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STATE OF NORTH DAKOTA

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

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 Mill Williston, LLC Defendants/Appellees.	)	Supreme Court No. 20220088 U.S. District Court No. 1:19-cv-00288

Certification Order Entered March 16, 2022
U.S. District Court Case No. 1:19-cv-288
United States District Court for the District of North Dakota
The Honorable Daniel L. Hovland

BRIEF OF AMICUS CURIAE CONTINENTAL RESOURCES, INC. PARTIALLY IN SUPPORT OF DEFENDANTS/APPELLEES AND PARTIALLY IN SUPPORT OF PLAINTIFFS/APPELLANTS

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Statement of Identity and Interest

[1] Continental is the largest producer of oil and gas in North Dakota—over 160,000 barrels of oil equivalent per day from thousands of wells in multiple formations. In the past two years, Continental produced nearly 100 million barrels of oil equivalent in North Dakota, generating nearly $6 billion. Continental operates seven horizontal drilling rigs (nearly 20% of the state's total), drilling roughly 15 wells per month. Continental owns approximately 655,000 net acres of oil and gas leasehold in North Dakota and plans to continue to drill and produce in North Dakota for the foreseeable future. Much of Continental's leasehold is developed with Overlapping Units (as defined below) that have noncontiguous boundaries with Base Units (as defined below). Consequently, Continental has more at stake in the outcome of this case than any other operator in the state.

Statement per N.D. APP. R. 29(a)(D)

[2] This Brief was authored solely by Continental's counsel. No party, party's counsel, or other person contributed money intended to fund preparing or submitting this Brief.

Introduction

[3] Pursuant to Rule 29 of the North Dakota Rules of Appellate Procedure, Continental respectfully submits this Brief as amicus curiae in support of (i) the position taken by Plaintiffs-Appellants Allen Dominek and Arlen Dominek ("Domineks") regarding allocation of production from Overlapping Units, and (ii) the position taken by Defendants-Appellees 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 (collectively, "Equinor"), regarding whether this Court should decline to answer the pending certified questions.

[4] Continental presents the following arguments for this Court's consideration.

a. Equinor correctly argues that this Court should decline to answer the

certified questions because the District Court lacks subject matter jurisdiction due to Domineks' failure to exhaust administrative remedies.

b. This Court should decline to answer the certified questions because the factual record is not fully developed and this Court's answers would not be dispositive.

c. The District Court also lacks subject matter jurisdiction because the central issue of the underlying case involves nonjusticiable political questions, which should be resolved by the elected officials of the NDIC or the North Dakota Legislature.

d. This Court should exercise supervisory jurisdiction and remand the case to the NDIC because the underlying case presents issues of vital importance to the public, the state's courts, and the state's economy, and there is no adequate alternative remedy.

e. This Court should defer to the legislature or the elected officials of the NDIC to answer the certified questions, because the case at issue excludes considerations vital to industry, the state, and the public.

f. Domineks correctly interpret N.D.C.C. § 38-08-08 and standard North Dakota Industrial Commission ("NDIC") pooling orders, insofar as they argue that proceeds from an Overlapping Unit should only be allocated to tracts within the Overlapping Unit, and not to a tract outside the Overlapping Unit that is within a Base Unit.

[5] For purposes of this Brief, a "Base Unit" is an existing spacing unit that does not overlap other spacing units in the same formation. An "Overlapping Unit" is a spacing unit established for purposes of a section line well drilled in the setback corridors along two or more Base Units. Such section line wells require Overlapping Units, which overlap two or more Base Units. It is assumed for this Brief that all Base Units and Overlapping

Units in North Dakota are subject to NDIC pooling orders with provisions substantially similar to NDIC Order Nos. 27791 and 18082. The spacing units in this case represent just one of many configurations for Overlapping Units. The four figures at right depict other configurations, and illustrate how complex these situations can become. These figures reflect existing Overlapping Units, not theoretical configurations. As demonstrated, the pending action involves the simplest possible overlap. Much more complex Overlapping Units are common in the state.

