

Challenges for Texas Companies Operating in the Bakken Shale

May 13, 2015



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BANKRUPTCY IN THE OIL PATCH – THE BAKKEN

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May 13, 2015

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Liquidity Problems for the Oilfield

Increasing Liquidity Constraints in the Oilfield-e.g., Services

- PE Principal: “There are 79 private equity-backed pressure pumping companies, and you only need 10.”
- Big shake-out in service industry
- Stacking equipment -- fast
- E&P companies asking for large (20-30%) discounts from suppliers to protect capex spending
- RIFs to reduce operating costs
- Reduced revenues to service companies could be insufficient to cover interest and capex and to maintain a trained workforce

Liquidity Problems for the Oilfield

Marginal fields; high cost fields; storage constraints; lackluster demand

Increasing Liquidity Constraints for Oilfield Companies

- Could trigger covenant and/or payment defaults under ABLs
- Lots of consolidation ahead
- Liquidation of weaker players
- High priced debt

SO WHAT DO WE DO NOW?

First Steps-Better Check Your Liens and Covenants

Mistakes Matter – Check Lien Perfection

(January 21, 2015, 11:08 AM ET) – The Second Circuit invalidated JPMorgan Chase & Co.’s claim to secured interest on a \$1.5 billion loan to General Motors Corp.’s bankruptcy predecessor, enforcing mistaken paperwork filed by its law firm that the bank failed to notice.

The appeals court’s ruling followed an October directive from the Delaware Supreme Court that a secured party’s filing of a so-called UCC-3 form sufficed to terminate the bank’s security interest, no matter any subjective intent to do otherwise.

“It is clear that although JPMorgan never intended to terminate the [loan], it authorized the filing of a UCC-3 termination statement that had that effect,” the three-judge panel said. “Nothing more is needed.”

REVIEW LIEN AND COLLATERAL PERFECTION EARLY

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First Steps-Better Check Your Liens and Covenants

- **Do you have what you think you have?**

2015 – Midstream Company has field dedications with Upstream Company. Upstream did a corporate restructure [non bankruptcy]. Assets and operations separated. Assets stay in entity that contracted with Midstream.

Review your contracts, but also your counterparties early.

Another First Step: Verify D&O Coverage

- D&O Coverage in Place?
- I mean Really?
- What is it rated?
- What does it cover?
- What does it not cover?
- Surely outside counsel will take a promise of future answer on coverage to represent now?
- What can I do about it if the insurer does not answer fast?
- Why should I care?
- What do you mean the indemnity rights are just prepetition claims?
- What do you mean the D&O is personally coming out of pocket?
- What do you mean my personal and company email accounts can be accessed?

Next Step: Review Opportunities in Distressed Acquisitions

- Acquisition and Investment Opportunities:
 - Buy market share via “M&A” or “363”
 - Companies may need additional equity investment or mezzanine/2nd lien debt to address borrowing base limitations or pay downs-can you “loan to own”?
 - Achieve or maintain economies of scale for operations and purchasing power with suppliers

Opportunities in Distressed Acquisitions

- Typical Situation
 - Company (operator) faced with borrowing base adjustment or pressure from secured lender
 - Lower revenues due to declining oil, gas and NGL prices and resulting reduced activity
 - Inability to procure new business or maintain existing margins
 - Unprofitable locations/operations
 - Capital constraints discourage new drilling?
 - How do you fix it? Why use a bankruptcy?

Bankruptcy Sale and Auction Process to Get Certainty

- Acquisitions in Chapter 11
 - Seller is in distress
 - Secured lender may require it
 - Purchaser may require it
 - Minimize challenges to the sale
 - Bid procedures and stalking horse protections
 - 363 Sale is free and clear
 - Easier to assign contracts
 - Resolve unprofitable location/division issues



Bankruptcy Sale – Assignment of Contracts

- Bankruptcy Allows Contract Rejection/Assignment
 - Leases and contracts may be assumed/assigned or rejected
 - Assignment can be implemented despite consent rights of counter-party to contract
 - Assignment requires curing past defaults and providing adequate assurance of future financial performance
 - Who pays cure (buyer or seller) is a negotiated point
 - But some exceptions



Concerns If Not Done In Bankruptcy?

- May need to acquire new equity instead of assets
 - Tax benefits?
 - Can avoid transfer of title issues
 - Avoid value hit from a bankruptcy
 - May not be a 363 sale process, but an 1129 plan process
 - Plan process may take longer than 363 sale process
 - Buyer may serve as plan sponsor under plan of reorganization / liquidation
 - New equity is issued in seller that receives discharge under plan

Concerns If Not Done In Bankruptcy?

- Fraudulent Transfer Risk
 - Was the deal “too good”?
 - Was the deal “in good faith”? [subjective and objective]
- Successor Liability Risk?
- Fiduciary Liability Issues?

How to Protect Against a FT in a Nonbankruptcy Process?

- Diligence seller and pro forma's/book
- Diligence most recent value representations
 - To banks
 - Owner financial statements
- Get a current valuation
- Build your file on front end
- Owner statements of value
- Recitals in the PSA

What Happens in a Bankruptcy Case?

- Financing orders on the front end
- Court permissions needed
- 363 v. Plan
- Timetable
- Committees
- US Trustee
- Retention issues
- Rewrite interest rates and debt terms
- Overcome the “holdouts”
- Resolve exposure to mass tort claims [silica, asbestos, environmental]

What Are the Benefits of Chapter 11 Acquisitions?

- Assets are free and clear of liens, claims and interests
- Resolution of title and environmental Issues
- Resolve consent Issues
- Cherry pick the good assets
- No fraudulent transfer risk
- Limited successor liability

- Court approved bid procedure
- Bid protections
- Reimbursement and breakup fees
- Possibility of low purchase price
- Stalking horse may be DIP Lender
- Forum for resolving contested claims

What Are the Downsides to Chapter 11?

- Reputational risk
- Loss of control
- Inability to get financing?
- Competing bids to the “chosen one”
- Expense [?]

What About a Traditional Reorganization?

- It's All About Valuation, Valuation, Valuation.
- New Equity to Preserve Equity
- Rewriting Interest Rates – Imbedded Debt v. New Debt
- Cram Down?
- How Finance?
- Drill, Baby, Drill?

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SPACING AND POOLING OF HORIZONTAL BAKKEN WELLS IN NORTH DAKOTA— PAST TO PRESENT

May 13, 2015

Fredrikson
& BYRON, P.A.

SPACING OF HORIZONTAL BAKKEN WELLS FROM 1987-2015

Statutory Authority For Spacing

38-08-07. Commission shall set spacing units. The Commission shall set spacing units as follows:

1. 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.

Spacing for Vertical Bakken Wells

- Proper Spacing for Elkhorn Ranch – Bakken Pool: Order No. 1752 entered in Case No. 1597, dated November 29, 1978.

In the matter of a hearing called on a Motion of the Commission to consider the proper spacing for the development of the Elkhorn Ranch-Bakken Pool, Billings County, North Dakota, redefine the limits of the field, and enact such special field rules as may be necessary.

- That the proper spacing for the Elkhorn Ranch-Bakken Pool shall be one well per 160 acres and the spacing units shall consist of governmental quarter section or governmental lots corresponding thereto.
- That all wells hereafter drilled in the Elkhorn Ranch-Bakken Pool shall be located not less than 500 feet from a spacing unit boundary

Transition of Spacing from Vertical to Horizontal Wells

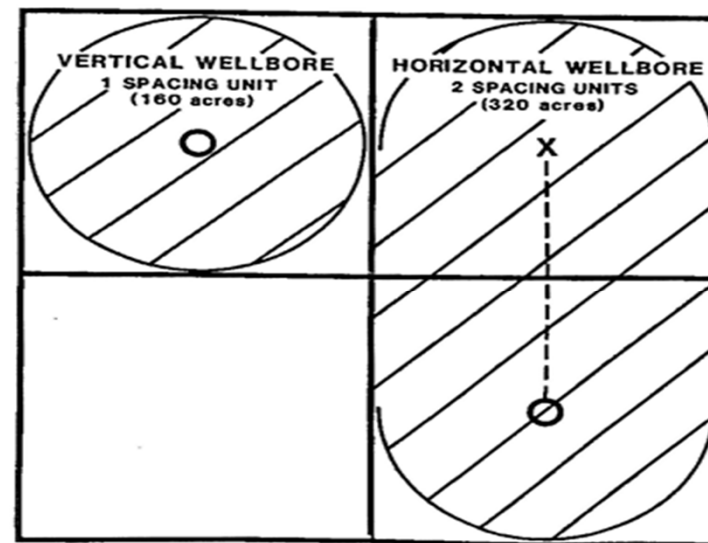
- Statutes, rules and orders were not conducive for drilling Horizontal Bakken Wells.
- Spacing for Vertical Bakken Wells--1 well to 160 acres--was too small for horizontal wells
- Operators wanted flexibility for location of wells and ability to drill longer laterals.

August 11, 1987

Case No. 4322

IN THE MATTER OF A HEARING
CALLED ON A MOTION OF THE
COMMISSION TO CONSIDER
THE APPLICATION OF
MERIDIAN OIL INC. FOR AN
ORDER DESIGNATING ALL OF
SECTION 11, T.143N., R.102W.,
BILLINGS COUNTY, NORTH
DAKOTA, AS A SEPARATE
ZONE OF 640-ACRE SPACING
FOR THE ELKHORN RANCH-
BAKKEN POOL, AND
ALLOWING FOUR WELLS TO
BE DRILLED AND COMPLETED
AT ANY LOCATION NOT
CLOSER THAN 500 FEET TO
THE BOUNDARIES OF SAID
SECTION OR SUCH OTHER
RELIEF AS THE COMMISSION
DEEMS APPROPRIATE.

HORIZONTAL DRILLING APPLICATION ADDITIONAL DRAINAGE



ONE SECTION

(NOT TO SCALE)

EXHIBIT NO. 8
DOCKET NO. 4296

Spacing of First Horizontal Bakken (Shale) Well (1987)

- Well Name: MOI Elkhorn 33-11H Well
- Operator: Meridian Oil, Inc.
- Field: Elkhorn Ranch
- Spacing: 640 Acres (up to 4 horizontal wells)
- Completion Zone: Upper Bakken Shale
- Completed: September 25, 1987
- Status: Plugged and abandoned
December 10, 2013
- Production:

Oil	372,076	BLS
Gas	1,267,084	MCF
Water	8,426	BLS

Request For Modification Of Existing Spacing For Vertical Wells To Allow Drilling Of Horizontal Bakken (Middle Member) Well

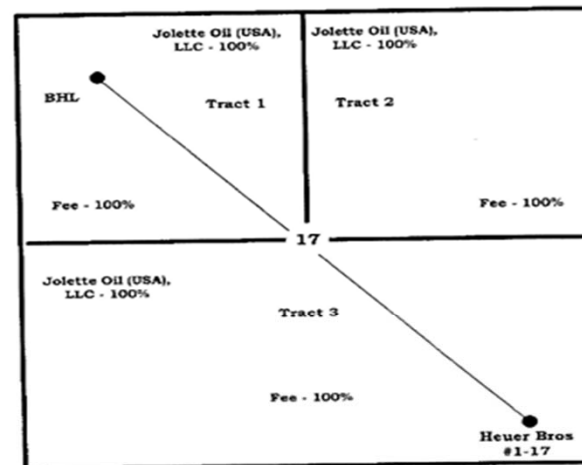
December 3, 2003

Case No. 8152

IN THE MATTER OF A HEARING CALLED ON A MOTION OF THE COMMISSION TO CONSIDER THE APPLICATION OF JOLETTE OIL (USA), LLC FOR AN ORDER TO CREATE AND ESTABLISH A 640-ACRE SPACING AND/OR DRILLING UNIT, COMPRISED OF ALL OF SECTION 17, T.161N., R.95W., SADLER FIELD, DIVIDE COUNTY, NORTH DAKOTA, AUTHORIZING THE DRILLING OF A HORIZONTAL WELL NOT LESS THAN 660 FEET FROM THE SPACING AND/OR DRILLING UNIT BOUNDARY AS AN EXCEPTION TO ANY PREVIOUS SPACING ORDERS AND THE PROVISIONS OF SECTION 43-02-03-18 OF THE NORTH DAKOTA ADMINISTRATIVE CODE AND/OR SUCH OTHER AND FURTHER RELIEF AS THE COMMISSION DEEMS APPROPRIATE.

Land Plat

Township 161 North, Range 95 West
Section 17: All
Divide County, North Dakota



Working Interest in Section 17
Jolette Oil (USA), LLC 100.00%

INDUSTRIAL COMMISSION
STATE OF NORTH DAKOTA
DATE 12/3/2003 CASE NO. 8152
Introduced By Jolette Oil USA LLC
Exhibit 3
Identified By Borchert

JOLETTE OIL (USA), LLC

NDIC CASE NO 8152
EXHIBIT NO 3

Spacing of First Horizontal (Middle Member) Bakken Well (2004)

- Well Name: Robert Heuer 1-17R
- Operator: Continental Resources, Inc.
- Spacing: 640 Acres
- Completion Zone: Middle Member of Bakken Formation
- Field: Sadler-Bakken Pool
- Completed: March 5, 2004
- Status: Producing
- Production:

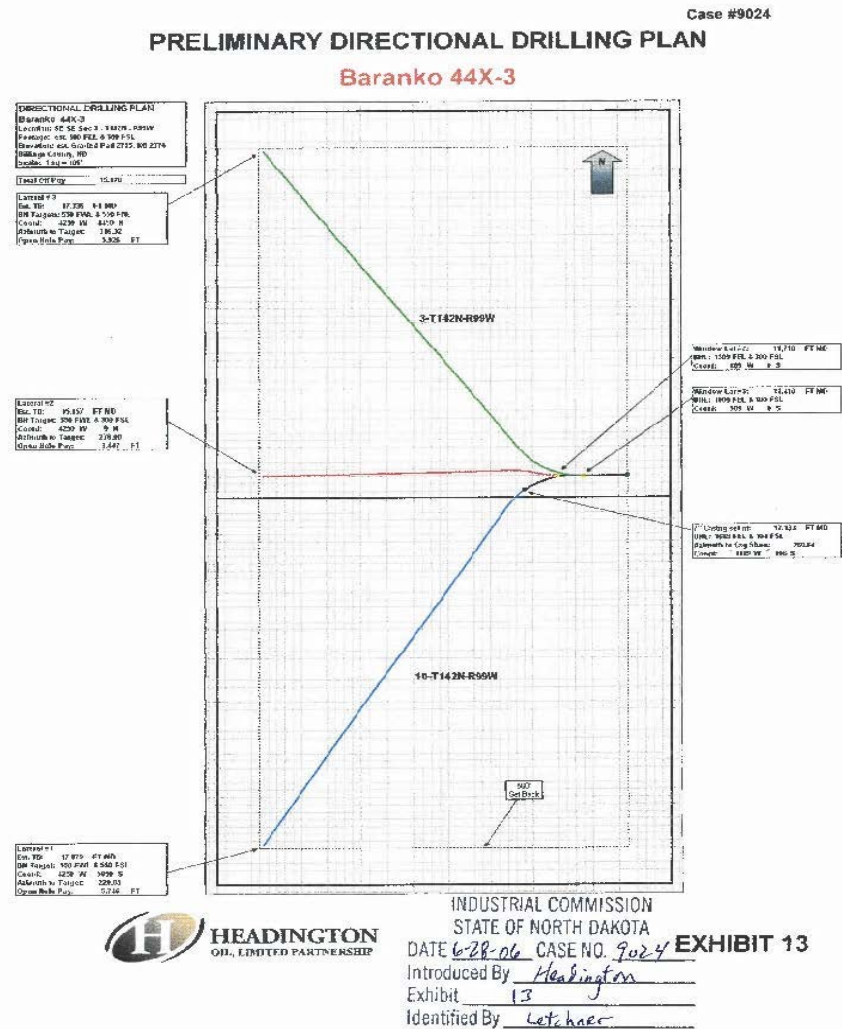
Oil	117,201	BLS
Gas	198,377	MCF
Water	45,218	BLS

Request To Allow Tri Lateral Well

June 28, 2006

Case No. 9024

IN THE MATTER OF A HEARING CALLED ON A MOTION OF THE COMMISSION TO CONSIDER THE APPLICATION OF HEADINGTON OIL, LIMITED PARTNERSHIP FOR AN ORDER EXTENDING THE FIELD BOUNDARIES AND AMENDING THE FIELD RULES FOR THE ST. DEMETRIUS-BAKKEN POOL SO AS TO CREATE 1280-ACRE SPACING UNITS COMPRISED OF SECTIONS 3 AND 10; SECTIONS 5 AND 8; SECTIONS 6 AND 7; AND SECTIONS 13 AND 14, T.142N., R.99W., BILLINGS COUNTY, NORTH DAKOTA, AUTHORIZING THE DRILLING OF ONE HORIZONTAL WELL WITHIN SAID SPACING UNITS NOT LESS THAN 500 FEET TO THE BOUNDARY OF SAID SPACING UNIT AND PROVIDING SUCH FURTHER AND ADDITIONAL RELIEF AS THE COMMISSION DEEMS APPROPRIATE.

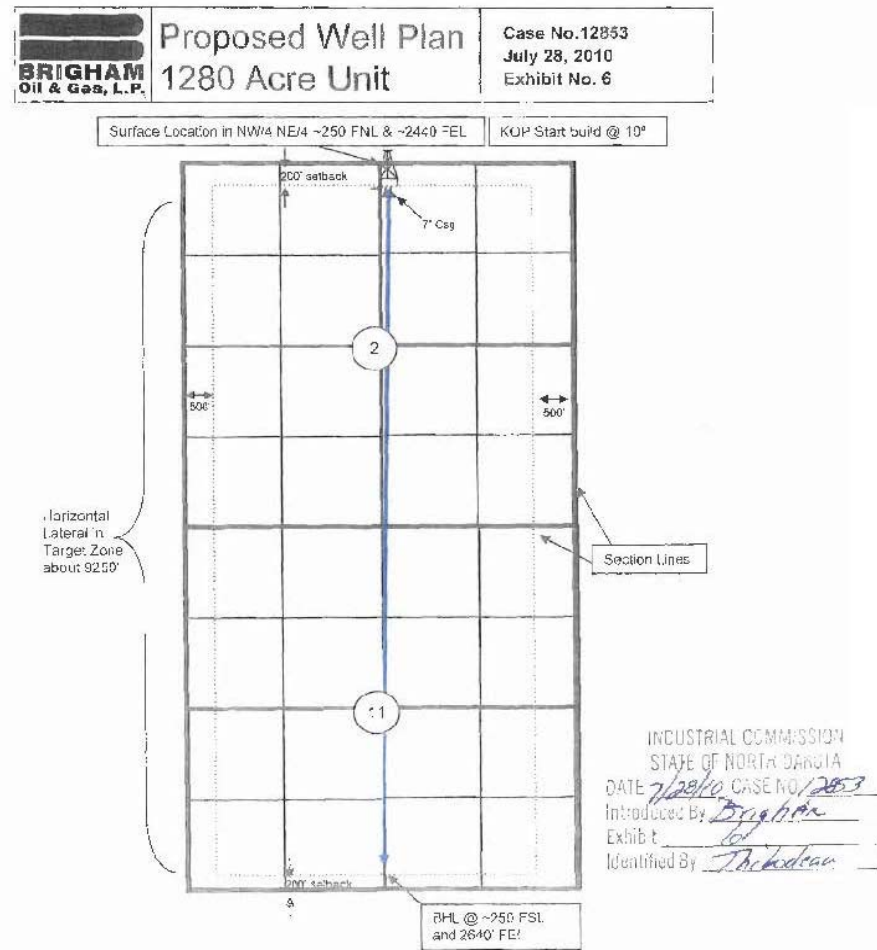


Request To Allow Single Long Lateral Well

July 28, 2010

Case No. 12853

APPLICATION OF BRIGHAM OIL & GAS, L.P. FOR AN ORDER EXTENDING THE FIELD BOUNDARIES AND AMENDING THE FIELD RULES FOR THE TODD-BAKKEN POOL TO CREATE AND ESTABLISH A 1280-ACRE SPACING UNIT COMPRISED OF SECTIONS 2 AND 11, T.154N., R.101 W., WILLIAMS COUNTY, ND, AUTHORIZING THE DRILLING OF ONE HORIZONTAL WELL ON SAID SPACING UNIT, AND SUCH OTHER RELIEF AS IS APPROPRIATE.



Pad Drilling: Eight Wells Per 1280

May 31, 2012

Case No. 18012

APPLICATION OF XTO ENERGY INC. FOR AN ORDER AUTHORIZING A TOTAL OF EIGHT WELLS ON AN EXISTING 1280-ACRE SPACING UNIT DESCRIBED AS SECTIONS 14 AND 23, T.154N., R.97W., GRINNELL-BAKKEN POOL, WILLIAMS AND MCKENZIE COUNTIES, ND, ELIMINATING ANY TOOL ERROR REQUIREMENTS AND SUCH OTHER RELIEF AS IS APPROPRIATE.

Case # 18012

PRELIMINARY DIRECTIONAL DRILLING PLAN - Second Well

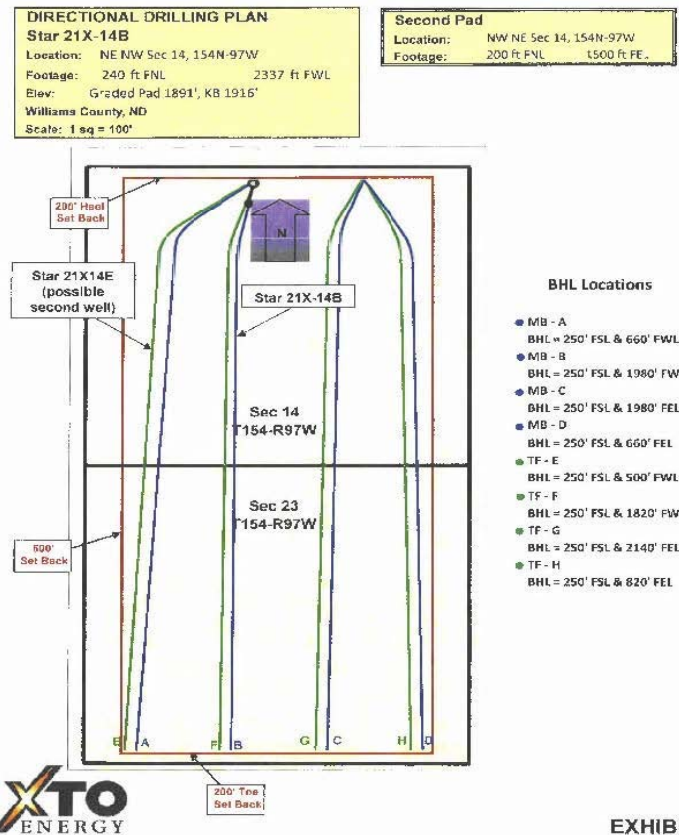


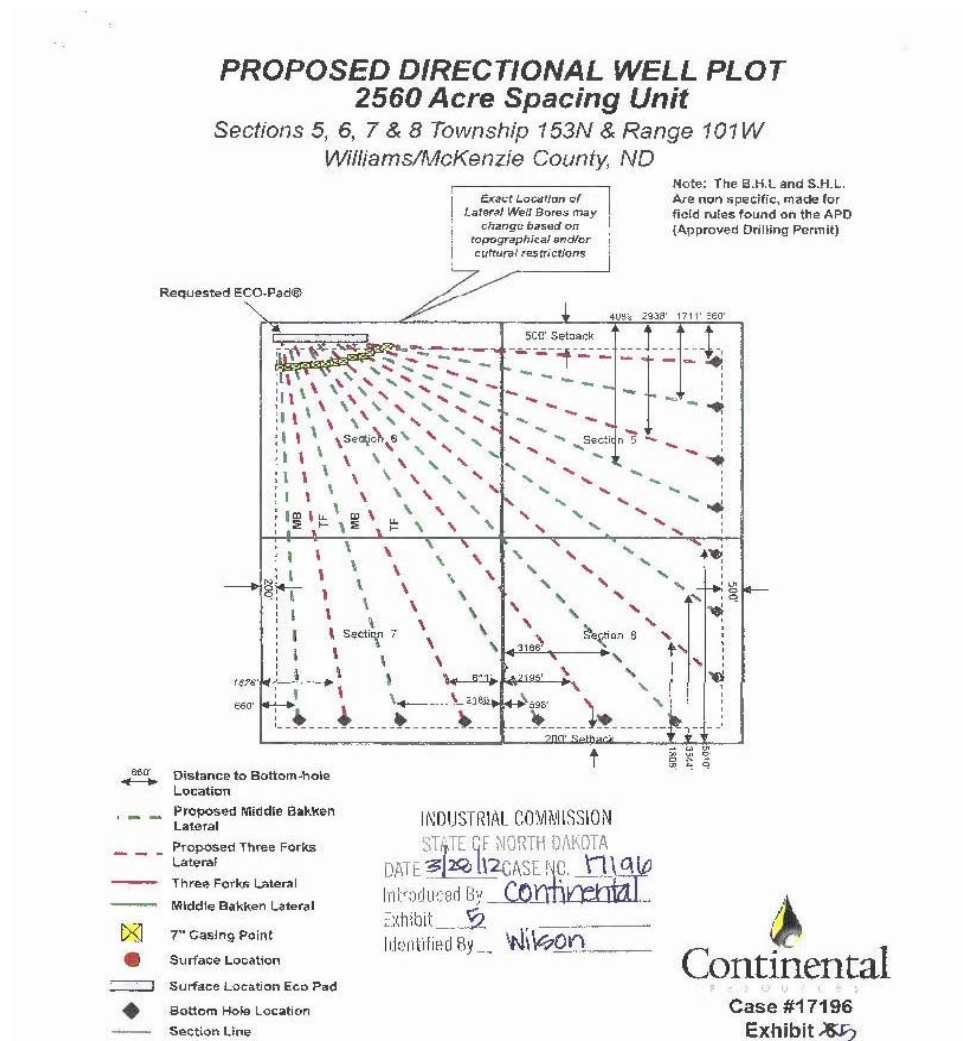
EXHIBIT 6

Pad Drilling: 14 Wells Per 2560

March 28, 2012

Case No. 17196

APPLICATION OF CONTINENTAL RESOURCES, INC. FOR AN ORDER AMENDING THE FIELD RULES FOR THE BAKER-BAKKEN POOL TO CREATE A 2560-ACRE SPACING UNIT COMPRISED OF SECTIONS 5, 6, 7 AND 8, T.153N., R.101W., MCKENZIE AND WILLIAMS COUNTIES, ND, AUTHORIZING THE DRILLING OF MULTIPLE HORIZONTAL WELLS FROM SAID WELL PAD WITHIN SAID 2560-ACRE SPACING UNIT; PROVIDING SETBACKS OF 500 FEET FROM THE NORTH AND WEST LINES OF THE SPACING UNIT BOUNDARY AND 200 FEET FROM THE EAST AND SOUTH LINES OF THE SPACING UNIT BOUNDARY; ELIMINATING ANY TOOL ERROR REQUIREMENTS AND SUCH OTHER RELIEF AS IS APPROPRIATE.

