

NORTH DAKOTA LAW REVIEW  
**ENERGY LAW  
SYMPOSIUM**

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UNIVERSITY OF NORTH DAKOTA



# 2019 North Dakota Law Review Energy Law Symposium

## Regulatory Update

North Dakota Industrial Commission  
Department of Mineral Resources  
Oil and Gas Division

LAWRENCE BENDER

April 11, 2019

**Fredrikson**  
& BYRON, P.A.



# Unitization: Statutory Changes and Notable Orders of the Commission

# Unitization

- Voluntary Unitization. N.D.C.C. 38-08-09
- Compulsory Unitization. N.D.C.C. § 38-08-09.31 *et seq.*
- Compulsory unitization statute enacted 1965
- Prerequisites for Unitization:
  - Unitization is necessary for operations;
  - Unitization operations are feasible;
  - Unitization costs less than the value of the oil and gas to be recovered; and
  - Unitization is for the common good

N.D.C.C. § 38-08-09.3

# Unitization

- Compulsory Unit approval:
  - Plan of Unitization must be ratified by the working interest owners
  - Plan of Unitization must be ratified by the royalty interest owners
- Percentage of approval:
  - 80% working interest
  - 80% royalty interest

1965 ND Session Laws Chapter 260 § 5

# Unitization

- Percentage of approval reduced from 80% to:
  - 70% working interest
  - 70% royalty interest

1991 ND Session Laws Chapter 389 § 1

# Unitization

- Percentage of approval reduced from 70% to:
  - 60% working interest
  - 60% royalty interest

2001 ND Session Laws Chapter 326 § 2

# Unitization

- Percentage of approval reduced from 60% to:
  - 55% working interest
  - 55% royalty interest

2017 ND Session Laws Chapter 253 § 2



# Unitization

- Two types of Units
  - Primary Recovery Unit
    - Recovery of oil and gas without the necessity of injecting water or other substances
  - Secondary Recovery Unit
    - Injection of gas or water into the reservoir

# Unitization

- All voluntary units and all compulsory units have been secondary recovery units
  - Exceptions:
    - Little Missouri-Pierre Unit
    - Corral Creek-Bakken Unit

# Unitization

- 2018 and 2019 trend towards more primary units
  - XTO Energy Inc. – Hofflund-Bakken Unit
  - Continental Resources, Inc. – Long Creek-Bakken Unit