Fig. 1 – Case at Issue

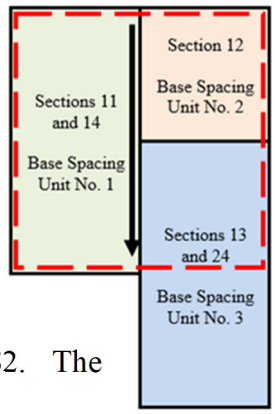


Fig. 2 – Overlapping Units

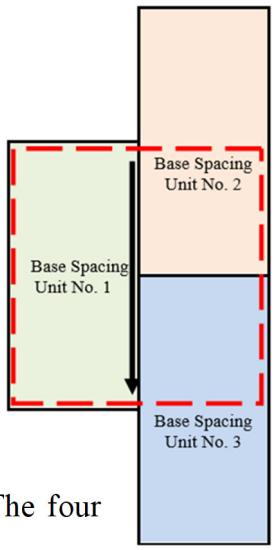


Figure 3 – Overlapping Units

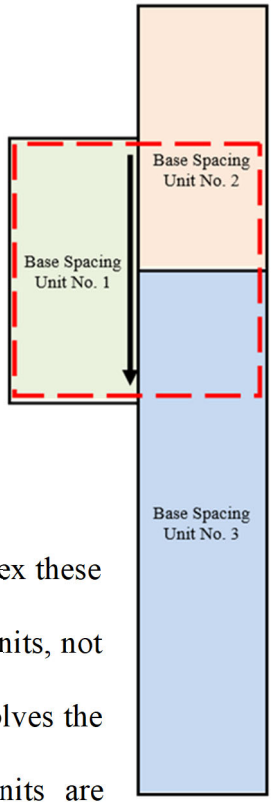
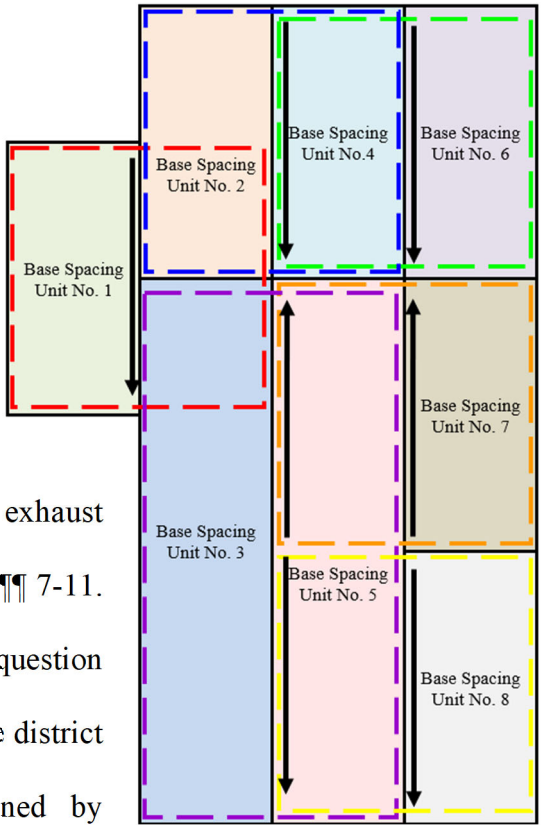


Figure 4 – Overlapping Units



Argument

1. Subject Matter Jurisdiction and Failure to Exhaust Administrative Remedies.

[6] Continental agrees with Equinor that this Court should decline to answer the certified questions because Domineks failed to exhaust their administrative remedies. Equinor Brief at ¶¶ 7-11. This Court "may refuse to consider a certified question if it is … not dispositive of the issues before the district court." N.D.R.App.P. 47.1(c)(1). As explained by

Equinor, the District Court lacks subject matter jurisdiction over Domineks' claims because Domineks failed to exhaust their administrative remedies. Equinor Brief at ¶¶ 7-11. Without jurisdiction, the District Court cannot issue a valid judgment. *Cont'l Res., Inc. v. Counce Energy BC #1, LLC*, 2018 ND 10, ¶ 6, 905 N.W.2d 768, 771. Lack of subject matter jurisdiction is dispositive, cannot be waived, and may be raised at any time. *Id*. Answers to the certified questions are not dispositive, because the District Court's lack of jurisdiction is dispositive. Answering the certified questions causes an impermissible advisory opinion and a waste of this Court's resources, which is why this Court avoids answering certified questions that are not dispositive. *State v. G.C.H.*, 2019 ND 256, ¶ 6, 934 N.W.2d 857, 860. This Court should decline to answer the certified questions because they are not dispositive of the District Court case.

