

20130110  
20130111

No. 20130110 and 20130111

FILED  
IN THE OFFICE OF THE  
CLERK OF SUPREME COURT

MAY 20 2013

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**State of North Dakota  
In the Supreme Court**

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STATE OF NORTH DAKOTA

Reep, et al. v. State, et al. SC#20130110 and Brigham Oil & Gas, L.P. v. N.D.  
Board of University & School Lands, et al. SC#20130111:

Stanford A. Reep and Amy Reep,  
the Stockman Family Trust,  
Heidi McGillivray, Julie Streich,  
Mary Beth Ferguson,  
Florence Irwin ex rel. Loren Irwin,  
her guardian and conservator,  
and Loren Irwin, Individually,  
Thomas Selby, and  
Sogard Davidson Mineral LLLP,  
and on Behalf of All Others  
Similarly Situated,

Plaintiffs and Appellants

v.

State of North Dakota,  
North Dakota Board of University  
and School Lands; and North  
Dakota Trust Lands Commissioner  
Lance D. Gaebe, in his official and  
personal capacities,

Defendants and Appellees

Brigham Oil & Gas, L.P.,

Plaintiff and Appellee

v.

North Dakota Board of University  
& School Lands; City of Williston;  
Williams County, North Dakota;

*Corrected Title Page*  
FILED BY CLERK  
SUPREME COURT JUN 12 2013

Geraldine Loder; Virgil A. Bloechl;  
Theresa Sitzmann; Michael M. Gran;  
Robert James McDonald;  
Richard R. McDonald;  
Mary Ellen Smith; Carol J. McDonald;  
Thomas T. MacDonald;  
Rose Marie Dokken;  
Elaine McDonald;  
John C. McDonald, Jr.; Josephine  
Swenson; Jacque N. Masog;  
Kay L. Dodge; William R. Mueller;  
Elvira C. Fulton; Doreen Fern  
McDonald; Georgia Carol Hausauer;  
Margaret Cecelia Gott; Marlyne  
Myrtle Loomis; Leslie Louise Neary;  
Virginia A. Venti; Eileen Eugenia Ehrler;  
BNSF Railway Company; Joseph Patrick  
Wodnik and Loraine Ann Wodnik, as  
joint tenants; Sherrill Myers;  
Viola DeTienne; Theresa Cogswell;  
Beulah Clawson; Norman Bratcher;  
Nancy Ann Bower-Pryor; Brian Jay  
Bower and Thomas Adrian Bower, as  
joint tenants; Stephen A. Messenger;  
Sandra Lee Messenger; Jacqueline Mech;  
Orville M. Erickson; Kerry P. Hoffman;  
Ardean O. Aafedt; Robert K. Torgerson;  
Jerome Bakke; Curtis Bakke; Sherrie  
Dee Bakke, Trustee of the Lowell G.  
Bakke Mineral Trust; Cynthia Jo Weldon;  
Jane Sanders Galt; Leah Pearce Bond;  
Charles E. Pearce and Gabriele Pearce,  
as joint tenants; B.C. Harris and Ann  
Harris, Co-Trustees of the Harris  
Revocable Trust executed July 25, 1996;  
James R. Goins; Wayne Smith;  
Michael Brooks; Bill Como; Christi  
Breithaupt; Chris Smith; Kelly Smith;  
Mark Lemley; Beverly Sundet;  
Ricky Vance; Linda Kirkland;

First National Bank and Trust Co. of Williston, Trustee of Hilda Noe Grandchildren Trust; Lois C. Zeigler, Trustee under the Last Will and Testament of Frederick H. Zeigler, Deceased; Shirley L. Schwaub, Trustee under Trust Agreement dated March 5, 1999; Gary S. Schwab; American State Bank & Trust Company of Williston, Trustee of Frank W. Moran and Mary Joan Moran Family Minerals Trust; American State Bank and Trust Company of Williston, Trustee of the Harris and Louise Anderson Family Minerals Trust U/A dated February 10, 2006; United States of America; LeRoy Clapper; Energy One, LLC; Powers Energy Corporation; GeoFocus Corporation; Golden Eye Resources, LLC; Golden Eye Royalties, LLC; Upstream Innovations, Inc.; The Dublin Company; Petroleum Land Services; Huston Energy Corporation; Harvest Oil Company, LLC; and all unknown persons claiming an interest in, or lien or encumbrance upon, the proceeds from the production of the mineral estate described in the complaint herein,

Defendants

---

Kerry Hoffman, City of Williston, Williams County, Harvest Oil Company LLC, Beverly Sundet, Ricky Vance, Linda Kirkland, First National Bank & Trust Co. of Williston, Trustee of the Hilda