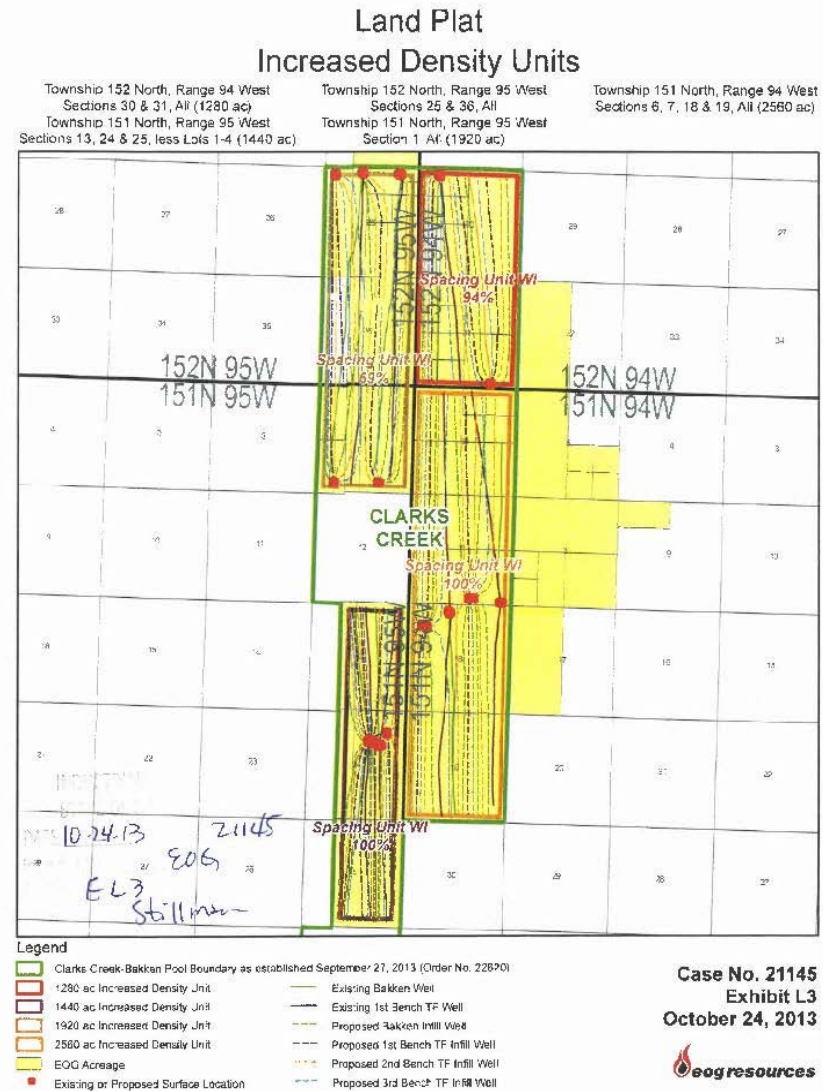


Multiple Wells: Various Size Spacing Units

October 24, 2013

Case No. 21145

APPLICATION OF EOG RESOURCES, INC. FOR AN ORDER AUTHORIZING THE DRILLING, COMPLETING AND PRODUCING OF A TOTAL OF SIXTEEN WELLS ON AN EXISTING 1280-ACRE SPACING UNIT DESCRIBED AS SECTIONS 30 AND 31, T.152N., R.94W.; A TOTAL OF THIRTY-FOUR WELLS ON AN EXISTING 1440-ACRE SPACING UNIT DESCRIBED AS ALL OF SECTIONS 13, 24 AND 25, LESS LOTS 1-4 IN EACH SECTION, T.151N., R.95W.; A TOTAL OF THIRTY-FOUR WELLS ON AN EXISTING 1920-ACRE SPACING UNIT DESCRIBED AS SECTIONS 25 AND 36, T.152N., R.95W. AND SECTION 1, T.151N., R.95W.; AND A TOTAL OF THIRTY-FOUR WELLS ON AN EXISTING 2560-ACRE SPACING UNIT DESCRIBED AS SECTIONS 6, 7, 18 AND 19, T.151N., R.94W., CLARKS CREEK-BAKKEN POOL, MCKENZIE COUNTY, ND, ELIMINATING ANY TOOL ERROR REQUIREMENTS AND SUCH OTHER RELIEF AS IS APPROPRIATE.

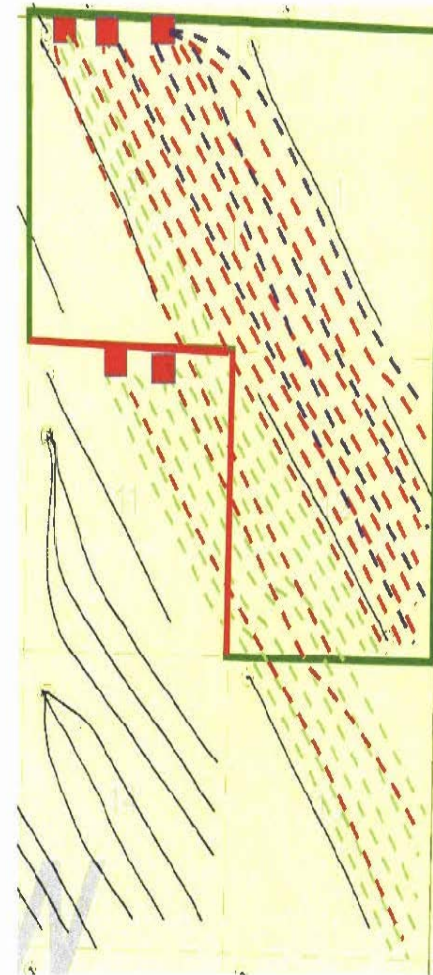


Multiple Wells: Overlapping Spacing Units

October 30, 2013

Case No. 23155

APPLICATION OF EOG RESOURCES, INC. FOR AN ORDER AMENDING THE FIELD RULES FOR THE PARSHALL-BAKKEN POOL, MOUNTRAIL COUNTY, NORTH DAKOTA, SO AS TO CREATE AND ESTABLISH FOUR OVERLAPPING 1920-ACRE SPACING UNITS COMPRISED OF SECTIONS 1, 2 AND 12; SECTIONS 1, 11 AND 12; SECTIONS 11, 13 AND 14; AND, SECTIONS 28, 29 AND 30, TOWNSHIP 152 NORTH, RANGE 90 WEST, AND CREATE AND ESTABLISH TWO OVERLAPPING 3840-ACRE SPACING UNITS COMPRISED OF SECTIONS 19, 20, 21, 28, 29 AND 30; AND SECTIONS 27, 28, 29, 32, 33 AND 34, TOWNSHIP 152 NORTH, RANGE 90 WEST, AUTHORIZING THE DRILLING OF MULTIPLE HORIZONTAL WELLS ON EACH OVERLAPPING 1920 AND 3840-ACRE SPACING UNIT, ELIMINATING ANY TOOL ERROR REQUIREMENTS, AND AUTHORIZING SETBACKS OF NO LESS THAN 50 FEET FROM THE SPACING UNIT BOUNDARY FOR THE PROPOSED OVERLAPPING 1920-ACRE SPACING UNITS COMPRISED OF SECTIONS 1, 2 AND 12; SECTIONS 2, 11 AND 12; AND SECTIONS 11, 13 AND 14, TOWNSHIP 152 NORTH, RANGE 90 WEST, ELIMINATING ANY TOOL; ERROR REQUIREMENTS AND SUCH OTHER AND FURTHER RELIEF AS APPROPRIATE.



Sec 1, 2 & 12, 152N-90W Spacing Unit

Proposed Wells=11 Total

--- 7 Bakken (IWD=300')

--- 4 Three Forks (IWD=600')

Planned Wells Subject to Adjoining
Overlapping Spacing Units

--- Bakken

--- Three Forks

— Entire Spacing Unit Boundary

— Boundary Lines
With 50' Set Back Request

INDUSTRIAL COMMISSION
STATE OF NORTH DAKOTA
DATE 10-30-14 CASE 23155
EOG
E2-D
2011

Case No. 23155

Exhibit E2-D

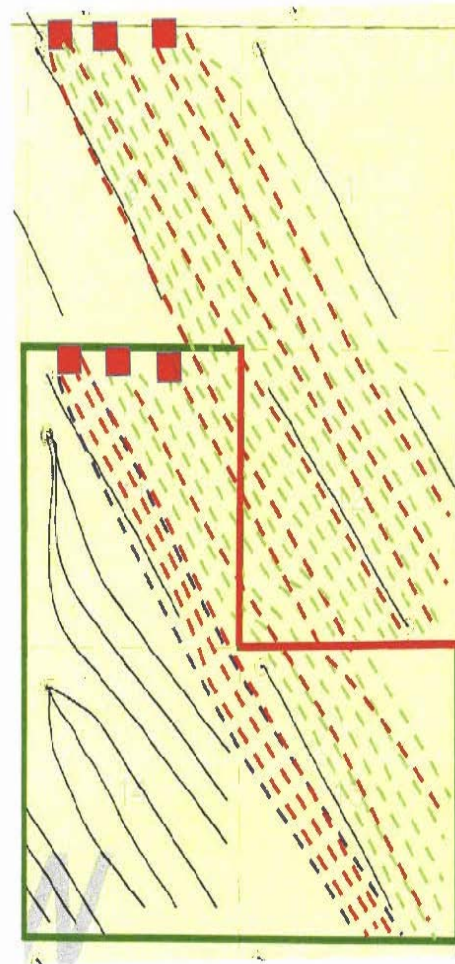
October 30, 2014

Multiple Wells: Overlapping Spacing Units

October 30, 2013

Case No. 23155

APPLICATION OF EOG RESOURCES, INC. FOR AN ORDER AMENDING THE FIELD RULES FOR THE PARSHALL-BAKKEN POOL, MOUNTRAIL COUNTY, NORTH DAKOTA, SO AS TO CREATE AND ESTABLISH FOUR OVERLAPPING 1920-ACRE SPACING UNITS COMPRISED OF SECTIONS 1, 2 AND 12; SECTIONS 1, 11 AND 12; SECTIONS 11, 13 AND 14; AND, SECTIONS 28, 29 AND 30, TOWNSHIP 152 NORTH, RANGE 90 WEST, AND CREATE AND ESTABLISH TWO OVERLAPPING 3840-ACRE SPACING UNITS COMPRISED OF SECTIONS 19, 20, 21, 28, 29; AND 30; AND SECTIONS 27, 28, 29, 32, 33 AND 34, TOWNSHIP 152 NORTH, RANGE 90 WEST, AUTHORIZING THE DRILLING OF MULTIPLE HORIZONTAL WELLS ON EACH OVERLAPPING 1920 AND 3840-ACRE SPACING UNIT, ELIMINATING ANY TOOL ERROR REQUIREMENTS, AND AUTHORIZING SETBACKS OF NO LESS THAN 50 FEET FROM THE SPACING UNIT BOUNDARY FOR THE PROPOSED OVERLAPPING 1920-ACRE SPACING UNITS COMPRISED OF SECTIONS 1, 2 AND 12; SECTIONS 2, 11 AND 12; AND SECTIONS 11, 13 AND 14, TOWNSHIP 152 NORTH, RANGE 90 WEST, ELIMINATING ANY TOOL; ERROR REQUIREMENTS AND SUCH OTHER AND FURTHER RELIEF AS APPROPRIATE.



Sec 11, 13 & 14, 152N-90W Spacing Unit
Proposed Wells=5 Total

- - - 3 Bakken (IWD=300')
- - - 2 Three Forks (IWD=600')

Planned Wells Subject To Adjoining
Overlapping Spacing Units

- - - Bakken
- - - Three Forks

— Entire Spacing Unit Boundary

— Boundary Lines
With 50' Set Back Request

INDUSTRIAL COMMISSION
STATE OF NORTH DAKOTA
DATE 10-30-14 CASE NO. 23155
EOG
E2-E
Zoll

Case No. 23155

Exhibit E2-E

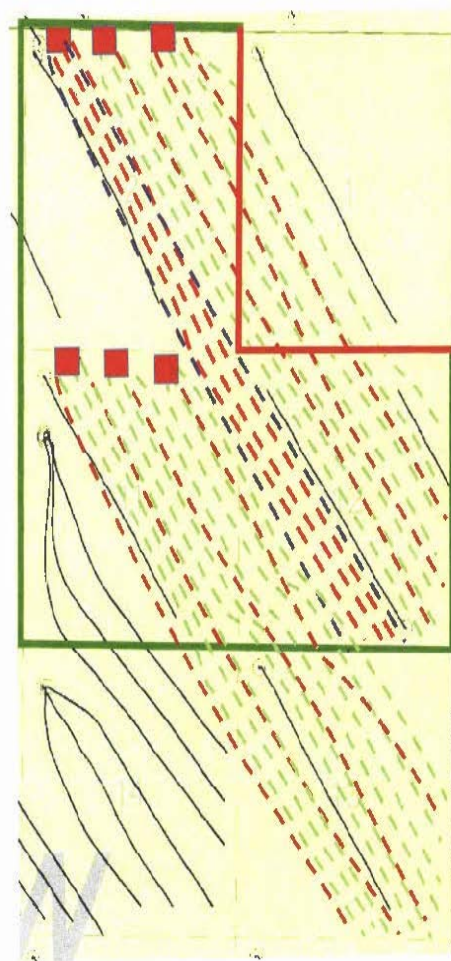
October 30, 2014

Multiple Wells: Overlapping Spacing Units

October 30, 2013

Case No. 23155

APPLICATION OF EOG RESOURCES, INC. FOR AN ORDER AMENDING THE FIELD RULES FOR THE PARSHALL-BAKKEN POOL, MOUNTRAIL COUNTY, NORTH DAKOTA, SO AS TO CREATE AND ESTABLISH FOUR OVERLAPPING 1920-ACRE SPACING UNITS COMPRISED OF SECTIONS 1, 2 AND 12; SECTIONS 1, 11 AND 12; SECTIONS 11, 13 AND 14; AND, SECTIONS 28, 29 AND 30, TOWNSHIP 152 NORTH, RANGE 90 WEST, AND CREATE AND ESTABLISH TWO OVERLAPPING 3840-ACRE SPACING UNITS COMPRISED OF SECTIONS 19, 20, 21, 28, 29; AND 30; AND SECTIONS 27, 28, 29, 32, 33 AND 34, TOWNSHIP 152 NORTH, RANGE 90 WEST, AUTHORIZING THE DRILLING OF MULTIPLE HORIZONTAL WELLS ON EACH OVERLAPPING 1920 AND 3840-ACRE SPACING UNIT, ELIMINATING ANY TOOL ERROR REQUIREMENTS, AND AUTHORIZING SETBACKS OF NO LESS THAN 50 FEET FROM THE SPACING UNIT BOUNDARY FOR THE PROPOSED OVERLAPPING 1920-ACRE SPACING UNITS COMPRISED OF SECTIONS 1, 2 AND 12; SECTIONS 2, 11 AND 12; AND SECTIONS 11, 13 AND 14, TOWNSHIP 152 NORTH, RANGE 90 WEST, ELIMINATING ANY TOOL; ERROR REQUIREMENTS AND SUCH OTHER AND FURTHER RELIEF AS APPROPRIATE.



