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 CLERK OF THE SUPREME COURT
 STATE OF NORTH DAKOTA

**IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF NORTH DAKOTA**

Allen Dominek and Arlen Dominek,)	
)	CERTIFICATION ORDER
Plaintiffs,)	
)	
vs.)	Case No. 1:19-cv-288
)	
Equinor Energy L.P. f/k/a and)	
a/k/a Brigham Oil & Gas L.P. and)	
Statoil Oil and Gas L.P., and)	
Grayson Mill Williston, LLC,)	
)	
Defendants.)	

I. CERTIFIED QUESTIONS

Pursuant to Rule 47 of the North Dakota Rules of Appellate Procedure, the United States District Court for the District of North Dakota certifies the following questions of law to the North Dakota Supreme Court:

There were two spacing units which were created and force-pooled by an order of the North Dakota Industrial Commission overlap (See Order Nos. 16105, 18082, 27636, and 27791). The “Underlying Spacing Unit” consists of Sections 13 and 24 and the “Overlapping Spacing Unit” consists of Sections 11, 12, 13, and 14, and a single horizontal well (Weisz 11-14 XE #1H well) authorized to produce oil and gas from the Overlapping Spacing Unit which well has been drilled along the section line on the east edge of Sections 11 and 14 and the west edge of Sections 12 and 13 and terminates within the Overlapping Spacing Unit:

- (1) The relevant portion of Section 38-08-08(1) of the North Dakota Century Code provides as follows:

Operations incident to the drilling of a well upon any portion of a spacing unit covered by a pooling order must be deemed, for all purposes, the conduct of such operations upon each separately owned tract in the drilling unit by the several owners thereof. That portion of the production allocated to each tract included in a spacing unit covered by a pooling order must, when produced, be deemed for all purposes to have been produced from such tract by a well drilled thereon.

Does the relevant portion of Section 38-08-08(1) of the North Dakota Century Code require the allocation of production from Section 13 of the Overlapping Spacing Unit to Section 24 of the Underlying Spacing Unit?

- (2) Does the following language from Industrial Commission pooling orders Nos. 27791 and 18082 require the allocation of production from Section 13 of the Overlapping Spacing Unit to Section 24 of the Underlying Spacing Unit? “All owners of interests shall recover or receive, without unnecessary expense, their just and equitable share of production from the spacing unit in the proportion as their interest may appear in the spacing unit.”
- (3) Does the following language from Industrial Commission pooling orders Nos. 27791 and 18082 prohibit or prevent the allocation of production from Section 13 of the Overlapping Spacing Unit to Section 24 of the Underlying Spacing Unit? “All owners of interests shall recover or receive, without unnecessary expense, their just and equitable share of production from the spacing unit in the proportion as their interest may appear in the spacing unit.”
- (4) Does the following language from Industrial Commission pooling order No. 27791 require the allocation of production from Section 13 of the Overlapping Spacing Unit to Section 24 of the Underlying Spacing Unit or other spacing units which overlap? “This order is limited to pooling the spacing unit described above for the development and operation of such spacing unit by the horizontal well(s) authorized for such spacing unit by order of the Commission. This order does not modify, amend or alter previous pooling orders for other spacing units or require the reallocation of production allocated to separately owned tracts within any spacing unit by any existing pooling orders or any pooling agreements.”
- (5) Does the following language from Industrial Commission pooling order No. 27791 prohibit or prevent the allocation of production from Section 13 of the Overlapping Spacing Unit to Section 24 of the Underlying Spacing Unit or other spacing units which overlap? “This order is limited to pooling the spacing unit described above for the development and operation of such spacing unit by the horizontal well(s) authorized for such spacing unit by order of the Commission. This order does not modify, amend or alter previous pooling orders for other spacing units or require the reallocation of production allocated to separately owned tracts within any spacing unit by any existing pooling orders or any pooling agreements.”

II. STATEMENT OF FACTS

This case arises out of a complex dispute over the proper allocation of royalties from overlapping spacing units created by a series of orders issued by the North Dakota Industrial Commission (“Industrial Commission”). The Industrial Commission has established several spacing units in Williams County, North Dakota, relevant to this action, which include the following:

1. A 1280-acre spacing unit comprised of Sections 11 and 14, Township 154 North, Range 102 West, Painted Woods-Bakken Pool established on February 16, 2010, by Order No. 14059 (Doc. No. 26-1) and pooled by Order No. 15403 (Doc. No. 26-2) on October 7, 2010.
2. A 1280-acre spacing unit comprised of Sections 13 and 24, Township 154 North, Range 102 West, Todd-Bakken Pool, established on June 8, 2011, by Order No. 16105 (Doc. No. 26-3) and pooled by Order No. 18082 (Doc. No. 26-4) on November 18, 2011.
3. A 640-acre spacing unit comprised of 12, Township 154 North, Range 102 West, Todd-Bakken Pool, established on July 9, 2014, by Order No. 21978 (Doc. No. 26-5) and pooled by Order No. 26796 (Doc. No. 26-6) on October 2, 2015.
4. A 2560-acre spacing unit comprised of Sections 11, 12, 13, and 14, Township 154 North, Range 102 West, Painted Woods-Bakken Pool, established on November 8, 2016, by Order No. 27636 (Doc. No. 26-7) and pooled by Order No. 27791 (Doc. No. 26-8) on November 16, 2016.