# Unitization

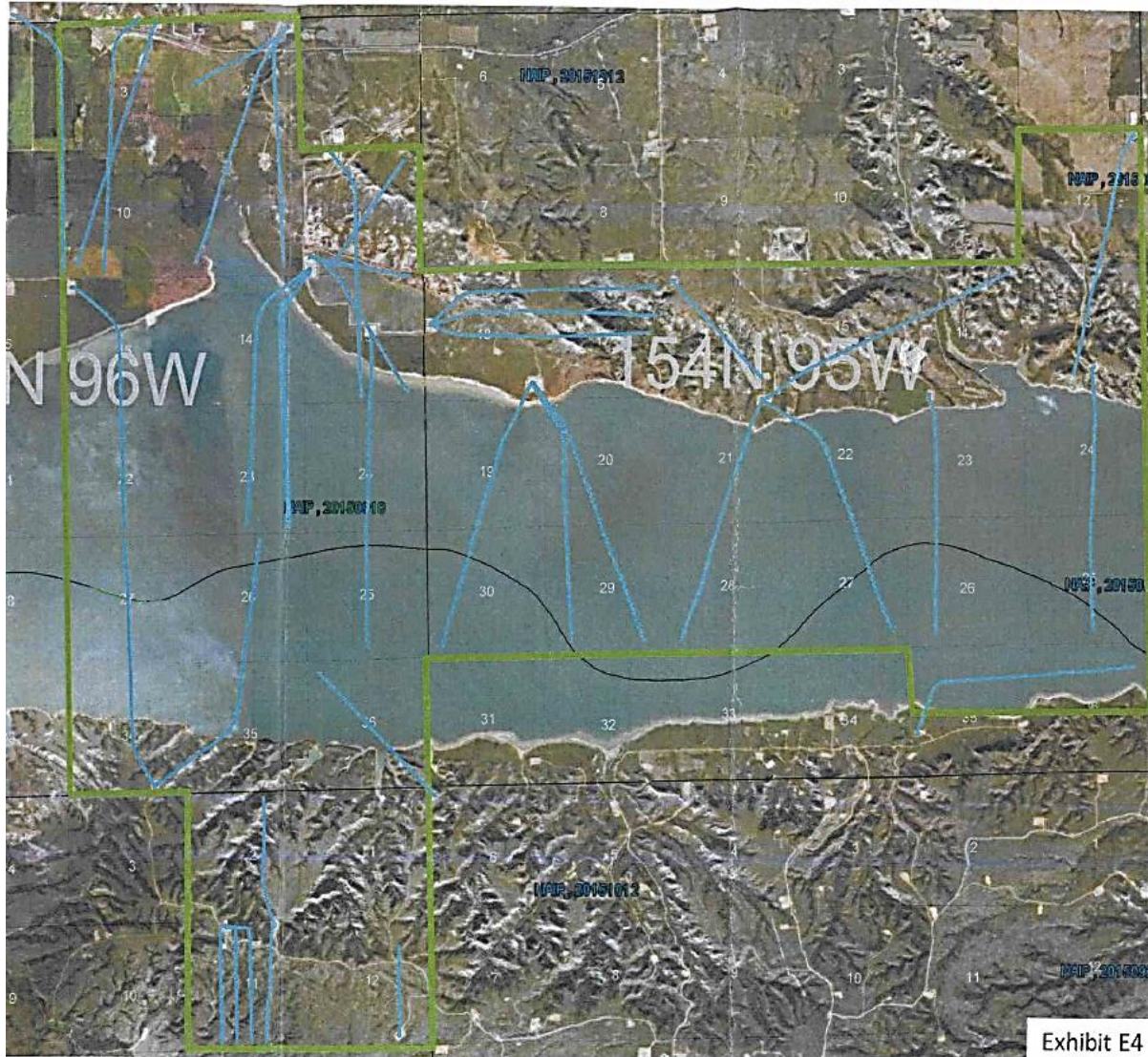
