

**IN THE SUPREME COURT
STATE OF NORTH DAKOTA**

<p>Allen Dominek and Arlen Dominek, Plaintiffs/Appellants, vs. 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 Mills Energy, LLC, Defendants/Appellees.</p>	<p>SUPREME COURT NO. 20220088</p>
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Certification Order Entered March 16, 2022
United States District Court No. 1:19-cv-288
United States District Court for the District of North Dakota
The Honorable Daniel L. Hovland, Chief Judge

BRIEF OF AMICUS CURIAE FROM THURMON ANDRESS,
MELISSA SANDEFER, JULIE SANDEFER, LISA SANDEFER,
THOMAS THOMPSON, AND ROBERT FULWILER
IN SUPPORT OF EQUINOR ENERGY'S INTERPRETATION
OF N.D.C.C. § 38-08-08(1)

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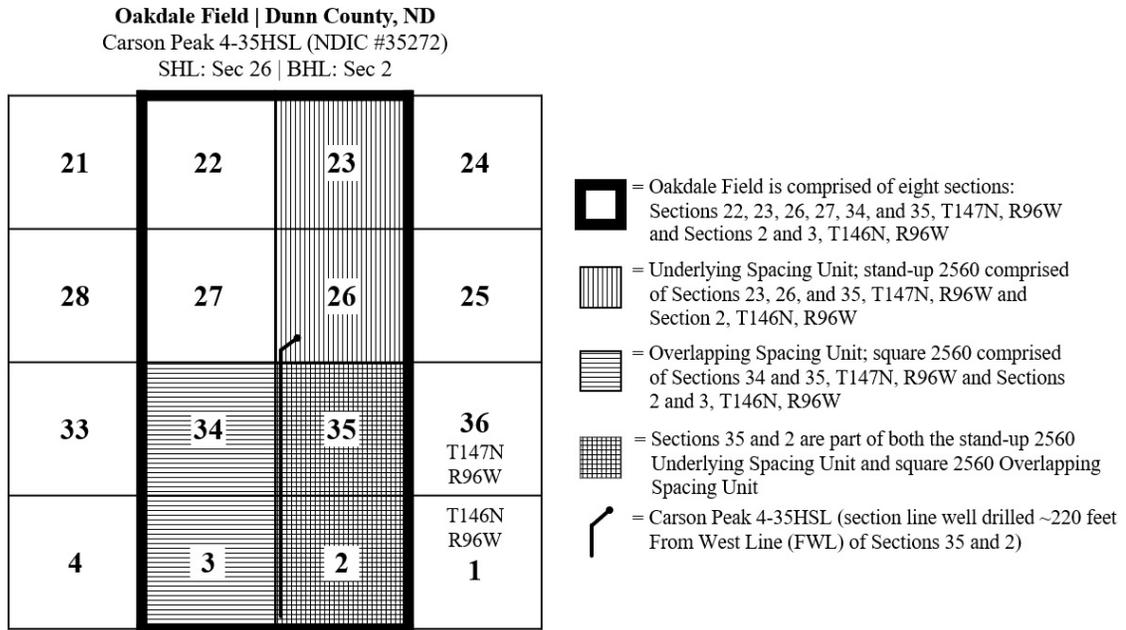
AMICUS CURIAE STATEMENT OF IDENTITY AND INTEREST

[¶1] Thurmon Andress, Melissa Sandefer, Julie Sandefer, Lisa Sandefer, Thomas Thompson, and Robert “Bob” Fulwiler (collectively, “Andress Sandefer”), own minerals located in Dunn County, specifically, Sections 22, 23, 26, and 27, Township 147 North, Range 96 West (the “Dunn County Property”). Andress Sandefer submits this brief, as *Amicus Curiae*, to support the position that the first certified question should be answered “Yes,” that N.D.C.C. § 38-08-08(1) requires allocation of production from Section 13 of the Overlapping Spacing Unit to Section 24 of the Underlying Spacing Unit.