Noe Grandchildren Trust,  
American State Bank and Trust  
Company, Trustee of the  
Frank W. Moran and Mary Joan  
Moran Family Minerals Trust,  
American State Bank and Trust  
Company of the Harris and Louise  
Anderson Family Minerals Trust  
U/A dated February 10, 2006,  
Upstream Innovations, Inc.,  
Shirley L. Schwab Trust under  
Trust Agreement dated  
March 5, 1999, Lois Zeigler,  
Trustee of the Last Will and  
Testament of Frederick H. Zeigler,  
Deceased, and Gary Schwab,

Appellants

---

APPEAL FROM PARTIAL FINAL JUDGMENT IN THE DISTRICT COURT  
NORTHWEST JUDICIAL DISTRICT  
Williams County Case No. 53-2011-CV-00495  
Honorable David W. Nelson

---

Brief of the Bakke Family, Pro Se  
Jerome Bakke,  
Curtis Bakke,  
Sherrie Dee Bakke, Trustee of the Lowell Bakke Trust

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STATE OF NORTH DAKOTA

DISTRICT COURT

COUNTY OF WILLIAMS

NORTHWEST JUDICIAL DISTRICT

CASE TYPE: CIVIL

Stanford A. Reep and Amy Reep, et al., )

Plaintiffs, )

v. )

**Case No. 53-2012-CV-00213**

State of North Dakota, et al., )

Defendants. )

**Supreme Court No. 2013-0110**

and )

Brigham Oil & Gas, L.P., )

Plaintiff, )

v. )

**Case No. 53-2011-CV-00495**

North Dakota Board of University  
& School Lands, et al., )

Defendants. )

**Supreme Court No. 2013-0111**

**Joint Notice of Appeal**

### STATEMENT OF THE CASE

This is a **joint notice of appeal** to the North Dakota Supreme Court from the Partial Final Judgment entered on April 2, 2013, regarding a dispute over shore zone mineral acres along the Missouri River between Brigham Oil & Gas, L.P. and the North Dakota Board of University & School Lands, et al.

The Bakke Family of Jerome Bakke, Curtis Bakke, and Sherrie Dee Bakke, Trustee of the Lowell Bakke Trust, are three of the 83 named defendants involved in this case.

David W. Nelson, Judge of the District Court, ruled that the State of North Dakota owns title to mineral interests in the land between the ordinary high water mark and the low water mark in the sections that are subject in this action. He stated that this judgment is **FINAL** and is immediately appealable.

## STATEMENT OF THE ISSUES

The Bakke Family is filing **Pro Se** and we would like to make a statement regarding **Case No. 53-2011-CV-00495 (Supreme Court No. 20130111)** in which we are involved as defendants.

The Bakke Family of Jerome Bakke, Curtis Bakke, and Sherrie Dee Bakke, Trustee of the Lowell Bakke Trust, inherited 12.336 mineral acres each from their father, George Bakke, from the following description:

**T. 154 North - Range 101 West**  
**Section 26: Lot 4 (36.1) and including all accretion and riparian interest in Sec. 25 and 26**  
**Williams County, North Dakota**

The **Mineral Deed** for these mineral acres has been recorded in the Williams County Court House for many years. (Appendix .. Page 8)

The mineral acres of the above property were leased to Brigham Oil by the Bakke Family on July 29, 2009. The documents regarding the Bakke Family ownership and **Lease** were filed with the Clerk of District Court in Williams County with our original response on July 6, 2011. (Appendix .. Page 9)

The Bakke Family's argument for review is based on the **BACKGROUND** information contained in **Document 99, labeled Case 4:11-cv-00058-DLH-CSM** which was filed 06/05/12, using pages 1-3 out of 12. We plan to use a common sense argument, as it would be ridiculous for us to try to argue the legality of any issue. (Appendix .. Page 10-12)

On pages 2-3 of the brief (Paragraph #2-3) it states that "at statehood, North Dakota acquired title to the beds of the navigable rivers up to the ordinary highwater mark pursuant to the equal-footing doctrine. Sprynczynatyk v. Mills, 523 N.W.2d 537, 539 (N.D. 1994). In its sovereign capacity, North Dakota has authority to allocate property interests in navigable riverbeds to riparian landowners. Id. at 539-40."

"In North Dakota, riparian landowners have absolute title to the ordinary highwater mark, and the State owns absolute title to navigable riverbeds up to the ordinary low water mark. However, the state's interests and the riparian landowner's interests in the shore zone are coexistent and overlap.' Mills, 523 N.W.2d at 544."