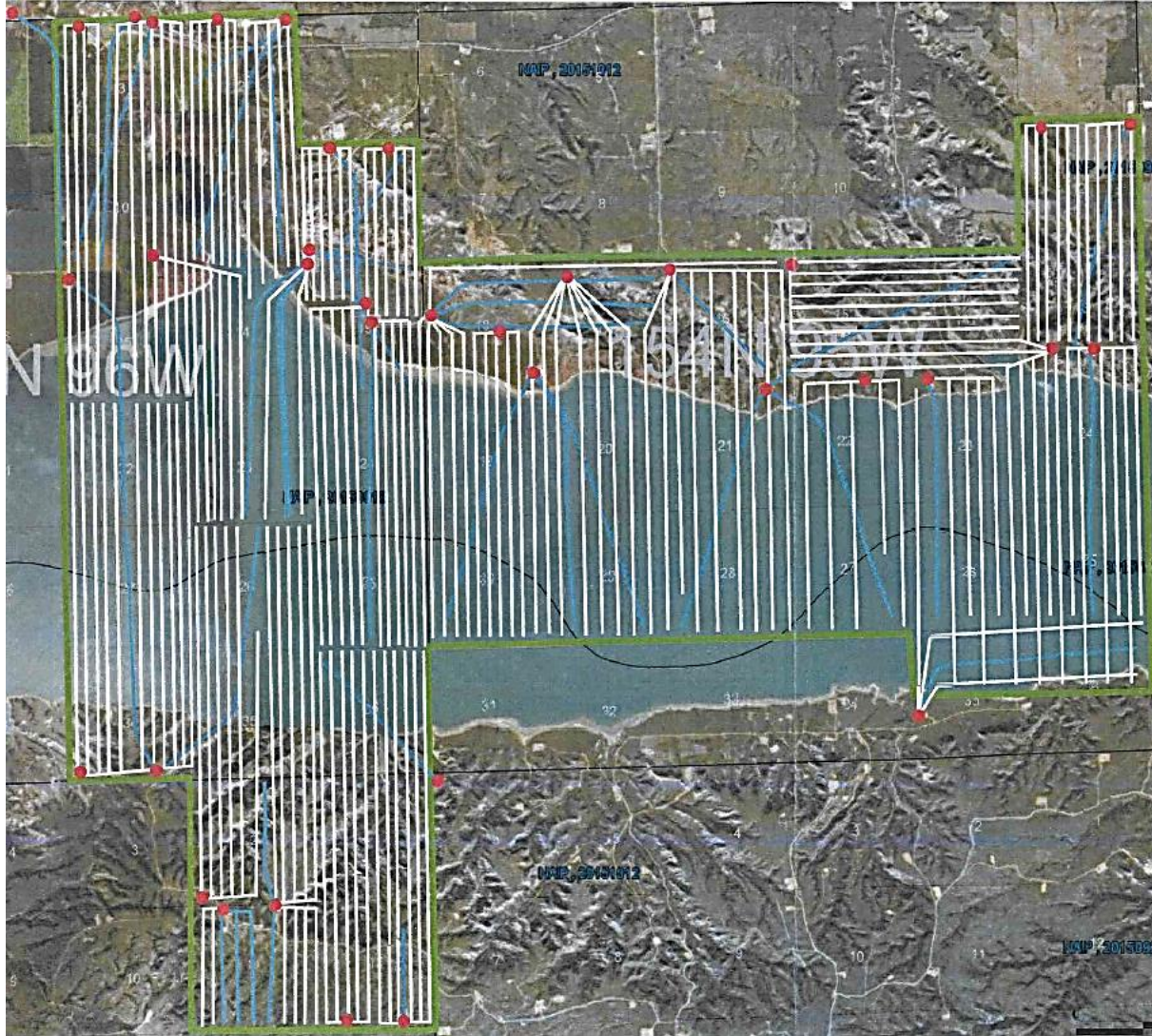