2. Factual Record Not Fully Developed.

[7] This Court should decline to exercise its discretion to answer the certified questions because the record was not fully developed at the District Court level. This Court has declined to answer certified questions where, notwithstanding its answers, "all of the issues in the case will remain to be tried, and the outcome of the suit will depend upon the evidence submitted in the case." *Merchant v. Richland Cty. Water Mgmt. Dist., Bd. of Comm'rs*, 270 N.W.2d 801, 804-805 (N.D. 1978) (quoting *School Bd. of Eagle Pub. Sch. Dist. No. 16 v. State Board*, 126 N.W.2d 799, 802 (N.D. 1964). The parties' motions for summary judgment contain extensive and contradictory factual allegations. R24-26, R32-34. Clearly, complex factual issues await adjudication. Even if this Court answers the certified questions, the District Court must determine the amount of royalties paid, when they were paid, by whom and to whom they were paid, and the existence of any deficiency,

among other factual issues. This case is not yet ripe for certified questions to this Court.

3. Nonjusticiable Political Questions.

[8] This Court should decline to answer the certified questions because they involve nonjusticiable political questions. "The nonjusticiability of a political question is primarily a function of the separation of powers." *Baker v. Carr*, 369 U.S. 186, 210 (1962). A nonjusticiable political question exists where (among other issues) "the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government…" *Id.* at 217. The pending certified questions involve broad public policy issues that will dramatically affect the state's economy and billions of dollars in production revenue that have long been paid and spent. Such decisions are for the legislature, not the courts. Furthermore, sensitive and highly technical oil and gas issues are the purview of the NDIC's three elected officials. These issues should be answered by the NDIC or the legislature, not the courts.

4. Supervisory Jurisdiction.

[9] This Court may remand this case back to the NDIC pursuant to its discretionary authority to exercise supervisory jurisdiction. N.D. Const. art. VI, § 2, and N.D.C.C. § 27-02-04; *see also State v. Haskell*, 2001 ND 14, ¶ 4, 621 N.W.2d 358. This Court will exercise such authority "rarely and cautiously, and only to rectify errors and prevent injustice in extraordinary cases in which there is no adequate alternative remedy." *Roe v. Rothe-Seeger*, 2000 ND 63, ¶ 5, 608 N.W.2d 289, 291. In *State vs. G.C.H.*, this Court declined to answer certified questions because they were not dispositive, but did exercise supervisory jurisdiction because there was no alternative remedy to prevent injustice. *Id*.

[10] The certified questions present issues of significant concern to the public, the courts, the state's economy, and a vital industry. Billions of dollars are at stake. A decision from any court on the substantive issues will trigger a profusion of litigation, with no possibility of a return to the current détente. There will be no adequate remedy to unwind any court ruling. This Court has previously exercised its supervisory jurisdiction in very similar circumstances. *Wilkinson v. Bd. of Univ. & Sch. Lands of N.D.*, 2020 ND 179, ¶ 20, 947 N.W.2d 910, 916. Thus, this situation is ripe for this Court to exercise supervisory jurisdiction, and put the matter in the hands of the NDIC's elected officials.

5. These Issues Are Appropriate For Political, Not Judicial Resolution.

a. This case is too narrow for the potential decision that could be issued.

[11] This case presents only one, very narrow, version of the myriad possibilities of Overlapping Units. There are dozens of variations of Overlapping Units, yet this Court is being asked to rule based on just one example. This Court cannot consider all dimensions of the issues because of the narrow confines of a single litigation matter. For example, the Base Unit covering Sections 13 and 24 might terminate prior to the Overlapping Unit for the Weisz Well. Then this Court's decision becomes improper, as it was based on the existence of a non-existent Base Unit. This situation will arise frequently, because in many cases, section line wells (which compel Overlapping Units) are drilled, and will produce, long after the wells in the Base Units cease production (rendering the Base Units obsolete).