Sec 2, 11 & 12, 152N-90W Spacing Unit
Proposed Wells=5 Total

- - - 3 Bakken (IWD=300')
- - - 2 Three Forks (IWD =600')

Planned Wells Subject To Adjoining
Overlapping Spacing Units

- - - Bakken
- - - Three Forks

— Entire Spacing Unit Boundary

— Boundary Lines
With 50' Set Back Request

INDUSTRIAL DIVISION
STATE OF NORTH DAKOTA
DATE 10-30-14
CASE NO. 23155
EDG
ELF
Zoll

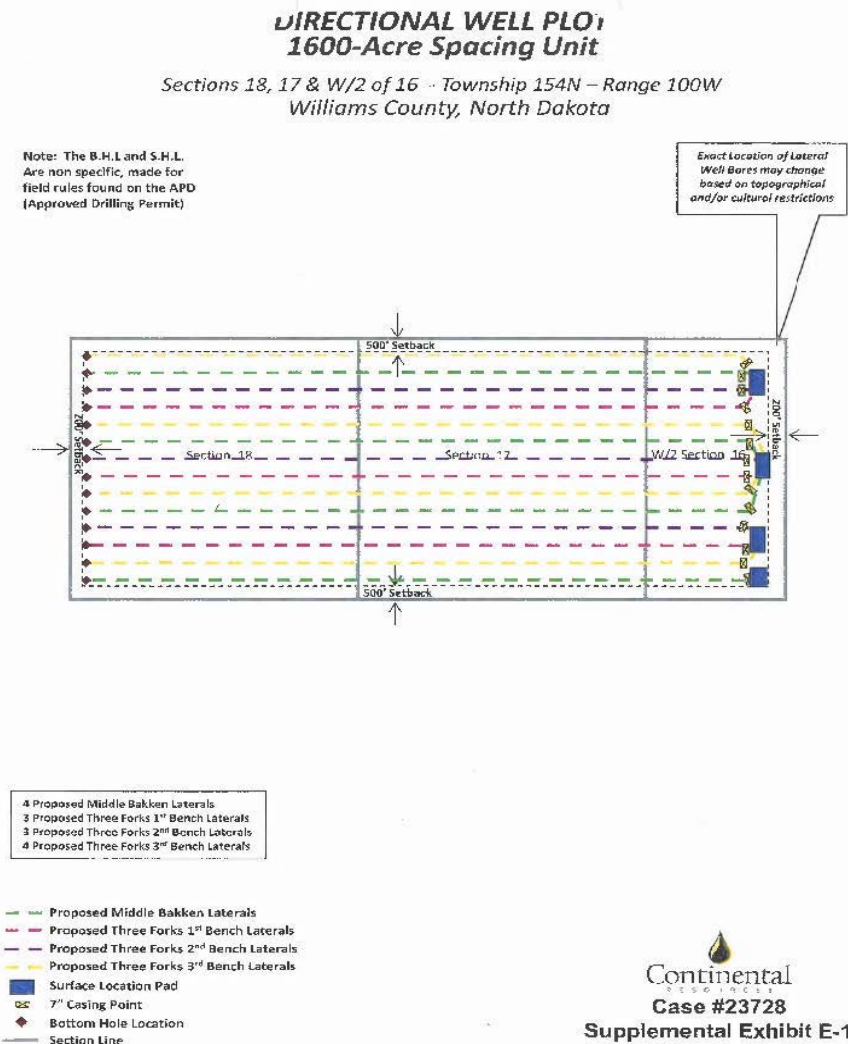
Case No. 23155
Exhibit E2-F
October 30, 2014

1600 Acre Spacing Unit Overlapping 1280

February 26, 2015

Case No. 23728

IN THE MATTER OF A HEARING CALLED ON A MOTION OF THE COMMISSION TO CONSIDER THE APPLICATION OF CONTINENTAL RESOURCES, INC. FOR AN ORDER AMENDING THE FIELD RULES FOR THE CATWALK-BAKKEN POOL, WILLIAMS COUNTY, ND, TO CREATE AND ESTABLISH TWO OVERLAPPING 1600-ACRE SPACING UNITS COMPRISED OF THE W/2 OF SECTION 16, ALL OF SECTIONS 17 AND 18; AND SECTIONS 19 AND 20 AND THE W/2 OF SECTION 21, T.154N., R.100W., AUTHORIZING A TOTAL NOT TO EXCEED FOURTEEN WELLS' ON EACH OVERLAPPING 1600-ACRE SPACING UNIT, ELIMINATING THE 1220 SETBACK RULE FOR THE FIRST WELL DRILLED IN EACH OVERLAPPING 1600-ACRE SPACING UNIT; AND CREATE AND ESTABLISH AN OVERLAPPING 3200-ACRE SPACING UNIT COMPRISED OF THE W/2 OF SECTIONS 16 AND 21 AND ALL OF SECTIONS 17, 18; 19, AND 20, T.154N., R.100W., AUTHORIZING THE DRILLING OF A HORIZONTAL WELL ON OR NEAR THE SECTION LINE BETWEEN THE PROPOSED OVERLAPPING 1600-ACRE SPACING UNITS ON SAID PROPOSED OVERLAPPING 3200-ACRE SPACING UNIT, ELIMINATING ANY TOOL ERROR REQUIREMENTS, AND SUCH OTHER RELIEF AS IS APPROPRIATE.

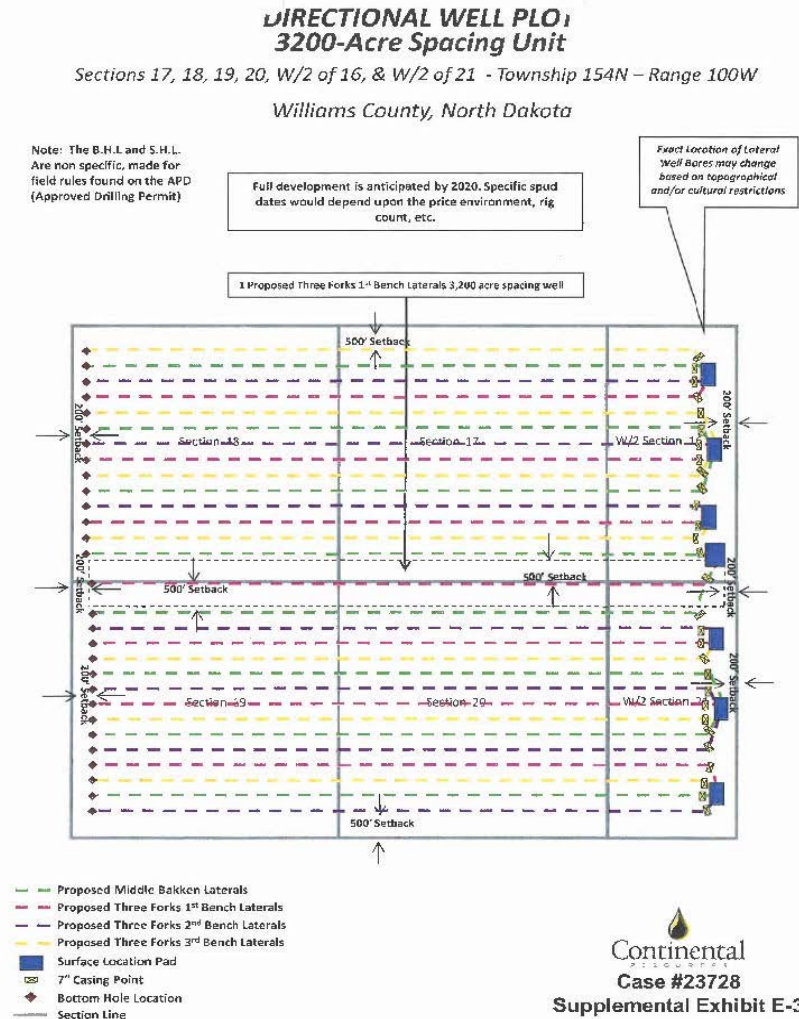


3200 Acre Spacing Unit Overlapping 2 1600 Acre Spacing Units

February 26, 2015

Case No. 23728

IN THE MATTER OF A HEARING CALLED ON A MOTION OF THE COMMISSION TO CONSIDER THE APPLICATION OF CONTINENTAL RESOURCES, INC. FOR AN ORDER AMENDING THE FIELD RULES FOR THE CATWALK-BAKKEN POOL, WILLIAMS COUNTY, ND, TO CREATE AND ESTABLISH TWO OVERLAPPING 1600-ACRE SPACING UNITS COMPRISED OF THE W/2 OF SECTION 16, ALL OF SECTIONS 17 AND 18; AND SECTIONS 19 AND 20 AND THE W/2 OF SECTION 21, T.154N., R.100W., AUTHORIZING A TOTAL NOT TO EXCEED FOURTEEN WELLS' ON EACH OVERLAPPING 1600-ACRE SPACING UNIT, ELIMINATING THE 1220 SETBACK RULE FOR THE FIRST WELL DRILLED IN EACH OVERLAPPING 1600-ACRE SPACING UNIT; AND CREATE AND ESTABLISH AN OVERLAPPING 3200-ACRE SPACING UNIT COMPRISED OF THE W/2 OF SECTIONS 16 AND 21 AND ALL OF SECTIONS 17, 18, 19, AND 20, T.154N., R.100W., AUTHORIZING THE DRILLING OF A HORIZONTAL WELL ON OR NEAR THE SECTION LINE BETWEEN THE PROPOSED OVERLAPPING 1600-ACRE SPACING UNITS ON SAID PROPOSED OVERLAPPING 3200-ACRE SPACING UNIT, ELIMINATING ANY TOOL ERROR REQUIREMENTS, AND SUCH OTHER RELIEF AS IS APPROPRIATE.



COMPULSORY POOLING OF OVERLAPPING SPACING UNITS

Pooling Orders for Overlapping Spacing Units

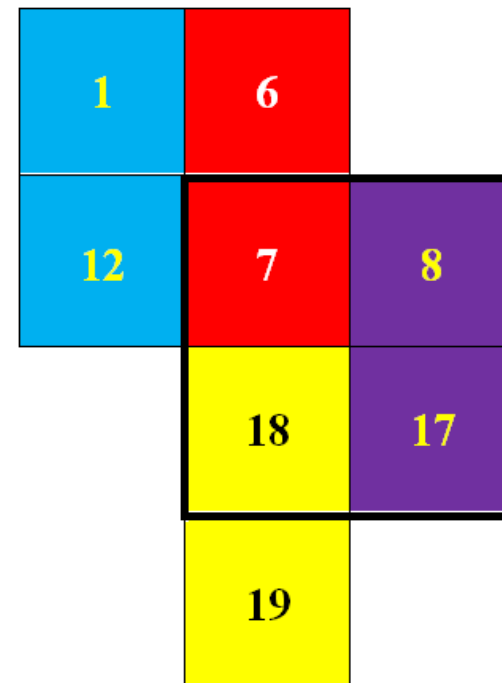
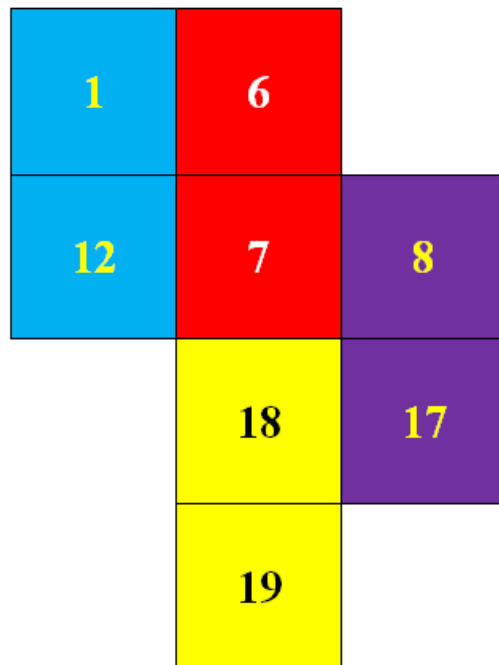
Pooling orders provide that all owners “shall recover or receive . . . their just and equitable share of production from said spacing unit in the proportion as their interests may appear in the spacing unit.”

Section 38-08-08 provides in part that the “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.”

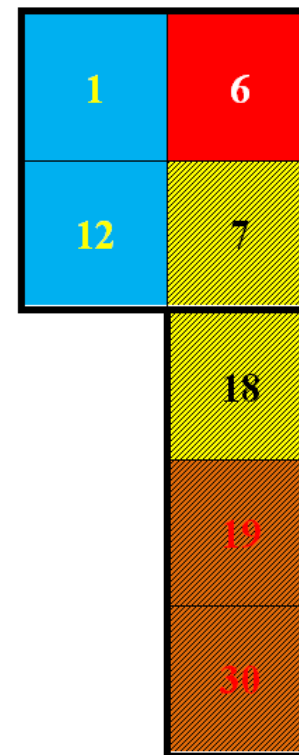
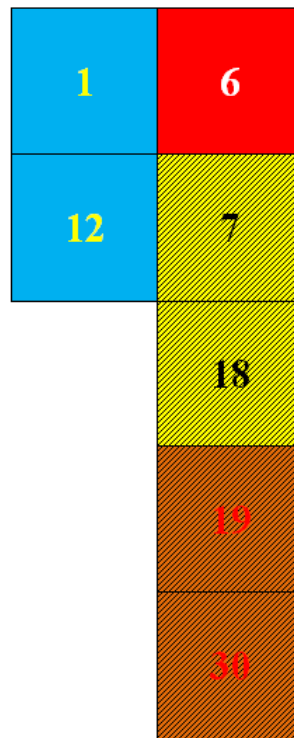
Pooling Orders will allocate a proportionate share of the production from any well to each tract in the Overlapping Spacing Unit. After that production is allocated to each tract, the production is “deemed for all purposes” to have been produced from that tract. Since production from any well drilled on the Overlapping Spacing Unit will be deemed to have been produced for all purposes from each tract, each Pooling Order will entitle each owner in the lands covered by the Pooling Order to a proportionate share of revenue based on acreage included in the Overlapping Spacing Unit.

Overlapping Pooling Orders will not modify, amend or alter previous pooling orders for other spacing units or require the reallocation of productions allocated to separately owned tracts within any spacing unit by any existing pooling orders or any pooling agreements.

Pooling of Spacing Units That Overlap Other Pooled Spacing Units



Pooling of Spacing Units That Overlap Other Pooled Spacing Units



Pooling of Spacing Units That Overlap Other Pooled Spacing Units

29	28	27
32	33	34

29 W/2	29 E/2	28 W/2	28 E/2	27 W/2	27 E/2
32 W/2	32 E/2	33 W/2	33 E/2	34 W/2	34 E/2

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LATEST IN NORTH DAKOTA RISK PENALTY ASSESSMENT

Presented by Dante E. Tomassoni

IMPOSITION OF RISK PENALTY

NDCC § 38-08-08(3)

- A non-participating interest owner can have a risk penalty imposed on them designed to compensate the operator for risk involved in drilling the well.
 - 50% for unleased owners
 - ◆ Must make a reasonable offer to lease.
 - 200% for nonparticipating Lessee's

IMPOSITION OF RISK PENALTY

- Must AFE other working interest owners:
 - Offer the leased nonparticipating owner the ability join in and participate in the risk and cost of drilling the well.
 - ◆ Requirements of Invitation to Participate covered in N.D.A.C. § 43-02-03-16.3
 - ◆ Location of well, itemized estimated costs, date of spud, must be returned to operator within 30 days.

IMPOSITION OF RISK PENALTY

- Before an operator can recover a risk penalty it must first:
 - Notify the nonparticipating owner with proof of service that the paying owner intends to impose a risk penalty and that the nonparticipating owner may object to the risk penalty by either responding in opposition to the petition ... or by filing an application or request for hearing with the industrial commission.