All of the oil and gas interests in each of the aforementioned spacing units have been pooled. Each pooling order provides that “[a]ll owners of interests shall recover or receive, without unnecessary expense, their just and equitable share of production from the spacing unit in the proportion as their interests may appear in the spacing unit.” These spacing units are illustrated below:

Sections 11 and 14 Spacing Unit 11 1280 base-spacing unit 14	Section 12 Spacing Unit 12 640 base-spacing unit
23	Sections 13 and 24 Spacing Unit 13 1280 base-spacing unit 24

Equinor Energy LP (“Equinor”) and/or Grayson Mill Williston, LLC (“Grayson”) are the operators of the Weisz 11-14 XE #1H well (“Weisz Well”). The spacing unit for the Weisz Well contains 2560 acres and is comprised of Sections 11, 12, 13, and 14, Township 154 North, Range 102 West, Williams County, North Dakota (“Overlapping Spacing Unit”). The Overlapping Spacing Unit was established by the Industrial Commission for the purpose of drilling a single, lease-line horizontal well. See Doc. No. 26-8. The Weisz Well is the only well authorized for the Overlapping Spacing Unit. The surface location of the Weisz Well is located just outside the Overlapping Spacing Unit in the southeast southwest quarter of Section 2, Township 154 North, Range 102 West, in Williams County, North Dakota. The terminus of the well is located 99 feet from the south section line and four feet from the east section line of Section 14.

The Plaintiffs, by virtue of their ownership of mineral interests in Section 13 of the Overlapping Spacing Unit, have an interest in the production from the Weisz Well. The Plaintiffs contend that production from the Weisz Well should be allocated equally between Sections 11, 12, 13, and 14. This would result in a 25% share to each of Sections 11, 12, 13, and 14.

Equinor agrees that Sections 11, 12, and 14 are each due 25% of production. However, Equinor contends the 25% of production due to Section 13 must be shared with Section 24 due to the Underlying Spacing Unit made up of Sections 13 and 24. Equinor has been splitting the

production between Sections 13 and 24 so that each receives 12.5%. Thus, the Plaintiffs contend they are only receiving one-half (1/2) of the royalties to which they are entitled.

The primary issue to be determined is whether Section 38-08-08(1) of the North Dakota Century Code and Industrial Commission pooling orders 27791 and 18082 require, as Equinor contends, or prohibit, as the Plaintiffs contend, the allocation of production from Section 13 of the Overlapping Spacing Unit to Section 24 of the Underlying Spacing Unit. While it is undisputed the Industrial Commission has the authority to force pool a spacing unit as was done in this case, the parties disagree as to whether the pooling orders in question, and Section 38-08-08(1), require the reallocation of royalties outside the unit and whether the Industrial Commission has the authority to make such an order.

III. LEGAL DISCUSSION

Rule 47 of the North Dakota Rules of Appellate Procedure permits the North Dakota Supreme Court to answer questions of law certified to it by federal courts and appellate courts of other states if the following conditions are met:

- (1) questions of law of this state are involved in any proceeding before the certifying court which may be determinative of the proceeding;
- (2) it appears to the certifying court there is no controlling precedent in the decisions of the supreme court of this state.

N.D. R. App. P. 47.

The certification of a question of law to a state court “rests in the sound discretion of the federal court.” Perkins v. Clark Equip. Co., 823 F.2d 207, 209 (8th Cir. 1987) (quoting Lehman Bros. v. Schein, 416 U.S. 386, 391 (1974)). The Eighth Circuit Court of Appeals has explained,

“[a]bsent a ‘close’ question and lack of state sources enabling a nonconjectural determination, a federal court should not avoid its responsibility to determine all issues before it.” Id. (quoting Shakopee Mdewakanton Sioux Cmty. v. City of Prior Lake, Minn., 771 F.2d 1153, 1157 n.2 (8th Cir. 1985)). The Eighth Circuit Court of Appeals has also stated:

In the absence of controlling precedent in the decisions of the [state supreme court] which would enable this court to reach a sound decision without indulging in speculation or conjecture, we believe the better practice is to seek a definitive resolution of this state law question[] by the [state supreme court].

Kulinski v. Medtronic Bio-Medicus, Inc., 112 F.3d 368, 372 (8th Cir. 1997) (quoting Kaiser v. Mem’l Blood Ctr. of Minneapolis, Inc., 938 F.2d 90, 93-94 (8th Cir. 1991)).

The Court respectfully certifies there are questions of North Dakota law and legislative intent in this case which will likely be determinative of this proceeding. Further, it appears to the Court there is no controlling precedent in the decisions of the North Dakota Supreme Court which provide guidance in resolving the questions of law being certified. This case presents important questions of state law which are likely to come before this Court again, and which this Court cannot resolve without engaging in speculation and conjecture.

IV. ORDER

The Clerk of Court shall transmit this Order to the North Dakota Supreme Court along with the following:

1. The docket sheet.
2. A copy of docket numbers 1, 11, 17, 24, 25, 26, 32, 33, 34, 43, 44, 45, and 62 along with all exhibits.

If the North Dakota Supreme Court requires any portion of the record not included with this Order, the undersigned will ensure that all such pleadings and records are promptly forwarded to the North Dakota Supreme Court by the Clerk of the District Court.

IT IS SO ORDERED.

Dated this 16th day of March, 2022.

/s/ Daniel L. Hovland
Daniel L. Hovland, District Judge
United States District Court