[¶2] Andress Sandefer’s interests are largely in the Oakdale Field, which covers a total of eight sections: six sections in Township 147 North, Range 96 West, and two sections in Township 146 North, Range 96 West. A portion of Andress Sandefer’s interests in the Dunn County Property are in an “Underlying Spacing Unit” like the owners in Section 24 of *Dominek, et al. vs. Equinor Energy, et al.* The Underlying Spacing Unit at issue with respect to Andress Sandefer consists of Sections 23, 26, and 35, Township 147 North, Range 96 West and Section 2, Township 146 North, Range 96 West. These four sections comprise what is commonly referred to as a “standup 2560” because the four sections are oriented in a north-south direction and comprise 2,560-acres, more or less. Part of this Underlying Spacing Unit (specifically, the south half of the standup 2560) is within an “Overlapping Spacing Unit” where there’s production from the Carson Peak 4-35HSL well (NDIC #35272) (“Carson Peak Well”), a section line well. The Overlapping Spacing Unit also contains 2,560 acres, more or less, but instead of being oriented in either a “standup 2560” (i.e., four sections aligned due north-south) or “laydown 2560” (i.e., four sections aligned due east-west), the Overlapping Spacing Unit is a “square 2560”, i.e., the four sections are aligned two sections north-south by two sections east-west.

[¶3] The Overlapping Spacing Unit consists of Sections 34 and 35, Township 147 North, Range 96 West and Sections 2 and 3, Township 146 North, Range 96 West. Per Figure 1, Sections 35 and 2 are in both the Overlapping and Underlying Spacing Units. Continental Resources (“Continental”) operates all wells in the Oakdale Field.

Figure 1: Carson Peak Well relative to Spacing Units



[¶4] The Court’s decision in *Dominek* will have a direct bearing on whether Address Sandefer’s interests are protected, and they receive their statutory share of production per N.D.C.C. § 38-08-08(1). Just like the Section 24 owners in *Dominek*, a portion of Address Sandefer’s Dunn County Property interests were unitized in order to create the standup 2560 Underlying Spacing Unit. However, unlike Equinor Energy (“Equinor”), when Continental created its square 2560 Overlapping Spacing Unit, Continental ignored that Address Sandefer’s interests previously contributed to the Underlying Spacing Unit. As such, the exclusion of Address Sandefer in the Carson Peak Well is a confiscation of their interests within the Underlying Spacing Unit, and violates N.D.C.C. § 38-08-08(1).

STATEMENT OF AUTHORSHIP AND CONTRIBUTIONS

[¶5] Counsel for the parties authored no portion of this brief. The parties to this proceeding and their attorneys did not contribute money to fund preparation or submission of this brief.

LAW AND ARGUMENT

I. The relevant portion of N.D.C.C. § 38-08-08(1) requires allocation of production from Section 13 of the Overlapping Spacing Unit to Section 24 of the Underlying Spacing Unit.

[¶6] Like the owners in Section 24, whom Dominek argues should be excluded from their share of production from the Weisz Well, Andress Sandefer's statutory rights will be violated by Continental if they are excluded from the Carson Peak Well. The infringement of Andress Sandefer's statutory and correlative rights under N.D.C.C. § 38-08-01(1) and N.D.C.C. § 38-08-07 can be proven mathematically by the following hypothetical example:

- Assume Andress Sandefer own 100% of Sections 23 and 26 in Figure 1.
- Assume Continental owns 100% of Sections 35 and 2 in Figure 1.
- Assume Party Z owns 100% of Sections 34 and 3 in Figure 1.
- Upon unitization, the standup 2560 Underlying Spacing Unit is allocated 50% to Andress Sandefer (1280 acres) and 50% to Continental (1280 acres) based upon each party's pro rata share of acreage assigned to the Underlying Spacing Unit.
- As previously noted by Equinor to the United States District Court, under North Dakota law, production from any tract, or attributable to any tract, included in the standup 2560 Underlying Spacing Unit must be deemed for all purposes to have been produced from all tracts within said spacing unit.
- Thus, any production from the Carson Peak Well, or any other section line well surrounding the standup 2560 Underlying Spacing Unit, must allocate said production 50-50 between Andress Sandefer (Sections 23 and 26) and Continental (Sections 35 and 2). Failure to allocate production 50-50 across the standup 2560 Underlying Spacing Unit from the Carson Peak Well means (i) Continental accreted

its interests while (ii) Andress Sandefer diluted its interests in the Underlying Spacing Unit. This outcome is a clear infringement upon Andress Sandefer's statutory rights and represents an unjust and inequitable sharing of production.