IMPOSITION OF RISK PENALTY

- Latest issues
 - Extensions to respond to AFE.
 - ◆ NDIC is strict on 30 days.
 - ◆ No Free looks
 - ◆ Be explicit
 - ◆ Get it in Writing - E-mail at least.
 - ◆ An offer to trade is not considered an extension
 - ◆ Negotiations alone, not an extension

IMPOSITION OF RISK PENALTY

- Latest issues
 - Conditional Acceptance
 - ◆ Conditional acceptance is not an acceptance
 - ◆ Suspect this issue to potentially come up more
 - Potential Conditional Acceptance Issues
 - ◆ Terms included in AFE beyond required by statute
 - ◆ Outside contracts – Pending litigation
 - ◆ AMI's

IMPOSITION OF RISK PENALTY

- Latest issues
 - Conditional Acceptance
 - ◆ What constitutes a counter offer
 - ◆ “on the condition that”?
 - ◆ Contract Law principles
 - Good practice to brief the issues for the NDIC if contract law is the best argument.
 - Consider these principles if making modifications to AFE’s
 - ◆ Not a lot of NDIC precedent.

THANK YOU



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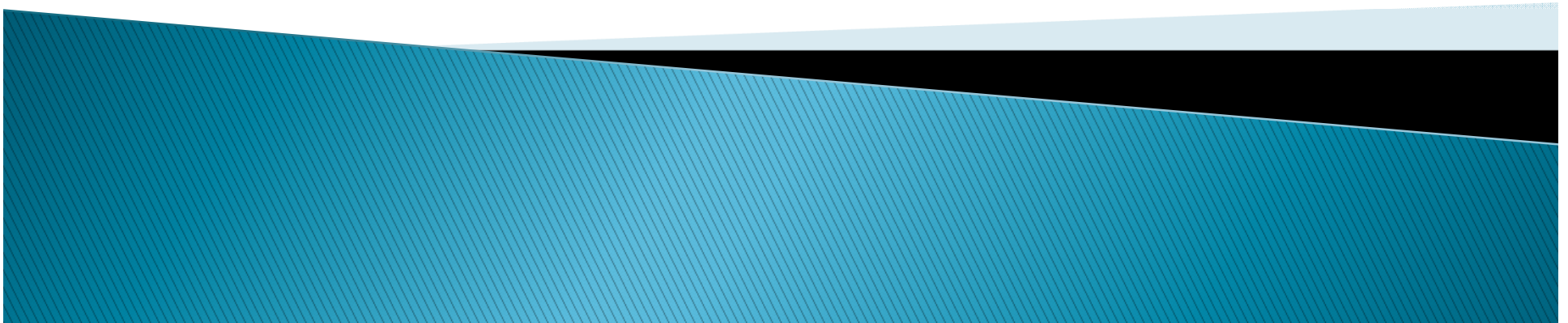
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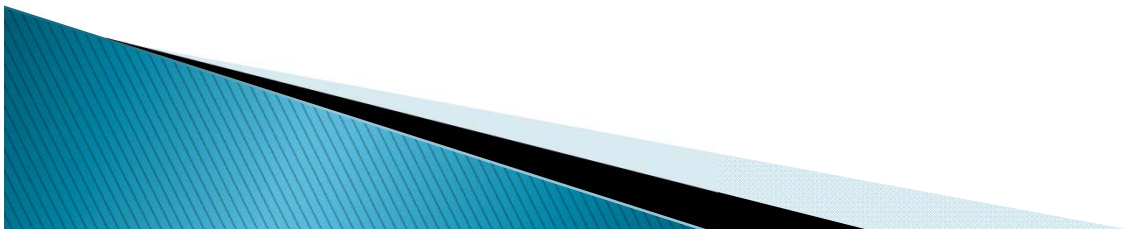
North Dakota Gas Flaring Issues and Indian Jurisdiction Issues

John W. Morrison
Crowley Fleck PLLP



North Dakota Statutes and Regulation

- ▶ Section 38-08-06.4, N.D.C.C.
- ▶ “gas produced with crude oil ... may be flared during a one year period from the date of first production”
- ▶ then “flaring must cease and the well must be ... connected to a gas gathering line” or equipped with a generator, liquids stripping plant or other beneficial use



North Dakota Statutes and Regulation

- ▶ Section 38-08-06.4 cont'd.
 - For well operated in violation “producer shall pay royalties to royalty owners ... and shall also pay gross production tax”
 - NDIC “ may enforce this section and ... may determine the value of flared gas”
 - Exemption if “connection of the well to a gas gathering line is economically infeasible at the time of the application or in the foreseeable future or that a market for the gas is not available”
 - Section 43-02-03-60.2 – “undiscounted” economics but allowed 10% for overhead



North Dakota Statutes and Regulation

▶ Prevention of Waste

- Traditional orders – field spacing orders provided that wells are allowed to produce at a maximum efficient rate (“MER”) for a set period of time and then must be connected to a gas gathering system or subject to production restrictions
 - Either 100 BOPD or a staggered reduction to 100 BOPD
 - Goal was to prevent waste of natural gas



North Dakota Statutes and Regulation

▶ Bakken Boom

- Infrastructure delays
- Limited capacity of existing infrastructure
- Resulted in 36% of gas being flared

▶ Industry task force

- Agreed gas capture goals could be met:
 - 10/1/14 – 74%
 - 1/1/15–77%
 - 1/1/16–85%
 - 10/1/20 – 95%
- Assumed additional infrastructure – affected by current economics



North Dakota Statutes and Regulation

▶ Order No. 24665

- Requires individual companies to meet the gas capture targets – currently 77%
 - Compliance allowed at state/county/field wide/well level
 - Infill wells (i.e., subsequent wells on a spacing unit) are subject to restriction if target is not met
 - 200 BOPD if 60% of gas from well is captured
 - 100 BOPD if less than 60% is captured
 - “Beneficial use” treated as capture
 - Electrical generator, compression, liquid stripping or other “value added” processes



North Dakota Statutes and Regulation

- Gas capture rate is determined by Form 5B – Gas Production Report
 - Gas sold + Gas used on lease + beneficial use/total produced
 - Produced volume typically determined by GOR
 - Tank vapors can be treated as “used on lease”
 - Theory is volume is used as “tank fill”
- Initial wells on spacing units not subject to restriction – allowed to produce at MER
- Recognizes that sometimes drilling initial well is necessary to maintain lease, and restrictions should only apply to wells the NDIC views as “optional”



North Dakota Statutes and Regulation

▶ Order 24665

- Expressly recognizes that flexibility is required due to ROW delays, midstream down-time for system upgrades and maintenance, federal restrictions, safety issues, delayed access to electrical power and reservoir damage
- Commission granted several exemptions under Order 24665
 - One involved flaring for a period of time to allow new gas plant to be completed
 - Second involved temporary flaring while additional compressors were added to system



North Dakota Statutes and Regulation

▶ 3/24/15 Policy/Guidance

- Commission staff recognized some tension between Order No. 24665 and Order No. 25417 re oil conditioning
 - Requires treaters to be operated at certain pressures and temperatures or alternatively oil tested to 13.7 PSI vapor pressure
 - Results in additional gas removed from crude oil, and higher volumes to be gathered
 - In many cases the gas gathering system is operating at a pressure higher than the 50 psig minimum required by the NDIC



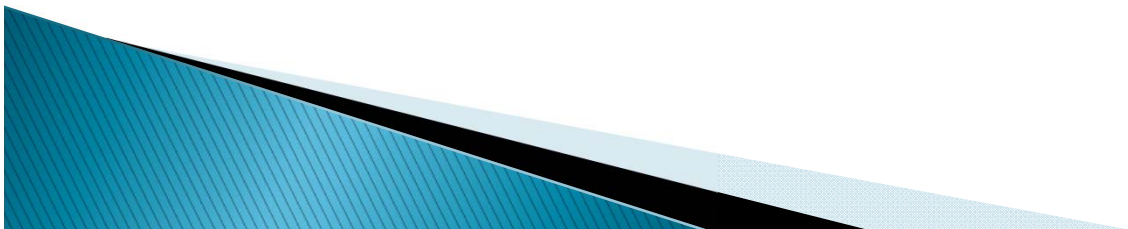
North Dakota Statutes and Regulation

- ▶ Legislative pressure
- ▶ Policy/Guidance Document
 - Allows volumes flared as a result of “force majeure” event to be removed from the monthly volume calculation
 - Requires event to be “properly documented in writing by the gas gathering company”
 - Some mid-stream companies routinely provide force majeure notices and copy the NDIC
 - Staff recommends that amounts be documented in a Form 4 Sundry Notice
 - Comments on Form 5B are not caught in routine gas capture audit unless flagged
 - No hearing is necessary – handled much the same as 14-day flowback volumes



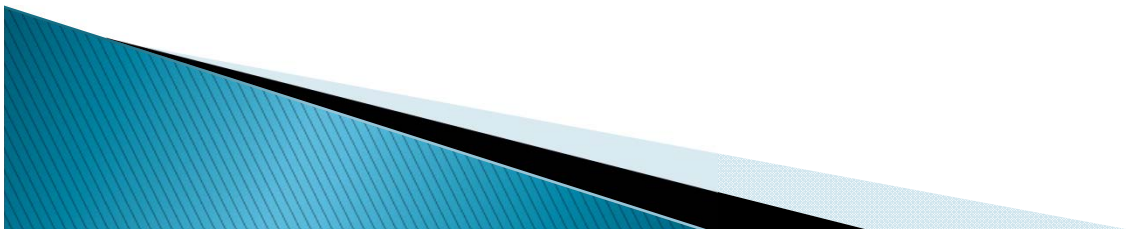
North Dakota Statutes and Regulations

- Recognizes that “temporary exemptions” may be obtained after notice and hearing for flaring resulting from ROW delays, midstream downtime for system upgrades or maintenance, federal regulatory delays, safety issues, electrical power delays, or reservoir damage
- Penalty
 - Statutory maximum penalty is \$12,500 per day
 - Two separate regimes
 - \$1000 per month penalty for not applying for a “temporary exemption” in the month following the month in which capture target not met, doubled each month to maximum of \$12,500 per month
 - Staff has recognized that company is not obligated to seek temporary relief, can just elect to restrict production



North Dakota Statutes and Regulations

- If production restrictions are imposed by NDIC staff, verbal NOV if not restricted the next month, written NOV if not restricted the following month, up to \$12,500 per day for third month



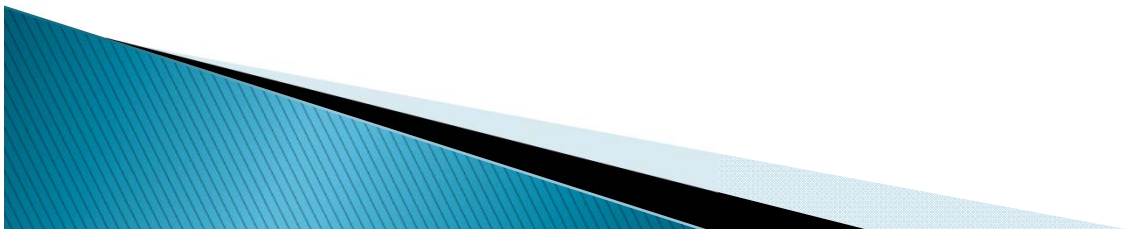
Fort Berthold Indian Reservation Issues

- ▶ FBIR has significant Bakken production
 - Mix of fee, allotted and tribal minerals
 - Allotted and tribal are leased by United States of America as trustee for the tribes or the allotted owner
- ▶ North Dakota generally asserts jurisdiction over oil and gas production on the reservation, regardless of whether fee or trust
- ▶ NDIC has instructed operators of wells on the reservation to restrict production pursuant to Order No. 24665



Fort Berthold Indian Reservation Issues

- ▶ NTL 4A – when gas is vented or flared without prior authorization of the Supervisor or otherwise avoidably lost, royalty is owned on the full value of the gas “so wasted”
- ▶ Tribal Resolution No. 13-070-VJB – asserts BLM has failed to adequately enforce NTL4-A and therefore tribes are regulating gas flaring
- ▶ State, Federal Government and Tribal Government all assert authority



Fort Berthold Indian Reservation Issues

- ▶ Burr et al v. XTO Energy et al
 - 4 named plaintiffs are suing 13 current and former operators on FBIR in tribal court
 - Putative class action – not certain whether they seek a plaintiff class or a defendant class or both
 - Seek royalties on value of flared gas
- ▶ All defendants have filed motions to dismiss, alleging lack of tribal jurisdiction, failure to exhaust administrative remedies, and a number of other bases
 - Currently awaiting argument
- ▶ At least one direct challenge has been filed in U.S. District Court and served



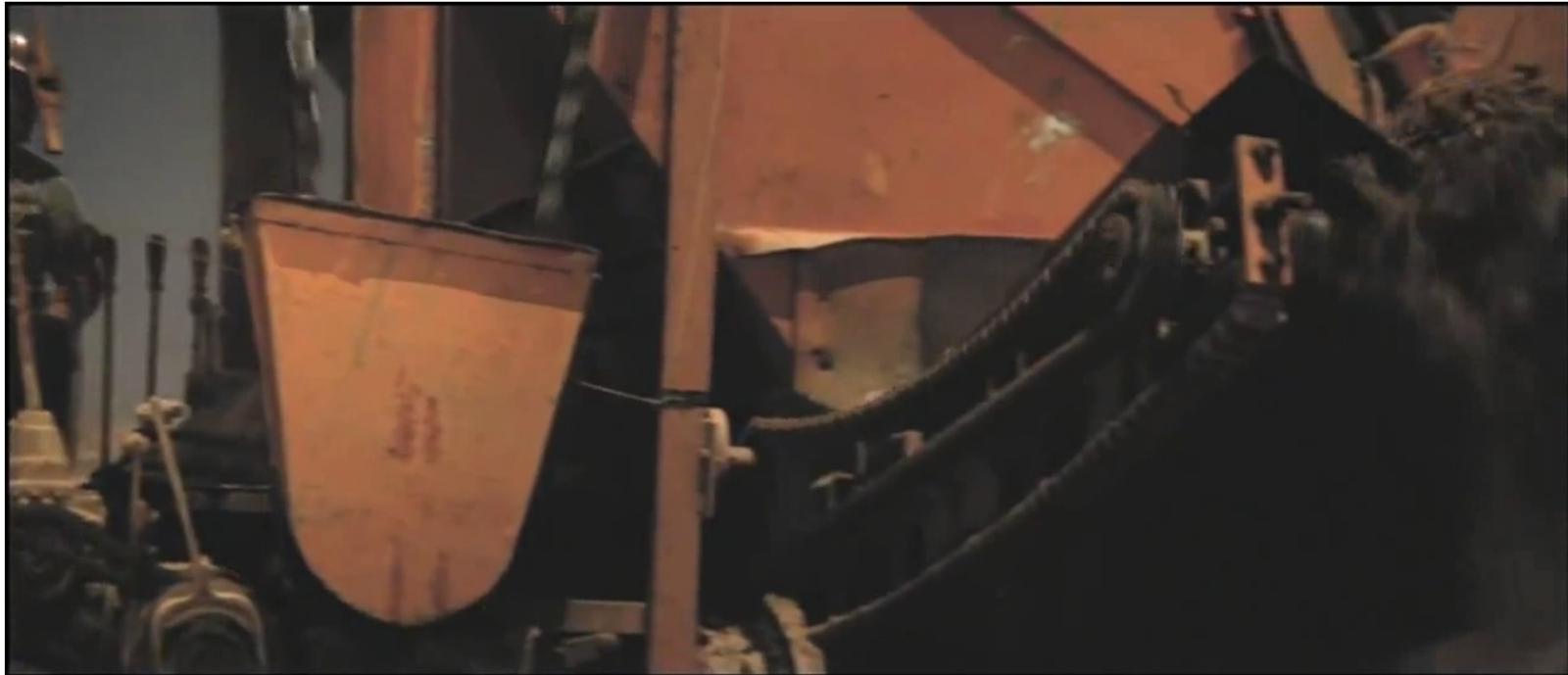
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Midstream Challenges *and Opportunities* in the Bakken