[12] Another example involves Overlapping Unit pooling orders obtained by companies that use Domineks' allocation method. Such companies followed statutory and regulatory pooling requirements, but only as to interested parties within the boundaries of the Overlapping Units. However, Equinor's interpretation would require notice and

elections to all parties within overlapped Base Units. Consequently, many existing NDIC pooling orders for Overlapping Units will be subject to collateral attack – another highly undesirable result of addressing the certified questions within the narrow confines of a single litigation matter. Given the many ramifications of this Court's decision that cannot be part of the analysis of this case, these issues should be determined by the legislature or the NDIC's elected officials, not this Court.

b. The parties to this case are too few for the potential decision.

[13] The case at issue involves only two parties,[1] yet the outcome will affect hundreds of companies and tens of thousands of individuals if this Court provides substantive answers to the certified questions. Those parties will have no input or opportunity to participate in the decision. Due process requires "the promotion of participation and dialogue by affected individuals in the decisionmaking process," but in this case, numerous parties will be affected with no opportunity to be heard. *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242, 100 S. Ct. 1610, 1613 (1980).

[14] The best way to protect the right to participate in the decision-making process for potentially affected parties is through the political system. The legislature is better suited to considering vital policy considerations affecting billions of dollars in revenue, much that has already been paid. The legislature, rather than this Court, is equipped to exonerate past payments, correct an undesirable policy choice, and balance the myriad interests of competing stakeholders. Even if the legislature does not act, these policy issues

[1] Although there are two named Appellees, they are functionally one party, with Grayson Mill Williston, LLC being the successor to Equinor Energy L.P. f/k/a and a/k/a Brigham Oil & Gas L.P. and Statoil oil and Gas L.P. https://tinyurl.com/54ahybsj (last visited August 17, 2022). Likewise, Allen Dominek and Arlen Dominek both own mineral rights at issue in this case, and are functionally a single party.

can be addressed through the NDIC, a political body composed of elected officials.

6. Domineks Correctly Interpret N.D.C.C. § 38-08-08 and NDIC Pooling Orders.

a. Introduction.

[15] If this Court does answer the certified questions presented, it should conclude that production from the Weisz 11-14 XE #1H well ("Weisz Well") should be allocated as recommended by Domineks. Continental agrees with, and fully supports the legal arguments made by Domineks insofar as they pertain to the allocation of proceeds from a well within an Overlapping Unit.

b. Plain language of the statute.

[16] Continental echoes that the plain language of the statute requires allocation according to the Domineks' method. Under the pooling statute, production from "*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). The word "thereon" refers to a "tract included in a spacing unit covered by a pooling order." Here, Section 24 is not a "tract included in a spacing unit covered by a pooling order" for the Overlapping Unit covering Sections 11 through 14. Production from the Weisz Well cannot be deemed to be production from Section 24. It is only deemed production from Sections 11 through 14. As the law stands, the NDIC has no power or authority to determine otherwise.

[17] Equinor argues that "[t]here is no single order or statute that directs Equinor to allocate production from the [Weisz Well] to owners of oil and gas interests in Section 24." Equinor Brief at ¶ 13. Rather, Equinor argues a patchwork of NDIC orders and statutory provisions combine to require an allocation method appearing nowhere in

N.D.C.C. § 38-08-08 or any other statute. *Id*. Equinor fails to address the fundamental flaw in its argument: the NDIC cannot change the statute, and any NDIC order that conflicts with the plain language of the statute is *ultra vires* and invalid.

c. The Weisz Well is not a well within any Base Unit.