- Reducing the percentages of Andress Sandefer and Continental or adding more parties to the equation does not change the math. Said differently, similar to the Section 24 owners in *Dominek*, expulsion of any Underlying Spacing Unit owner from the Carson Peak Well, or any section line well, equates to confiscation of interest which is an infringement upon said owner's statutory rights.

[¶7] Unlike Equinor, Continental refuses to pay Andress Sandefer for their share of production from the Carson Peak Well even though Andress Sandefer's interests in Sections 23 and 26 were diluted to originally form the standup 2560 Underlying Spacing Unit. In other words, all acres inside the four sections that comprise the standup 2560 Underlying Spacing Unit were proportionately weighted. To now exclude, or expel, any fraction of them accretes some parties while diluting other parties. The same is true for the Section 24 owners in *Dominek*.

[¶8] To prove how unjust this position is for the Section 24 owners and Andress Sandefer, take the concept of section-line wells to the opposite extreme: only include acreage inside the NDIC setbacks. For reference, assume the NDIC requires a 250-ft setback from the lease, or spacing unit, boundary. A 250-ft setback stretching 10,560 ft (or 2-miles-long which is typical of Bakken wells) covers an area of 60.6 acres, more or less (i.e., $250 \text{ ft} \times 10,560 \text{ ft} = 2,640,000 \text{ ft}^2 / 43,560 \text{ ft}^2 \text{ per acre} \approx 60.6 \text{ acres}$). Because both sides of a section-line have the same 250-ft setback, each section-line theoretically restricts development of 121.2 acres, more or less. When taken to its extreme, the production sharing theories espoused by *Dominek* and Continental demand that owners be expelled if they are outside the 121.2 acres centered over a section-line.

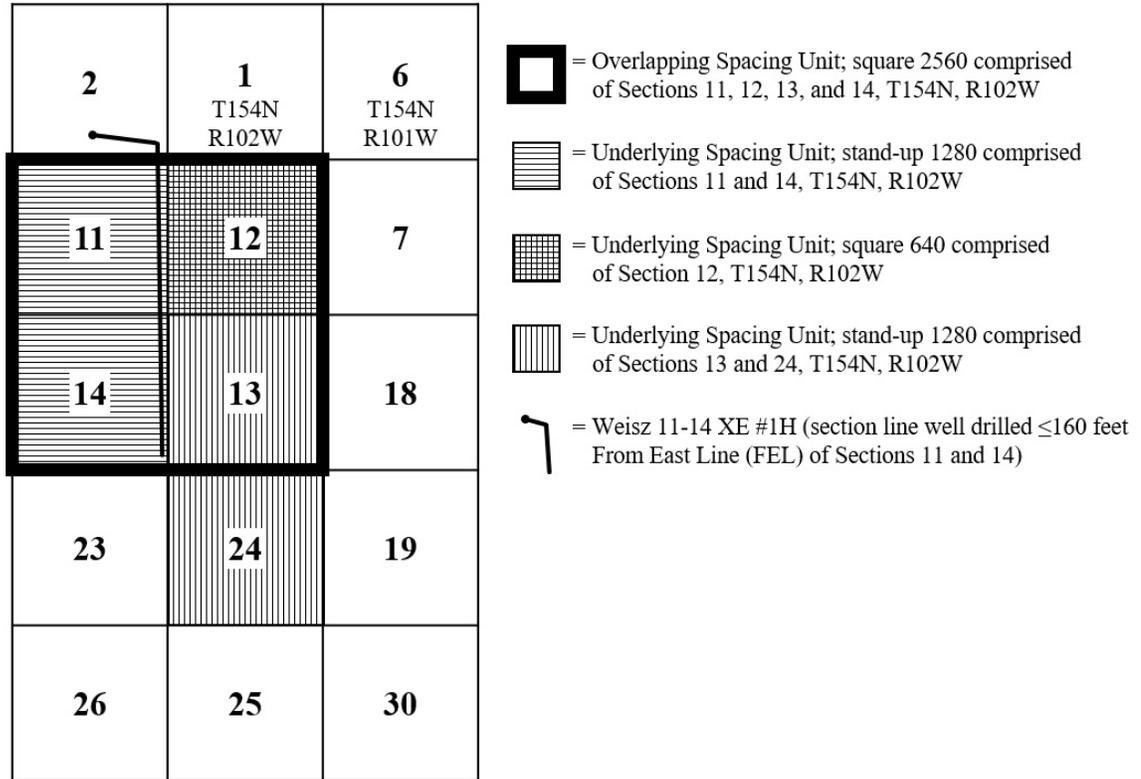
[¶9] Thus, owners inside NDIC setback areas get to participate in Underlying Spacing Units that span entire section(s), while retaining unto themselves all production from Overlapping Spacing Units that are necessary to develop lands inside NDIC setbacks. This extreme scenario shows just how preposterous of a position Dominek and Continental are taking. The clear and unambiguous intention of N.D.C.C. § 38-08-08(1) is that all acres originally committed to an Underlying Spacing Unit get to participate in their share of all production in that spacing unit irrespective of the production coming from a well in the interior of the unit or from a well on the extreme edge of the unit.