Presented by:
Anne Weber
Brian J. Graham

May 13, 2015

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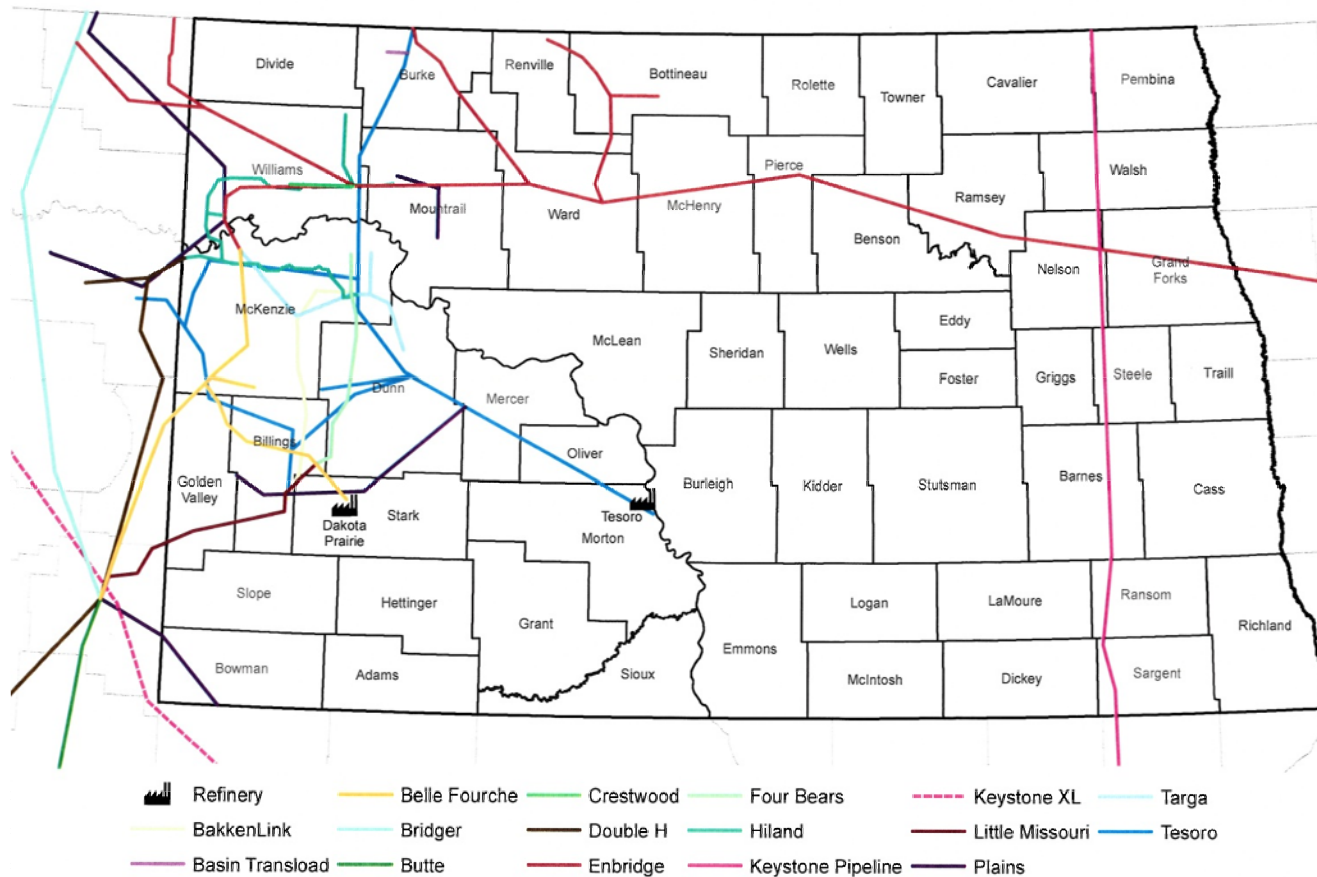


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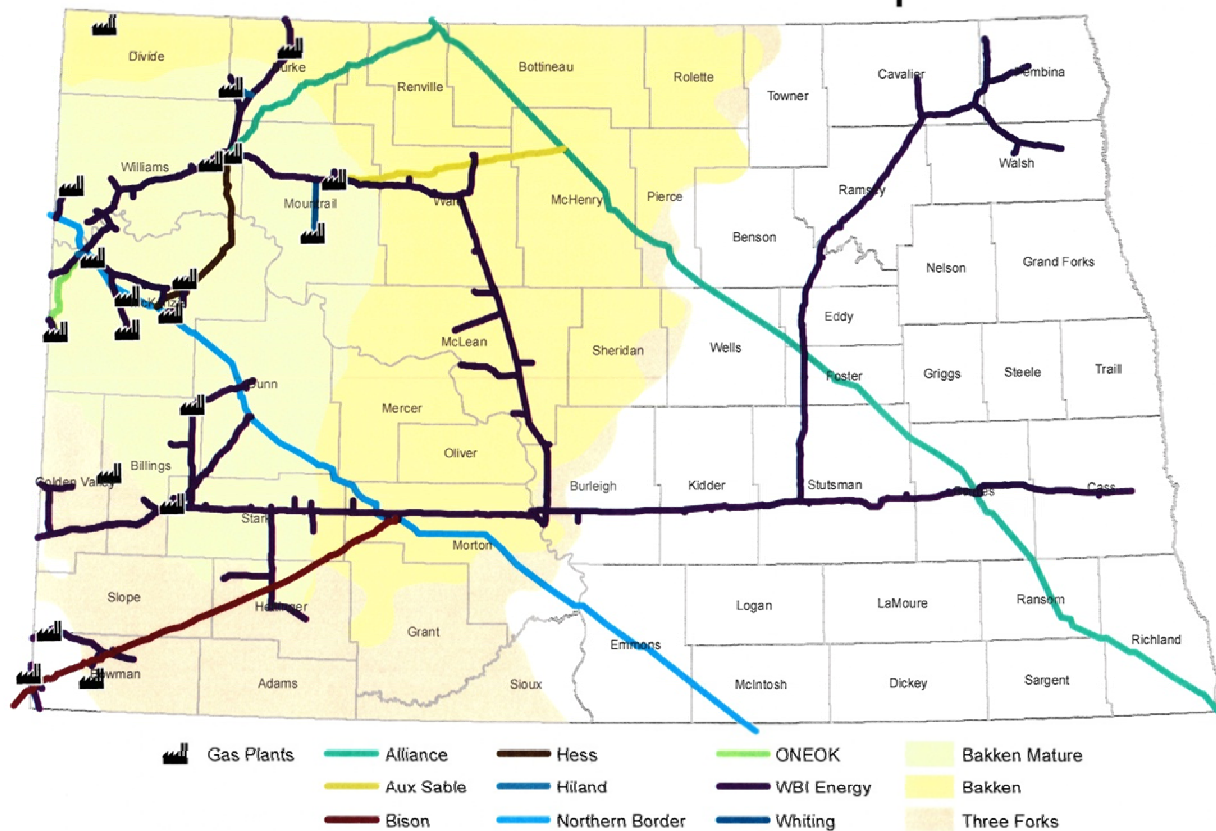
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North Dakota Crude Oil Pipelines



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North Dakota Natural Gas Pipelines



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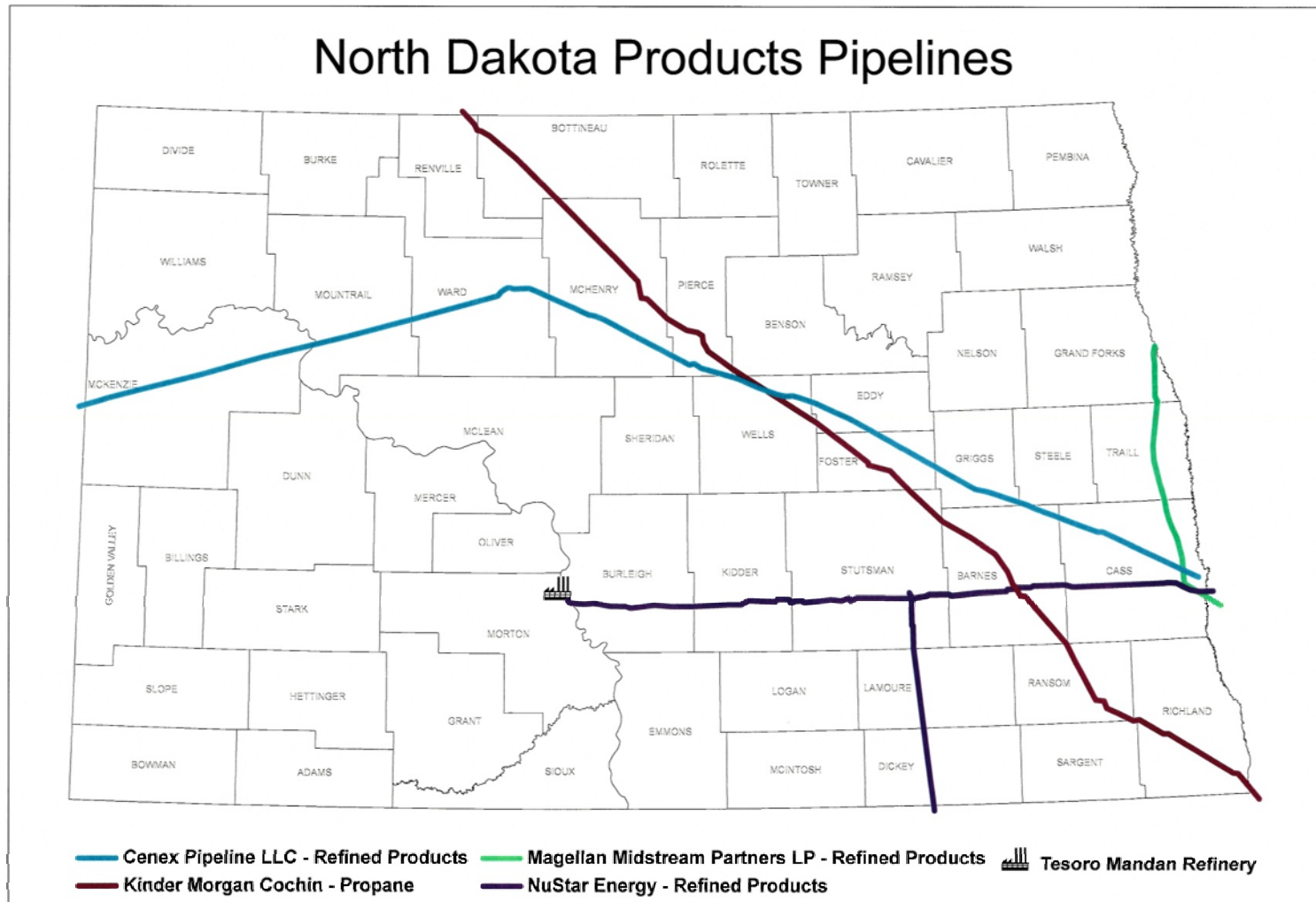
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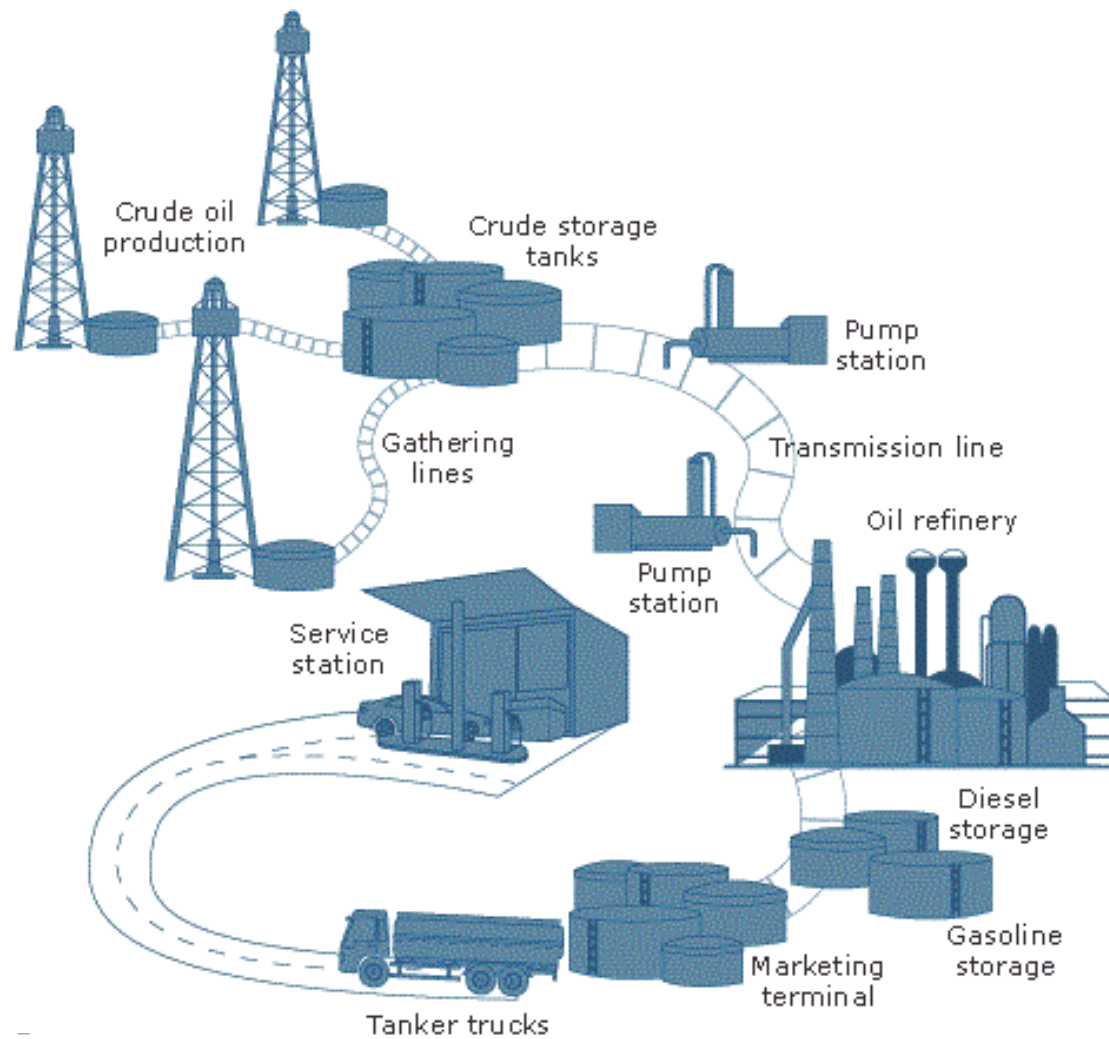
North Dakota Products Pipelines