Exhibit E4

- XTO application for Hofflund-Bakken Unit
  - Proposed Unit Area: 26,201.89 acres
  - Proposed Unit Area: 34 existing wells
  - Proposed Unit Area: North Shores of Lake Sakakawea
  - Need for long reach horizontal wells under Lake Sakakawea
  - Very rough terrain
  - Need to set back from Lake Sakakawea

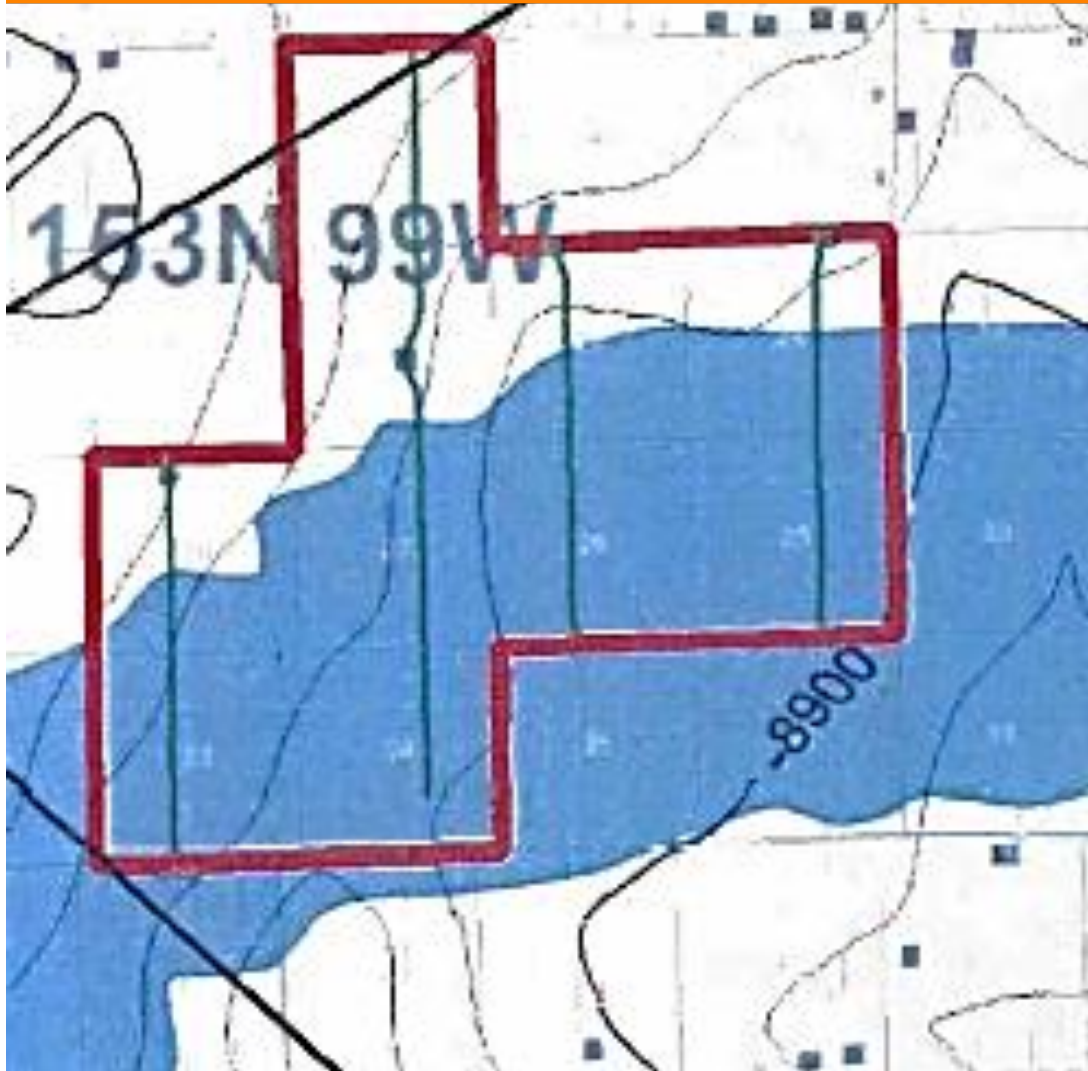


# Unitization



- If the proposed unit is approved:
  - XTO estimates 100-150 wells will be drilled
  - XTO estimates \$1 billion in capital will be invested
  - XTO estimates additional 150 million barrels of oil will be recovered
  - XTO estimates \$4 billion in revenue will be derived

