case where the 802.3(a) exemption does not apply, the parties can also exclude unproductive assets regardless of whether they are adjacent to producing reserves?

Thanks,

[REDACTED]

No – you are missing the key clause in point 3 of 1207002: “so long as the adjacent producing reserves qualify for the carbon-based mineral reserves exemption under 16 C.F.R. § 802.3(a).” If the unproductive assets are located adjacent to **non-exempt** producing assets, they are not exempt under § 802(c).

Bmw

10/22/13

KW CONCURS