[18] Equinor incorrectly argues that NDIC Order No. 18082 (which pooled the Base Unit for Sections 13 and 24) allocates *all* production that occurs (or is deemed to occur by Order No. 27791) on Section 13 equally between Sections 13 and 24. Equinor Brief at ¶ 19. Equinor's argument fails, however, because Equinor conflates the Base Unit and the Overlapping Unit pooled by Order Nos. 18082 and 27791, respectively. The Weisz Well is *not a well* within the Base Unit that is subject to Order No. 18082. The Base Unit and the Overlapping Unit are separate legal entities. Just because they share a proximate geographic area does not mean they automatically merge into a single spacing unit.

d. Allocating production across all Base Units creates the absurd result of allocating among separate pools, and should be avoided.

[19] The NDIC establishes separate spacing units for separate pools:

> When necessary to prevent waste, to avoid the drilling of unnecessary wells, or to protect correlative rights, the commission shall establish spacing units ***for a pool***. Spacing units when established must be of uniform size and shape for the entire pool, except that when found to be necessary for any of the purposes above mentioned, the commission is authorized to divide any pool into zones and establish spacing units ***for each zone***, which units may differ in size and shape from those established in any other zone.

N.D.C.C. § 38-08-07(1) (emphasis added). A "pool" is "an underground reservoir containing a common accumulation of oil or gas or both; each zone of a structure which is completely separated from any other zone in the same structure ***is a pool***, as that term is used in this chapter." N.D.C.C. § 38-08-02(13) (emphasis added). Every spacing unit, by

statutory definition, covers ***a separate pool*** from every other spacing unit.

[20] Overlapping Units cover different pools or zones than the Base Units they overlap, even though the Base Units apply to the exact same geological interval as the Overlapping Units. This is a legal fiction necessary for the NDIC to establish Overlapping Units. The Overlapping Units and the Base Units, therefore, cover different pools or zones, even though they apply to the same geologic interval. Neither the NDIC nor Equinor would ever argue that production from a 320-acre Lodgepole spacing unit would be allocated across the entirety of a 1,280-acre Bakken spacing unit overlapping the Lodgepole spacing unit (e.g., NDIC Order Nos. 10397 and 26312, respectively). Though absurd, this result is the only possible outcome following Equinor's argument.

[21] Equinor's interpretation of the pooling statute and orders would create an absurd result. This Court interprets statutes in accordance with the plain meaning of their words, and avoids absurd or ludicrous results. *State v. Fasteen*, 2007 ND 162, ¶ 8, 740 N.W.2d 60, 63. Equinor's interpretation of N.D.C.C. § 38-08-08 and Order Nos. 18082 and 27791 would require allocation across all pools and formations. It would be as though North Dakota's oil and gas resources existed in a two-dimensional plane. "The rules of statutory interpretation militate against such an 'absurd' result." *Winkler v. Gilmore & Tatge Mfg. Co.*, 334 N.W.2d 837, 841 (N.D. 1983).

e. Equinor's interpretation is wrong because it creates a daisy chain effect.

[22] Additionally, if this Court adopts Equinor's interpretation, a "daisy chain" effect would inevitably occur when Overlapping Units overlap other Overlapping Units, as in Figure 4 above. Granted, Equinor and the NDIC argue the "daisy chain" effect is

precluded by a provision included in all pooling orders for Overlapping Units.[2] Equinor Brief at ¶ 32, NDIC Brief at ¶ 20. While such provision may express the NDIC's *intent*, when a provision of an administrative agency order conflicts with statute, courts will hold the order or the provision invalid. *Olson v. Job Serv. N.D.*, 2013 ND 24, 826 N.W.2d 36.

[23] The anti-daisy chain provision states that an Overlapping Unit's pooling order does not require reallocation within other spacing units. However, Equinor argues that once a Base Unit is pooled, production that is deemed *by statute* to occur on any tract in the Base Unit is deemed to occur on all tracts. Thus, in Figure 4, production in Base Unit 1 is *deemed* to be production on all of Base Units 1, 2 and 3 because of the Overlapping Unit (outlined in red) covering portions of those Base Units. Thus, according to Equinor, any production from such Overlapping Unit is statutorily deemed as production on all of Base Units 1, 2 and 3, and must be allocated to all lands in any Overlapping Units covering any portions of Base Units 1, 2, and 3. Consequently, because statute takes precedence over NDIC orders, this results in production being allocated to all of the Overlapping Units outlined in red, blue and purple, comprising fourteen sections and nearly 9,000. Clearly, this absurd result of Equinor's interpretation was not the legislature's intent.

f. Equinor's allocation harms, rather than protects, correlative rights.