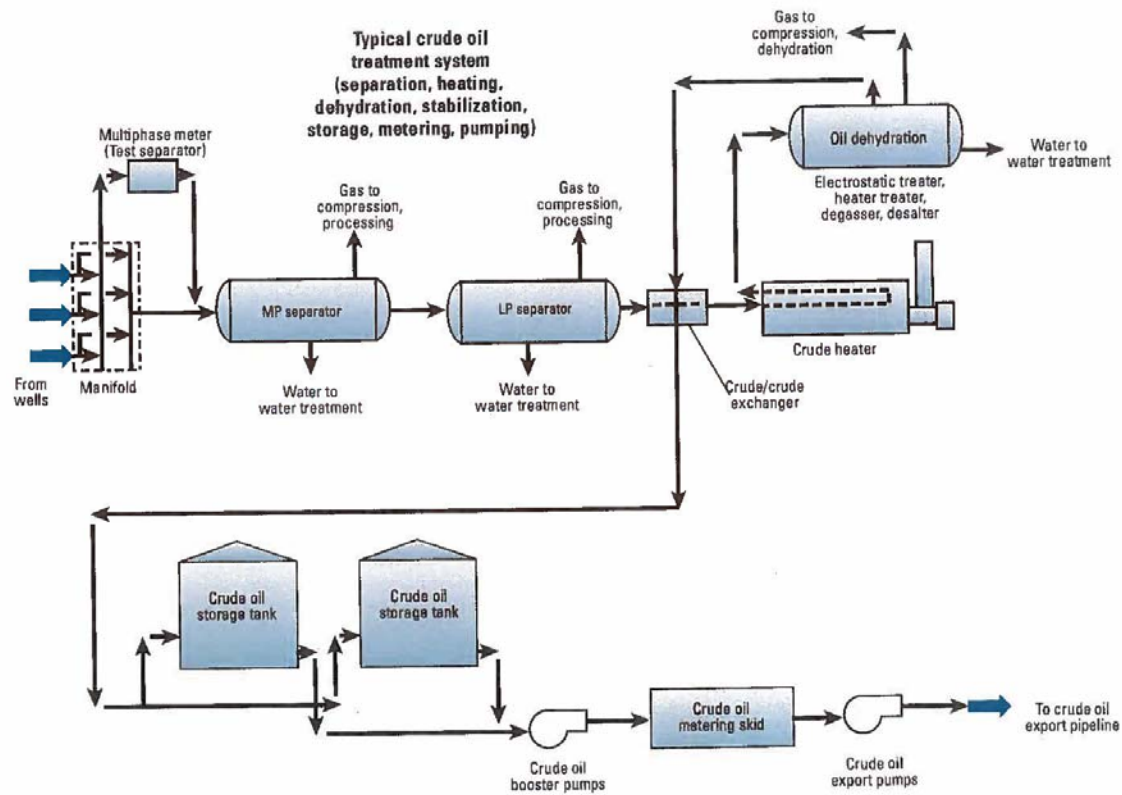
Midstream Sectors

- Gas
 - Well developed infrastructure and regulatory scheme
- Oil & NGLs
 - Increasing infrastructure; Regulation differs from gas
- Water
 - Emerging midstream sector

Oil Midstream Overview



Crude Oil

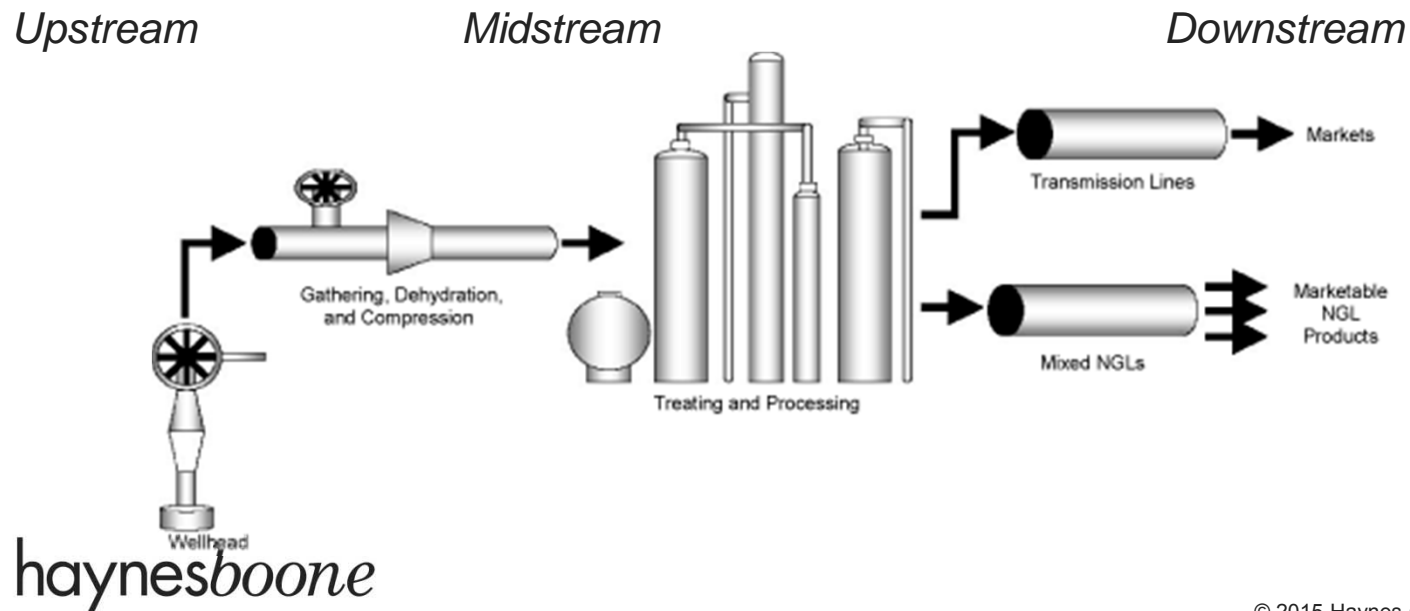


Midstream Oil Sector

- Facilities and services between the wellhead/lease and downstream transportation (larger pipeline or rail terminal)
- Facilities typically include FERC or State PUC regulated pipelines
- Services include pipeline transport and trucking

Midstream Gas Sector

- Typically facilities and services between the wellhead/lease and tailgate processing plant and/or re-delivery into interstate pipelines
- Typically non-FERC regulated pipelines and field compression plus gas plant inlet compression and processing for NGLs extraction



Midstream Water Sector

- Facilities and services between the source and wellhead/lease and disposal
- Facilities typically include flowlines and/or pipelines, pumps and disposal wells; services include pipeline transport and trucking and waste disposal

Midstream Review: Midstream = the Critical Link

- Between dramatically different Upstream and Downstream industries
- The assets and services that link the Exploration & Production (E&P) sector, the supply side of the energy value chain, with the demand side, the petrochemical, refining, and utility/retail distribution industries

Midstream Review: Midstream Assets

- Facilities: Pipelines, plants, compression/pumps, loading facilities, meter stations, transportation hubs, storage and other facilities and equipment that provide physical connection between wells (upstream) and interconnecting facilities (downstream)
- Facility Agreements:
 - Real Property ROWs, Leases, Site Purchases, Access
 - Whole Suite of Construction Agreements
 - Interconnection Agreements for physical connections and CTM at each end of a midstream segment
 - Commercial Agreements – often by segment

Midstream Review: Midstream Services

- Midstream services highgrade and/or move production within and out of production area (upstream) and into the market (downstream)
- Gathering/Transportation
 - Largest subset of Midstream sector services
 - Generally, gathering is the farthest upstream movement of gas, crude oil or water from the wellhead via pipeline/truck
 - **NEW – movement back upstream (gas life, water distribution)**
 - Defined differently by different regulators
 - Usually includes measurement

Midstream Review: Midstream Services

- What type of Agreements?
 - Gathering/Transportation: Moving Molecules
 - **NEW Leasehold Services: Gas life, water , dehydration, etc.**
 - Treating/Processing: Changing/enhancing value of the Production
 - Purchase/Sale/Marketing: Buy/sell/Exchange Production

CHALLENGES – What's New

- Changes to Project Assumptions – VOLUMES, VOLUMES, VOLUMES; PRICING
- Semi-Completed & Over- Budget Projects – facility gaps, errors/sloppiness in build and flip projects
- Litigation – a wave is expected
- More actions on federal lands – longer timelines, more restrictions
- Changing counterparties; JV gone bad
- Roll-off of dedications/dueling dedications
- Gas Supply Agreements for industrial use
- Quality issues
- Rail vs. Pipeline vs. Truck

OPPORTUNITIES - What's New

- Co-located Facilities - Gas, Crude and Water Pipelines & surface facilities
- Water distribution; reuse and recycling
- More Producer build-down to Midstream facilities
- Gas Supply Agreements for industrial use
- Water processing at the Leasehold; NGL “Recovery” at Leasehold
- Oil polishing/processing off the Leasehold
- CNG/LNG within the fractionator plant fenceline
- Gas lift
- Crude oil quality
- Rail vs. Pipeline vs. Truck



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Gas Gathering Under FERC – Mostly NOT Regulated

- Bottom Line
 - FERC typically does not have jurisdiction upstream of natural gas processing plant tailgate; therefore, under FERC, gathering includes processing

But see:

- Gas Supply lines; long “stub lines”
- Contrast to Wyoming Supreme Court’s 2004 *Cabot v. Dorman* decision which held that gathering stops at the point prior to processing (costs of production scenario)

Oil vs. Water Gathering Under FERC

- Oil: Nearly every crude oil pipeline is regulated by FERC and required to post a tariff or obtain a temporary waiver from tariff requirements!
- Water: Not Regulated by FERC
 - Mostly local transport destined for disposal at the closest disposal location, not interstate commerce
 - Not a “common carrier” within the definition of the ICA

How it Works - Contract leverage depends on supply/demand

- Scenario 1 – Midstream Operators have leverage: New build-out = major investment by Midstream Operator in exchange for commitment or dedication and financial backstops from Producer/Shipper
- Scenario 2 (old) – Leverage balance:
- Scenario 2 (new) – dynamic
- Scenario 3 (old) – Producers have leverage: Consolidation - declining reserves result in consolidation of, and fewer total, Midstream facilities
- Currently- Companies with \$\$\$\$ have leverage

How Do Midstream Agreements Work?

- **Gas vs. Oil Gathering Agreements**
 - Negotiated/free market vs. tariff
 - Confidential vs. tariff – confidential dispute resolution
 - Rights to capacity vs. rights to transport
 - Curtailment
- **Water Gathering Agreements**
 - Emerging – tend to be based on crude oil Gathering Agreements but there are many key differences
- **Gas vs. Oil Purchase Agreements**
 - Oil: Typical first purchases at the wellhead/lease
 - Gas: A wide range of either purchased at the wellhead or further downstream
 - Purchase at the Wellhead: Gas = no standard, highly negotiated; Oil = Conoco GSTs form base
 - Purchased Downstream: energy commodity industry uses “standardized” master agreements: Gas = NAESB; Derivatives = ISDA

Practice Pointers

- **Level of Attorney effort?**
- **What is the term?**
 - Short term – e.g., 30 days interruptible (current facts – either party can exit easily)
 - Long term – 5+ years (consider change – exit rights, capacity, price, etc.)
- **What is Committed?**
 - Producer: 1 well and/or overflow volumes v. all volumes from current and future interests over entire counties
 - Midstream Operator: Level of service; level and coverage of build-out expenditure
- **What is the total \$\$ exposure over entire term of agreement?**
 - Short term – e.g., 30 days interruptible vs. Long term – 5+ years

Checklist for Midstream Deals

Top 10 Terms

History – Producers Enter and Exit Midstream

- Many Producers have entered and tried to make a go in the Midstream sector, but few have stayed ... WHY?
 - Roller coaster history
 - Midstream Operator's profits often cents on a dollar compared to E&P ROI – Midstream is a margin business
 - “Service Company” dynamics [field services]
 - Midstream operator must understand its costs, risks and facilities – not an area to “dabble in”
 - No rate base safety net

Margin Business – Further Details

- Producers/Shippers pay, one way or another, for all Midstream facilities owned and operated by Midstream Operators
 - Upfront contribution to construction in return for “reduced” fee; or
 - Over some period of time via dedications, throughput commitments and/or “indemnity” agreements and/or higher fees; or
 - Embedded in higher fees that cover facility and operating costs

Practice Pointers

- Few, if any, standard forms
- Few, if any, standard definitions
- Non-uniform formats – Key terms and conditions can appear anywhere in the Contract
- Read the fine print!

Practice Pointer

LOOK FOR THE SWEET SPOT

Balance Producer's commitment vs.
Midstream gathering infrastructure/ services

Extra consideration?

Larger area of dedication?

Longer term/renewal?

Different buildout deal?