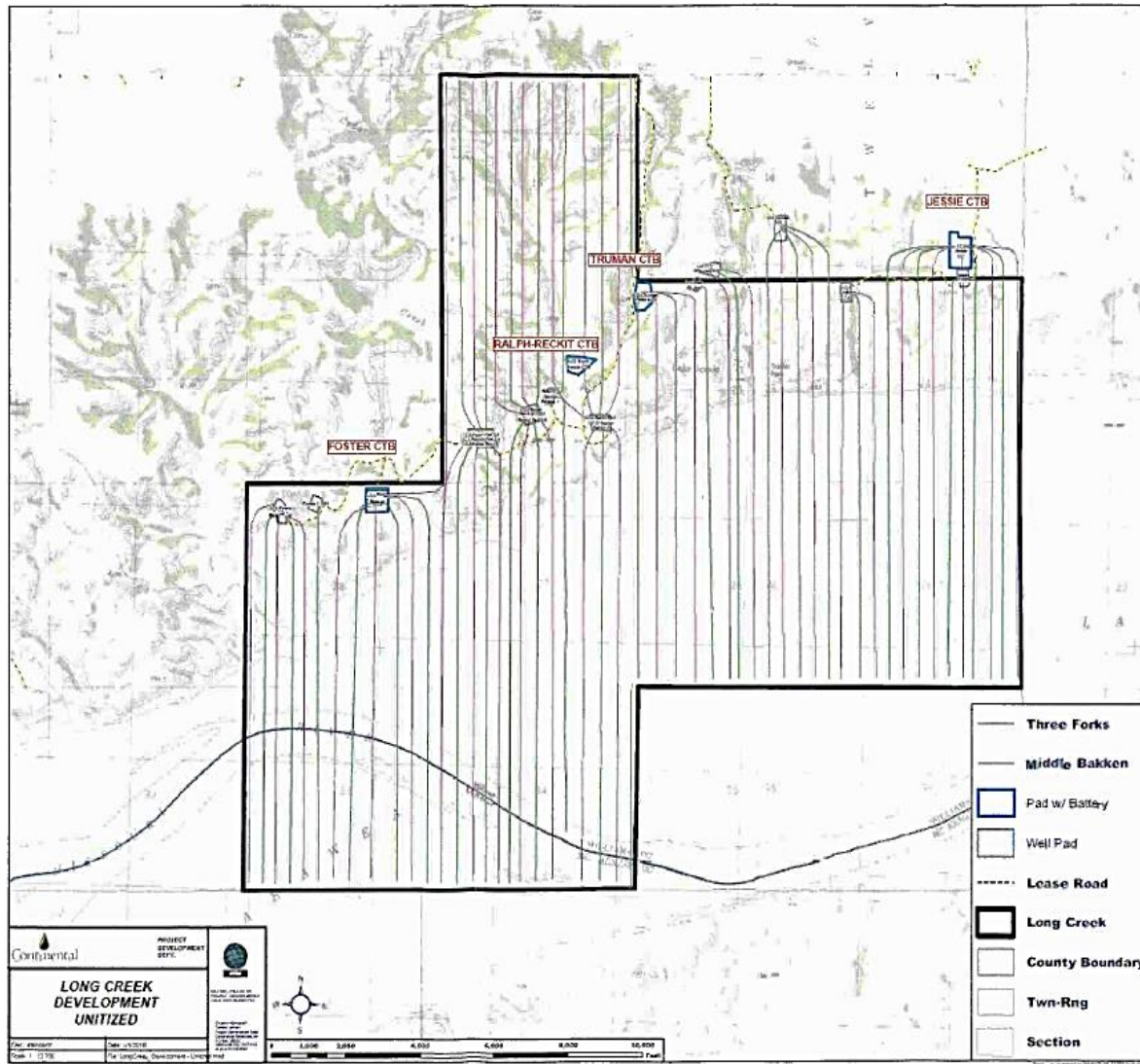
# Unitization



- Continental application for proposed Long Creek-Bakken unit
  - Proposed Unit Area: 6,398.71 acres
  - Proposed Unit Area: 5 existing wells
  - Proposed Unit Area: North Shores of Lake Sakakawea
  - Need for long reach horizontal wells under Lake Sakakawea
  - Very rough terrain
  - Need to set back from Lake Sakakawea



# Unitization



- If the proposed unit is approved:
  - Continental estimates additional 56 wells
  - Continental estimates \$461 million in capital will be invested
  - Continental estimates additional 33 million barrels of oil will be recovered
  - Continental estimates \$1.6 billion in revenue will be derived

# Unitization

- Primary units are being considered by other Bakken Operators
- Commission criteria for Primary Units:
  - Terrain is challenging
  - Uniform porosity, permeability, thickness of reservoir
  - Uniform development before unitization
  - Plans for uniform development after unitization



# Unitization

- Working interest owners and royalty interest owners seem receptive to Primary Units
  - State of ND has ratified Hofflund-Bakken Unit
  - State of ND has ratified Long Creek-Bakken Unit



# Suspension and Revocation of Drilling Permits: Notable Commission Cases

# Suspension and Revocation of Drilling Permits

- 1990s drilling of horizontal Red River “B” wells in Bowman & Slope Counties increasing
- Operators in the area: Continental Resources, Inc. and Burlington Resources Oil & Gas Company, L.P.
- Operations were important to Continental and Burlington
- Continental and Burlington began to compete for permits

# Suspension and Revocation of Drilling Permits

- Commission's policy was to grant the permit to the operator who first filed
- Policy created a battle between Continental and Burlington
- Commission determined that this approach not conducive to reasonable regulation and development

# Suspension and Revocation of Drilling Permits

- Commission set guidelines to resolve disputes over APDs
- Section 43-02-03-16.2 of the North Dakota Administrative Code enacted
- Provides that the Commission may consider:
  - Technical ability of the permit holder
  - Experience of the permit holder
  - The number of wells drilled and operated by the permit holder in the area
  - Whether drainage might occur if the permit holder does not timely drill
  - Contractual obligations such as expiring leases
  - Percentage of working interest of permit holder