[24] Equinor incorrectly argues that its allocation protects correlative rights. Equinor claims that the Weisz Well produces oil that would "otherwise be produced from

[2] "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.

the" Dominek 13-24 1-H Well (NDIC File No. 21499) ("Dominek Well"). Equinor Brief at ¶ 22. Equinor reasons that the Weisz Well production must therefore be allocated to Section 24 to protect the Section 24 owners' correlative rights. The Dominek Well is more than one-half mile from the Weisz Well, so it is extremely unlikely that the Weisz Well produces oil that would otherwise be produced by the Dominek Well. However, if Equinor is correct, then the Dominek Well is producing oil that would otherwise be produced by the Weisz Well, which would then be allocated to owners in Sections 11 and 14. Instead, the Dominek Well is only allocated to the owners in Sections 13 and 24.

[25] In any case, the Weisz Well produces only from Sections 11-14, and should be allocated to only Sections 11-14 to best protect correlative rights. Correlative Rights is defined in North Dakota as:

> The opportunity afforded, so far as it is practicable to do so, to the owner of each property in a pool to produce without waste his just and equitable share of the oil or gas, or both, in the pool; being an amount, so far as can be practically determined, and so far as can practicably be obtained without waste, substantially in the proportion that the quantity of recoverable oil or gas, or both, under such property bears to the total recoverable oil or gas, or both, in the pool, and for such purposes to use his just and equitable share of the reservoir energy.

Hystad v. Indus. Comm'n, 389 N.W.2d 590, 595-96 (N.D. 1986) (internal citation and quotations omitted). An Overlapping Unit covers a pool separate from the overlapped Base Units. Equinor's allocation reroutes production from the Overlapping Unit pool to the Base Unit pool. If the Overlapping Unit pool has a million barrels of recoverable oil, Equinor's allocation method diverts 125,000 barrels to Section 24, leaving 875,000 barrels for the Overlapping Unit pool. Thus, a 10% owner of the property in the Overlapping Unit pool should receive 100,000 barrels, but only gets 87,500 under Equinor's allocation method.

[26] Alternatively, under Domineks' allocation method, the owners in Section 24

receive nothing from the Weisz Well, but will receive a share of proceeds from a section line well drilled on the boundary between Sections 23-26, and in an Overlapping Unit covering those same sections. Thus, the Section 24 owners will have the equal opportunity to produce the oil underlying their section. This is the best way to protect correlative rights.

g. Equinor's interpretation conflicts with NDIC's Overlapping Units policy.

[27] Finally, Equinor's interpretation disregards the NDIC's discretionary authority to establish Overlapping Units that cover all Base Units. If Equinor is correct that production from a section line well should be allocated to all lands in adjacent Base Units, the NDIC would most logically create and pool Overlapping Units accordingly. Rather than create a 2,560-acre Overlapping Unit that allocates proceeds to 3,200 acres (Figure 1), or 3,840 acres (Figure 2) or 5,120 acres (Figure 3), the NDIC would sensibly create and pool an Overlapping Unit covering 3,200, or 3,840 or 5,120 acres, using Equinor's allocation formula. The NDIC's policy is to form Overlapping Units that do not always cover all adjacent Base Units. Thus, Domineks' interpretation is consistent with NDIC policy.

h. BLM'S CA policy is not persuasive or relevant, and should be disregarded.

