

STATE OF NORTH DAKOTA  
Supreme Court Case No. 20210050  
McKenzie County Case No. 13-2019-CV-00012

Vic Christensen Mineral Trust,

Plaintiff

v.

Enerplus Resources Corporation,

Defendant, Cross-Claim Defendant, and Appellant,

and Meyer Family Mineral Trust, Joann Deryce Struthers Trust, and Steven J. Reed  
Living Trust,

Defendants, Cross-Claim Plaintiffs, and Appellees

**APPELLEES MEYER FAMILY MINERAL TRUST'S, JOANN DERYCE  
STRUTHERS TRUST'S, AND STEVEN J. REED LIVING TRUST'S PETITION  
FOR REHEARING**

APPEAL FROM ORDERS OF THE DISTRICT COURT, DATED JULY 27, 2020 AND  
AUGUST 10, 2020, NOVEMBER 23, 2020, AND MARCH 17, 2021, GRANTING  
SUMMARY JUDGMENT AGAINST APPELLANT

APPEAL FROM SOUTHWEST JUDICIAL DISTRICT, DUNN COUNTY, NORTH  
DAKOTA  
THE HONORABLE WILLIAM HERAUF

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## INTRODUCTION

[1] Pursuant to N.D.R.App.P. 40, Appellees petition the Court for a rehearing of its judgment dated January 6, 2022. Appellees dispute the Court's failure to find that the title dispute involved herein was due to Enerplus' actions and therefore should not be a "safe harbor" for Enerplus.

## LAW AND ARGUMENT

### **1. Should Enerplus have applied the Acoma case precedent to the fact situation involved.**

[2] In reaching its decision, the Court fails to mention one word as to whether or not Enerplus should have applied the well established precedent set out in Acoma Oil Corp. v Wilson, 47 N.W.2d 476 (ND 1991) to the fact situation involved in this matter.

[3] The Court merely quotes the district court's statement:

The dispute of title between VCMT and the Trust Defendants comes solely as a result of the actions of Enerplus and its title attorney. Had the title opinion been correct in the first place and had there been no erroneous suggestions that the 5/128ths Royalty burdened the 1/5 ownership of the Trust Defendants, there would have been no dispute.

and then summarily discusses this finding without addressing how or why the District Court arrived at this determination.

[4] The District Court made this finding based upon the fact that Enerplus incorrectly failed to apply tried and true North Dakota precedent to the fact situation. Enerplus did not follow the Acoma case and its later sister case Wenco v EOG Resources, Inc., 822 N.W.2d 701 (ND 2012).

[5] The law set out in Acoma by this Court is as follows:

The key question is, not what the grantor purported to retain for himself, but what he purported to give to the grantee. If he undertook to convey half the minerals and had the power to do so, he should be held to his undertaking. The risk of title loss is on the grantor in a warranty deed.

[6] This Court following Acoma stated in Wenco:

First, we might agree that *Acoma* should be overruled if it were an aberration in the law. It is not. *Acoma* is supported by decisions in two other jurisdictions, and *Wenco* points to no cases from other jurisdictions that have held to the contrary under these circumstances. Second, and foremost, *Acoma* has been the law in North Dakota for more than 20 years and its holding is embodied in the North Dakota Mineral Title Standards. The rule of stare decisis is grounded upon the theory that when a legal principle is accepted and established rights may accrue under it, security and certainty require that the principle be recognized and followed thereafter." *Dickie v. Farmers Union Oil Co.* 2000 ND 111, 13,611 N.W.2d 168. That rule is especially applicable here. As evidenced by this case, rights have accrued under *Acoma*, and certainty and security in already existing division orders and title opinions overwhelmingly militate against overruling its holding.

[¶17] We conclude the district court correctly ruled *Acoma* controls this case and that *Wenco's* interest bears the entire burden of the Bank's Royalty interest.

[7] If Enerplus had correctly applied the well established precedent of Acoma and Wenco, there would have been no stipulation requirement and no title dispute herein. Based upon Acoma and Wenco, the Trust Defendants should never have been liable for bearing any outstanding royalty interest and their mineral interest should not have been suspended.

[8] This Court's stating that the acreage discrepancy was an issue of dispute is also incorrect. If Acoma and Wenco were correctly applied, any acreage discrepancy issue would be VCMT's problem because the Trust Defendants received a 1/5th mineral interest

which did not bear any burden as to the outstanding royalty. Further, because the outstanding royalty was deeded back to VCMT, the acreage discrepancy issue is moot.

## **2. The Court misinterpreted Section 47-16-39.1.**

[9] This Court has interpreted the "safe harbor" provision in Section 47-16-39.1 to apply to disputes wrongfully created by the oil operator.

[10] Section 47-16-39.1 is entitled "Obligation to pay - Breach". Surely the legislature did not intend that an oil operator could create its own "safe harbor" by fabricating a dispute through its failure to apply the law. Surely the legislature intended the words "title dispute" to apply only to legitimate title disputes between parties and not to disputes that would not exist if not incorrectly created by an oil operator. In this case, Enerplus inappropriately created the dispute by failing to apply Acoma and Wenco to this matter. This Court should not do the same.

[11] This Court's interpretation that the language in Section 47-16-39.1, "the operator shall make royalty payments to those mineral owners whose title and ownership interest is not in dispute" does not apply to partial interests is immaterial and irrelevant because as explained above, none of the Trust Defendants interest should have ever been suspended.

## **CONCLUSION**

[12] No title dispute or "safe harbor" should exist if the operator fails to follow the law and creates the title dispute itself. The Supreme Court should grant Appellee's Petition for Rehearing to correct the aforementioned issues that it has overlooked and misapprehended. The District Court's determination followed North Dakota law and held that Enerplus breached its obligation to pay royalties. This Court should do the same.

## CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies, in compliance with N.D.R.App.P. 32(a)(8)(A), that the Appellees Meyer Family Mineral Trust's, Joann Deryce Struthers Trust's, and Steven J. Reed Living Trust's Petition for Rehearing was prepared with Times New Roman proportional typeface, 12 pt. font, and totals 7 pages.

Dated this 10<sup>th</sup> of January, 2022.

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