The Bakke Family has no argument with the right of the State of North Dakota to own and control the navigable riverbeds. We agree that the State of North Dakota owns the riverbeds to the low water mark. However, any boat navigating a river stays to the

center flow of the river. No boat will navigate along the highwater mark, which rises during times of floods and goes down when the flood is over.

North Dakota became a state in 1889, which was 122 years before the State of North Dakota filed their claim. The Bakke Family feels that the State of North Dakota waited too long to claim the land to the highwater mark. Apparently, the State of North Dakota waited until these shore zone mineral acres had a higher value. Brigham Oil & Gas drilled an oil well (Williston 25-36 #1-H) on this site on December 14, 2009. This oil well and others along the river would bring great economic possibilities for all of the defendants involved. There are 83 defendants just in this case.

The Bakke Family could better understand the State of North Dakota's claim to these shore zone minerals if the State had financial issues. However, the taxes from all of the wells in the Bakken Oil Patch has made the state rich beyond measure. The State would also benefit from the defendants' ownership of these shore zone minerals, as each royalty check includes a Production Tax and each defendant must pay State and Federal Taxes on all of their royalty payments. Therefore, the State of North Dakota would still benefit financially, although to a lesser degree.

While the Bakke Family agrees with the basic premise of the rights that the State of North Dakota received in 1889, we feel there is the possibility of differing opinions and interpretations regarding the shore zone minerals. The above quoted document states that "... the state's interests and the riparian landowner's interests in the shore zone are coexistent and overlap." Mills, 523 N.W.2nd at 544." This was not clarified by the North Dakota Supreme Court in this decision, but was left to be determined later.

The Bakke Family feels that this case will be a monumental decision affecting not only the 83 defendants of the case involving Brigham Oil & Gas, L.P. verses North Dakota Board of University and School Lands, et al. (Supreme Court No. 20130111), but also the case of Stanford A. Reep and Amy Reep verses State of North Dakota, et al. (Supreme Court No. 20130110), as these two cases have been consolidated. Undoubtedly, there will be more cases of the same nature involving many more defendants. The Bakke Family feels that these consolidated cases require the decision of a court with several judges and the stature of the North Dakota Supreme Court.

## CONCLUSION

The Bakke Family would like the North Dakota Supreme Court to rule in favor of the defendants by declaring that they own the shore zone mineral acres between the low water mark and the high water mark. How refreshing it would be to see the North Dakota Supreme Court stand behind the average citizens of North Dakota rather than let the State of North Dakota lay claim to mineral acres the defendants have owned for years.

Dated: May 20, 2013

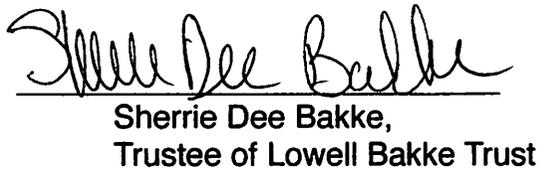
Respectfully submitted by:

  
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By: JB/CB/SDB/mb

RECEIVED BY CLERK MAY 22 2013  
SUPREME COURT  
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STATE OF NORTH DAKOTA

DISTRICT COURT

COUNTY OF WILLIAMS

NORTHWEST JUDICIAL DISTRICT

CASE TYPE: CIVIL

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STATE OF NORTH DAKOTA

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Plaintiffs, )

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Brigham Oil & Gas, L.P., )

Plaintiff, )

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North Dakota Board of University )  
& School Lands, et al., )

Defendants. )

Case No. 53-2012-CV-00213

Supreme Court No. 2013-0110

Case No. 53-2011-CV-00495

Supreme Court No. 2013-0111

**Joint Notice of Appeal**

**CERTIFICATE OF SERVICE**

As Defendants, JEROME BAKKE, CURTIS BAKKE, AND SHERRIE DEE BAKKE, TRUSTEE OF LOWELL BAKKE TRUST hereby certify that on May 20, 2013, we have sent copies of our Joint Notice of Appeal to the following defendants. A copy of these foregoing documents have been mailed by first class mail, postage paid, to the following attorneys and participants, with the exception of using registered mail to the Clerk of Court of the Williams County District Court:

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-and-**

**American State Bank &  
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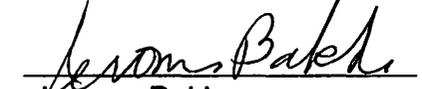
Dated: May 20, 2013

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Respectfully submitted by,  
The Bakke Family of:

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