[28] The North Dakota Petroleum Council ("NDPC") supports its argument with a BLM memorandum about overlapping communitization agreements ("CAs") that aligns with Equinor's allocation method. NDPC Brief at ¶¶ 9-10. However, the BLM memorandum is not persuasive or relevant and should be disregarded. The BLM has recently issued two interpretations regarding allocation of proceeds from overlapping CAs, as follows:

> Permanent Instruction Memorandum 2018-012, dated July 3, 2018, issued by the Assistant Director for the Energy, Minerals, and Realty Management

> Division of the BLM in Washington D.C., with the subject of "Adjudicating Overlapping Communitization Agreements" ("PIM 2018-12"); and
>
> Permanent Instruction Memorandum 2018-004, dated July 3, 2018, issued by the Montana Deputy State Director for Energy, Minerals & Realty in Billings, Montana, with the subject of "Adjudicating Overlapping Communitization Agreements in North Dakota" ("MT PIM 2018-04").

[29] PIM 2018-012 (national BLM) mandates Domineks' allocation method for overlapping CAs while MT PIM 2018-04 (Montana BLM) mandates Equinor's allocation method for overlapping CAs. The conflict between the national and Montana BLM offices is resolved by a provision in PIM 2018-012, which authorizes a state BLM office to develop different policies in accord with state statutes, regulations, and practice. MT PIM 2018-004 contains scant analysis to support its conclusions about allocation methods. It merely quotes a section of N.D.C.C. § 38-08-08 and the NDIC's standard anti-daisy-chain provision. The lack of analysis, alone, is sufficient grounds for this Court to disregard MT PIM 2018-004. More importantly, CAs are not statutory pooling and not relevant to the certified questions. A CA is a voluntary contract between the federal government and private parties with interests in oil and gas production. *Burlington Resources Oil & Gas Co.*, 150 IBLA 178, 185 (IBLA August 31, 1999). A CA is not relevant to the pooling statute, which derives from the state's police power, not its power to enter into contracts. *Cont'l Res. v. Farrar Oil Co.*, 1997 ND 31, ¶ 16, 559 N.W.2d 841, 846.

[30] The NDPC argues that this Court should tailor its interpretation of state law to suit the BLM's interpretation of state law. This argument is circular: the federal tail wagging the state dog. Rather if this Court answers the certified questions, the BLM should issue a new memorandum consistent with this Court's answers. Pandemonium will not then ensue. Existing CAs will remain valid because they are approved contracts not subject to

unilateral alteration by decision of BLM. *Burlington*, 150 IBLA at 186.

Conclusion

[31] This Court should decline to answer the certified questions. They are not dispositive of the underlying case because of Domineks' failure to exhaust administrative remedies and the many factual issues to be determined at trial. This case involves nonjusticiable political questions and the central issues should be resolved by legislature or by the elected officials of the NDIC.

[32] In the alternative, should this Court take up a decision on the certified questions, it should answer the certified questions as recommended below. Any other answers would create absurd results and run contrary to the plain meaning of the pooling statute. The interpretation utilized by the BLM is not relevant, and the Equinor's allocation method fails to protect correlative rights or account for vital public considerations. For these reasons and those set forth above, if this Court does not decline to answer the certified questions, it should answer them as follows.

Q1: no (Continental adopts Domineks' reasoning regarding this question)
Q2: no (Continental adopts Domineks' reasoning regarding this question)
Q3: yes (Continental adopts Domineks' reasoning regarding this question)
Q4: no (Continental adopts Equinor's reasoning regarding this question)
Q5: no (Continental adopts Equinor's reasoning regarding this question)

Dated this 22nd day of August, 2022.

By: */s/ James P. Parrot*

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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies under N.D.R.App.P. 29(a)(5) and 32(a)(8)(A), that this Brief uses proportional typeface, 12 pt. font, and does not exceed 19 pages.

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IN THE SUPREME COURT
STATE OF NORTH DAKOTA

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 Mill Williston, LLC Defendants/Appellees.	)	Supreme Court No. 20220088 U.S. District Court No. 1:19-cv-00288

CERTIFICATE OF SERVICE

I hereby certify that on August 22, 2022, the following documents: BRIEF OF AMICUS CURIAE CONTINENTAL RESOURCES, INC. PARTIALLY IN SUPPORT OF DEFENDANTS/APPELLEES AND PARTIALLY IN SUPPORT OF PLAINTIFFS/APPELLANTS was filed electronically with the Supreme Court through the E-Filing Portal which served copies by electronic mail upon all counsel of record as follows:

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