1st Key Element: Producer's Level of Commitment

- Dedication and/or contractual quantity commitment spectrum [**INCREASING NEED FOR DUE DILIGENCE & REPS AND WARRANTIES**]
 - Dedication = real property covenant running with the land
 - Gas supply vs. Lease vs. Well vs. Wellbore
- Quality commitments (contractual)
 - All producer's production
 - Throughput commitment (specific volume)
 - Max or min daily or monthly quantities
 - No quantity – any gas delivered and received

2nd Term: Infrastructure

- Level of buildout and who has the obligation to build; RP or CP
- Gathering Lines – Location and configuration – how customized and for what purpose
- Other Field Services Assets including [Gas] compression: Location [field, plant inlet]
 - Bakken RP pressure service issues
 - Crude oil “processing”

3rd Term: Scope of Midstream Services

- Determination of Quality and Services to Improve Quality
 - Dehydration – oil polishing
 - Gas Treating, CO₂ – oil processing, vapor recovery
 - Blending for Gas (Nitrogen) – Blending for Oil
 - Gas Conditioning – Oil Stabilization
- Measurement
- Transport; compression (if gas); single phase
- Redelivery of thermal or volume equivalent less FL&U (gas) or PLA (oil)
- Marketing

4th Term: Composition/Quality

- Obtain quality specs needed for Downstream transport/use – if not “pipeline” or other end-user quality, how will quality be improved?
 - Gas
 - Oil
 - Water
- Off-spec – what happens? Challenges, Opportunities, Costs

5th Term: Consideration Owed to Gatherer

- Menu approach – Fees vary by types of services: Gathering, compression, treating/conditioning, length of transport, redelivery point
- Fees paid on receipt point quantities
- In-Kind: Producer bears FL&U; Shipper bears PLA
- Percent of proceeds; Percent of posted price; Right to extract and take title to valuable components
- Fees within a single type of service can vary: Level of pressure service, redelivery at different Delivery Points, carrot approach, stick approach
- Fees typically escalate

6th Term: Deliveries by Midstream Operators

- Redelivered thermal (gas) or barrel (oil) equivalent at the Delivery Point(s); Less delivered at the Delivery Point than received
 - Valuable components (e.g., Condensate via liquids and drip) collected and removed by Gatherer following receipt of the gas at the Receipt Points or processed by Gatherer to extract NGLs at Processing Plants
 - Losses: Fuel, Lost and Unaccounted for (gas) (can be significant); Pipeline loss allowance (typically set)

7th Term: Title; right to deliver

- Typically not with Gatherer except if Gatherer Purchases at Wellhead
 - Title to components can pass to Gatherer for FL&U and any components to be removed by Gatherer (e.g., drip liquids) at Receipt Points. May pass to Gatherer in commingling scenario and then pass back to Producer/Shipper or its designee at Delivery Point
 - Recommend Due diligence, reps and warranties
 - Special attention to JOAs or lack of JOAs

8th Term: Evaluate Risk Management Strategies

- Release/renegotiation rights
- Term of the Agreement
- Control future destiny – e.g., right to acquire Upstream gathering infrastructure from gatherer; Designate other Delivery Points
- Cap FL&U; Force majeure periods, etc.
- Financial assurance; audit rights
- Negotiate shortfall payments on throughput deficiency option
- Reserved rights (to production; to build-out)
- New connections and new or excess volumes

9th Term: Liabilities

- Build-out & delivery obligations
- Regulatory issues
- Do the assets work the way they were assumed to?
- Who has title; who has control
- Hidden litigation
- JV issues

Gas Gathering Under FERC - Mostly NOT Regulated

- FERC Function Perspective – Modified “Primary Function Test” is the current (12/10) test for non-jurisdictional gathering facilities. Physical and geographic factors:
 - The length, diameter and operating pressure of the line
 - The location of wells along the facility and extension of the facility beyond the central point in the field
 - The facility’s geographic configuration
 - The location of the compressor and processing plants
- In addition, FERC considers:
 - The purpose, location and operation of the facility
 - The general business activity of the owner of the facility
 - Whether the jurisdictional determination is consistent with the NGA and the Natural Gas Policy Act of 1978
 - Other relevant facts and circumstances of a particular case, including non-physical criteria

Oil Gathering Under FERC

- Mostly regulated
 - FERC regulates oil pipelines under the authority of the Interstate Commerce Act (ICA). The ICA does not define oil gathering lines, but regulates “[t]he transportation of oil or other commodity... by pipe line, or partly by pipe line and partly by railroad or by water from one State ... to any other State ...”
- Common Carrier
 - The ICA defines common carriers to include all pipeline companies engaged in the interstate transportation of oil or other commodities except water or natural/artificial gas (i.e., NGLs) for hire
 - The ICA further requires common carriers to furnish transportation to the public at posted reasonable fares, charges and classifications (tariff)

10th Term: Future upside/downside

- Look at dedications/ commitments downstream and effect on rights to extract and keep value of valuable components
- Title
- Quality Nominations and scheduling/balancing
- Curtailment downstream
- Water could go either way
- Volumes!!!!!!
- Pipelines vs. rail vs. truck

Thank You!

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AN ETHICAL CLOSING

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THE GOOD NEWS:

Ethics Rules in Texas and North Dakota are pretty much the same.

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THE HOLIDAY PARTY

A firm hosts a holiday party to celebrate its client-friends. The firm asks the clients to bring colleagues who have never done work with the firm and guests who could be potential clients.



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**AND EVERY
GUEST GETS A
FREE IPAD.**



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WHICH RESULTS IN EVEN GREATER MERRIMENT...AND BUSINESS



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ETHICAL OR NOT?



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SOLICITATION

Texas Rule 7.03 prohibits a lawyer from improperly soliciting business

Subsection (c) provides that “A lawyer, in order to solicit professional employment, shall not pay, give, advance, or offer to pay, give, or advance anything of value, other than actual litigation expenses and other financial assistance as permitted by Rule 1.08(d), to a prospective client or any other persons.”

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SOLICITATION

North Dakota Rule 7.2 also prohibits a lawyer from improperly soliciting business

Subsection (d) provides that “A lawyer shall not give anything of value to a person for recommending the lawyer’s services, except that a lawyer may (1) pay the reasonable costs of advertisements or communications permitted by this Rule; (2) pay the usual charges of a not-for-profit lawyer referral service or legal service organization; (3) pay for a law practice in accordance with Rule 1.17.”

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KEY CONSIDERATIONS

1. Are both clients and non-clients invited?
2. What is the purpose of the party or gift?
3. Is the party or gift of value?



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**BECAUSE OUR
HYPOTHETICAL
INVOLVES
A PARTY FOR BOTH
CLIENTS AND NON-
CLIENTS FOR THE
DEVELOPMENT OF
BUSINESS, AND AN IPAD
IS OF VALUE, PROBABLY
BETTER TO STICK WITH
PARTY FAVORS OF
NOMINAL VALUE.**



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THE PERFECT MATCH

The Millionaire Matchmaker creates a website that collects and creates profiles for potential clients. After accepting the information from those potential clients, the company randomly matches potential clients with attorneys who subscribe to the website.

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THE MATCH

So I got caught shoplifting at Walmart and I know it's a misdemeanor. My fine is \$2130.70 and I've already done arbortration. - Avvo.com - Google Chrome

www.avvo.com/legal-answers/so-i-got-caught-shoplifting-at-walmart-and-i-know--2183218.html

Criminal charges

Dallas, TX

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Legal Advice > Criminal defense > So I got caught shoplifting at Walmart and I kn...

Criminal defense

So I got caught shoplifting at Walmart and I know it's a misdemeanor. My fine is \$2130.70 and I've already done arbortration.

Lexington, SC | 2 hours ago

Filed under: Criminal defense Criminal charges Juvenile law Shoplifting

So having already completed arbortration for charges that weren't even mine and the fact that they weren't mine was already proven in court a year ago. I'm 17 and know I can be charged as an adult. this is my first offense. Not a very good student, but I do have a job, but not nearly enough to pay that fine. Can I get in lowered? I know I shoplifted and I'm sure there camera footage of of me stealing since its in Walmart. It's was originally for a blog and I always walked back inside and out everything back on the rack. My research was to test the likelihood of being caught. They caught me literally 1 out of 10 times, and I had purposely made it as noticeable as possible for them to see me. And the Walmart I "stole" from is the 2nd best in the country. How do i fi this?

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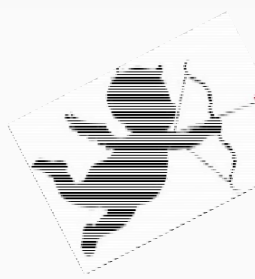
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Super Lawyer
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ETHICAL OR NOT?



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INTERNET REFERRALS

Texas Rule 7.03 and North Dakota Rule 7.3 prohibit solicitation of employment.

In Texas, the subscription to a website may be ethical if: (1) automated process without discretion; and (2) site makes clear lawyers paid to be listed, and makes no representation about quality of lawyers.

In North Dakota, rules that apply to print advertising apply to the internet. Must be truthful and not misleading.

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KEY CONSIDERATIONS

1. Representations about quality of lawyers?
2. Disclosure of subscription fee?
3. Truthfulness of representations?
4. Discretion?



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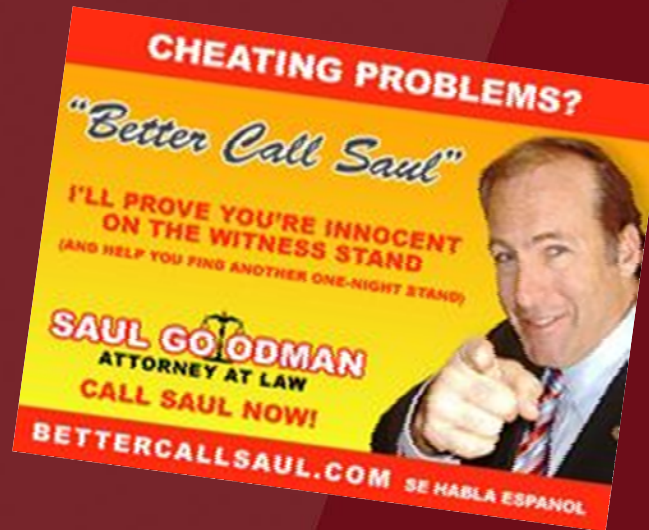
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OR WHETHER
INDIVIDUAL
LAWYERS HAVE
HONORED THEIR
OBLIGATIONS TO
BE TRUTHFUL



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WHEN GOOD CLIENTS DO BAD THINGS

During the course of litigation, Saul Goodman discovers that his client defrauded his business partner a year ago, and that his client intends to lie about it. Saul is almost certain that his client's current business profits by defrauding all of his current partners in the same way. He advises his client of the consequences of the fraud, reveals the current fraud, and withdraws from the representation.

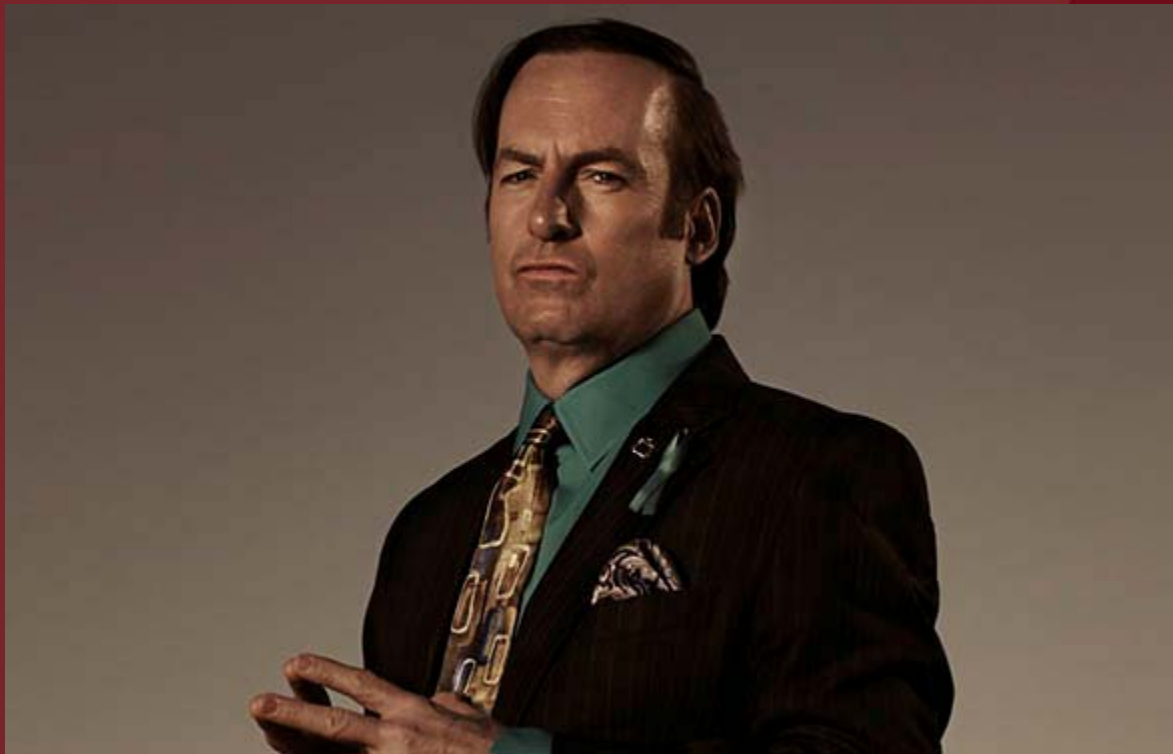
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**AND THEN
THIS
HAPPENS...**

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ETHICAL OR NOT?



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CRIME FRAUD EXCEPTIONS

- An attorney may discuss the legal consequences of the potentially criminal or fraudulent actions.
- An attorney shall reveal confidential communications to prevent ***imminent* substantial bodily harm**.
- An attorney may reveal confidential communications to prevent **substantial injury or harm to financial interests** or ***non-imminent* substantial bodily harm**.

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KEY CONSIDERATIONS

1. Imminent Harm? Financial or Bodily? Substantial?
2. Ongoing or past?
3. Duty of Candor to the Court



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BECAUSE OUR LAWYER BELIEVED THE FRAUD WAS ONGOING HE ADVISED THE CLIENT OF THE CONSEQUENCES, AND HAD THE DISCRETION TO DISCLOSE THE FRAUD TO PREVENT ONGOING INJURY. BECAUSE THE CLIENT INTENDED TO LIE ABOUT THE FRAUD, THE LAWYER RIGHTFULLY WITHDREW FROM THE REPRESENTATION TO AVOID SPONSORING FALSE TESTIMONY.



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QUESTIONS?

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