[¶10] The Court’s decision in *Dominek* will impact whether Andress Sandefer rightfully receives its statutorily-required share of production from the Carson Peak Well. “When multiple parties own land within a spacing unit, they must combine, or ‘pool,’ their separate interests in the land and divide between them all profits from production within the spacing unit. See N.D.C.C. § 38–08–08(1).” *N. Oil & Gas, Inc. v. Moen*, 808 F.3d 373, 375 (8th Cir. 2015). *See also Horob v. Zavanna, LLC*, 2016 ND 168, ¶ 24, 883 N.W.2d 855 (stating, “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.”) (quoting N.D.C.C. § 38-08-08(1)).

[¶11] If the Court sides with Equinor – holding the owners in Section 24 are entitled to their share of production and royalties in the Weisz Well because they have an interest in the Underlying Spacing Unit that includes Section 13 (see Figure 2, below) – Andress Sandefer’s statutory and correlative rights in Sections 23 and 26 will be protected and they will receive their required share of production from the Carson Peak Well.

Figure 2: Weisz Well relative to Spacing Units

Painted Woods Field | Williams County, ND
 Weisz 11-14 XE #1H (NDIC #33453)
 SHL: Sec 2 | BHL: Sec 14



[¶12] It is not just or equitable if mineral owners similarly situated as those in Section 24, like Andress Sandefer, are effectively cut-out of receiving their share of revenue for production of oil and gas from wells in an Overlapping Spacing Unit draining the reserves in their Underlying Spacing Units. If the Court sides with Dominek, Andress Sandefer’s interests, like those of the owners in Section 24, will be confiscated, diluted, and drained without receiving any payment for production from the Underlying Spacing Unit that’s coincidental with the Overlapping Spacing Unit, thus violating Andress Sandefer’s rights under N.D.C.C. § 38-08-08(1).

[¶13] As Equinor correctly argues, the North Dakota Century Code requires the allocation of production, thus revenue, from Section 13 of the Overlapping Spacing Unit to Section

24 of the Underlying Spacing Unit.

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.

N.D.C.C. § 38-08-08(1) (emphasis added). Pooling contemplates that profits gained from production in any portion of a spacing unit must be allocated to all owners in that spacing unit. “Pooling involves the division of profits between owners of land within a single spacing unit, *see* N.D.C.C. § 38-08-08(1).” *N. Oil & Gas*, 808 F.3d at 379. If the Court adopts Dominek’s position and cuts-out the owners in Section 24, and owners like Address Sandefer who have interests in Underlying Spacing Units, there is no division of profits between the owners within those spacing units as required by North Dakota law per *Moen*.

[¶14] The fact that, under North Dakota law, production anywhere on pooled acreage holds all leases that are even partially within a spacing unit supports this interpretation of N.D.C.C. § 38-08-08(1). “The majority rule is government pooling and unitization orders do not divide the lease, and production anywhere on the pooled acreage holds all leases that may be wholly or partly in the unit.” *Egeland v. Cont’l Res., Inc.*, 2000 ND 169, ¶ 16, 616 N.W.2d 861 (citing N.D.C.C. § 38-08-08(1)). It is not just or equitable if owners like those in Section 24 can have their leases held by production from Section 13 in the Overlapping Spacing Unit, but not receive any payments from the production in Section 13 of that unit, which holds their interests.

[¶15] One of the primary purposes of pooling and unitization is to protect correlative rights. “The purposes of pooling are to prevent the physical and economic waste that accompany the drilling of unnecessary wells and to protect the correlative rights of

landowners over a reservoir.” *Slawson v. N. Dakota Indus. Comm’n*, 339 N.W.2d 772, 774 (N.D. 1983). Under Dominek’s interpretation, if there is no production in Section 24 of the Underlying Spacing Unit, the leases of those owners remain held by production from Section 13 in the Overlapping Spacing Unit, despite the fact the owners in Section 24 would not be getting paid for the production in Section 13. Surely, that does not protect the correlative rights of those owners, nor owners like Andress Sandefer, and cannot be the result contemplated by N.D.C.C. § 38-08-08(1).

[¶16] Because the Weisz Well produces from Section 13, and Section 13 is pooled with Section 24, all production from Section 13 must be deemed for all purposes to be production from both Sections 13 and 24. As noted in *Hystad v. Industrial Commission*, each landowner is entitled to their just and equitable share of oil or gas in a pool, and the operator owes a duty to all other owners in the common source of supply not to damage or take an undue proportion of oil or gas from the common source of supply. *Hystad*, 389 N.W.2d 590, 595 (N.D. 1986). The discussion of correlative rights in the concurring opinion in *Hystad* is instructive.

Additional dialogue between counsel for the respective parties and members of the staff of the Commission leave little doubt that the rationale is to protect correlative rights by requiring all who shared in the original well to share in additional wells on the spacing unit because much of the oil had been produced during primary production.

Hystad, 389 N.W.2d at 600 (J. Vande Walle, concurring). While not quite apples to apples, it drives home the point made in *Moen* with respect to N.D.C.C. § 38-08-08(1) and spacing in general – “[t]he division of profits between owners of land within a single spacing unit.”

[¶17] Because the owners in Section 13 shared in production from wells drilled in the Underlying Spacing Unit that includes Section 24, then to protect the statutory and

correlative rights of the Section 24 owners, they must be allowed to share in production from any wells that are spaced in Section 13, e.g., the Weisz Well. Likewise, Address Sandefer should receive their statutory share of production (and related revenue) from the Carson Peak Well. The Court should answer the first certified question “yes” – N.D.C.C. § 38-08-08(1) requires the allocation of production from Section 13 of the Overlapping Spacing Unit to Section 24 of the Underlying Spacing Unit.

CONCLUSION

[¶18] Address Sandefer respectfully requests that the Court answer the first question in the Certification Order in the affirmative – that N.D.C.C. § 38-08-08(1) requires allocation of production from Section 13 of the Overlapping Spacing Unit to Section 24 of the Underlying Spacing Unit.

Respectfully submitted this 22nd day of July, 2022.

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CERTIFICATE OF COMPLIANCE

[¶1] Pursuant to Rules 29(a)(5) and 32(a)(8) of the North Dakota Rules of Appellate Procedure, this brief complies with the page limitation and consists of 12 pages.

Dated this 22nd day of July, 2022.

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CERTIFICATE OF SERVICE

[¶1] I hereby certify that on July 22nd, 2022, I served the following documents:

1. Motion for Leave to File Brief of Amicus Curiae
2. Brief of Amicus Curiae from Thurmon Andress, Melissa Sandefer, Julie Sandefer, Lisa Sandefer, Thomas Thompson, and Bob Fulwiler

on the following by electronic mail transmission, pursuant to N.D.R.App.P. 25 and 31:

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