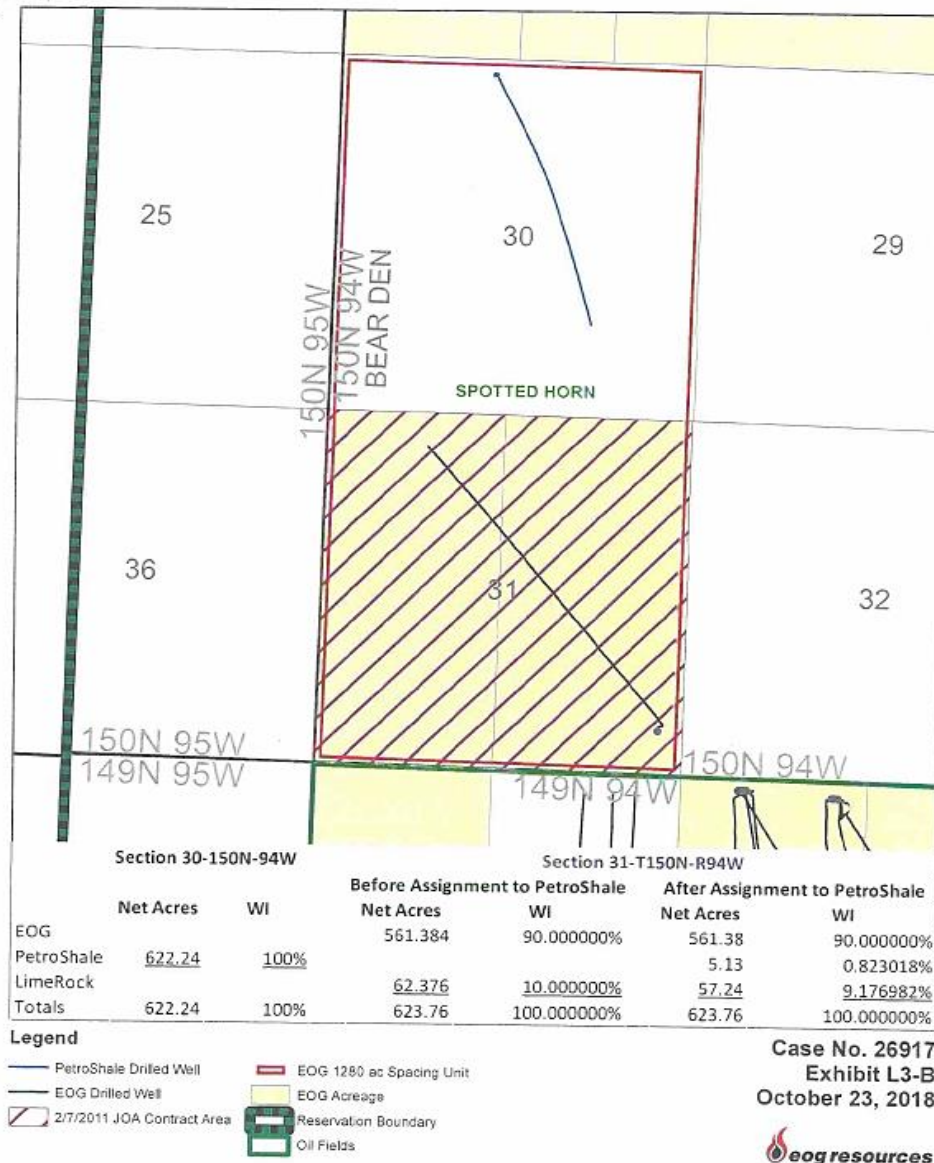
# Suspension and Revocation of Drilling Permits

- Rule provided a presumption:
  - Operator with the majority interest should be the permit holder
  - Many applications to revoke permits have been filed
  - Commission is very consistent
  - Majority interest owner prevails
  - Rule has worked fairly well
  - Many cases are resolved before hearing

# Suspension and Revocation of Drilling Permits

- New permit disputes
  - Subsection (e) of Section 45-02-03-16.2 provides Commission may consider contractual obligations
  - Implementation of Joint Operating Agreement (“JOA”) to determine APD dispute

# Suspension and Revocation of Drilling Permits



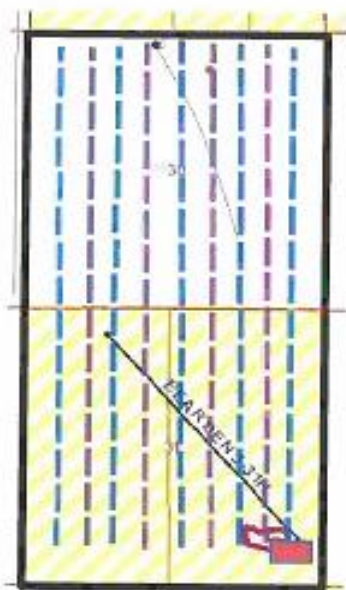
- Section 30-T150N-R94W is a 640-acre spacing unit – PetroShale (USA) Inc. operator
- Section 31-T150N-R94W is a 640-acre spacing unit – EOG Resources, Inc. operator
- Sections 30 and 31 is an overlapping 1280-acre spacing unit
- Section 30 owned by PetroShale
- Section 31 owned by EOG covered by a JOA naming EOG as operator
- PetroShale permits a well on 1280 acre spacing unit – ½ of the lateral Section 30, ½ of the lateral Section 31



# Suspension and Revocation of Drilling Permits

## Antelope-Sanish Pool

EOG Development Plan for T150N - R94W Sec 30 & 31

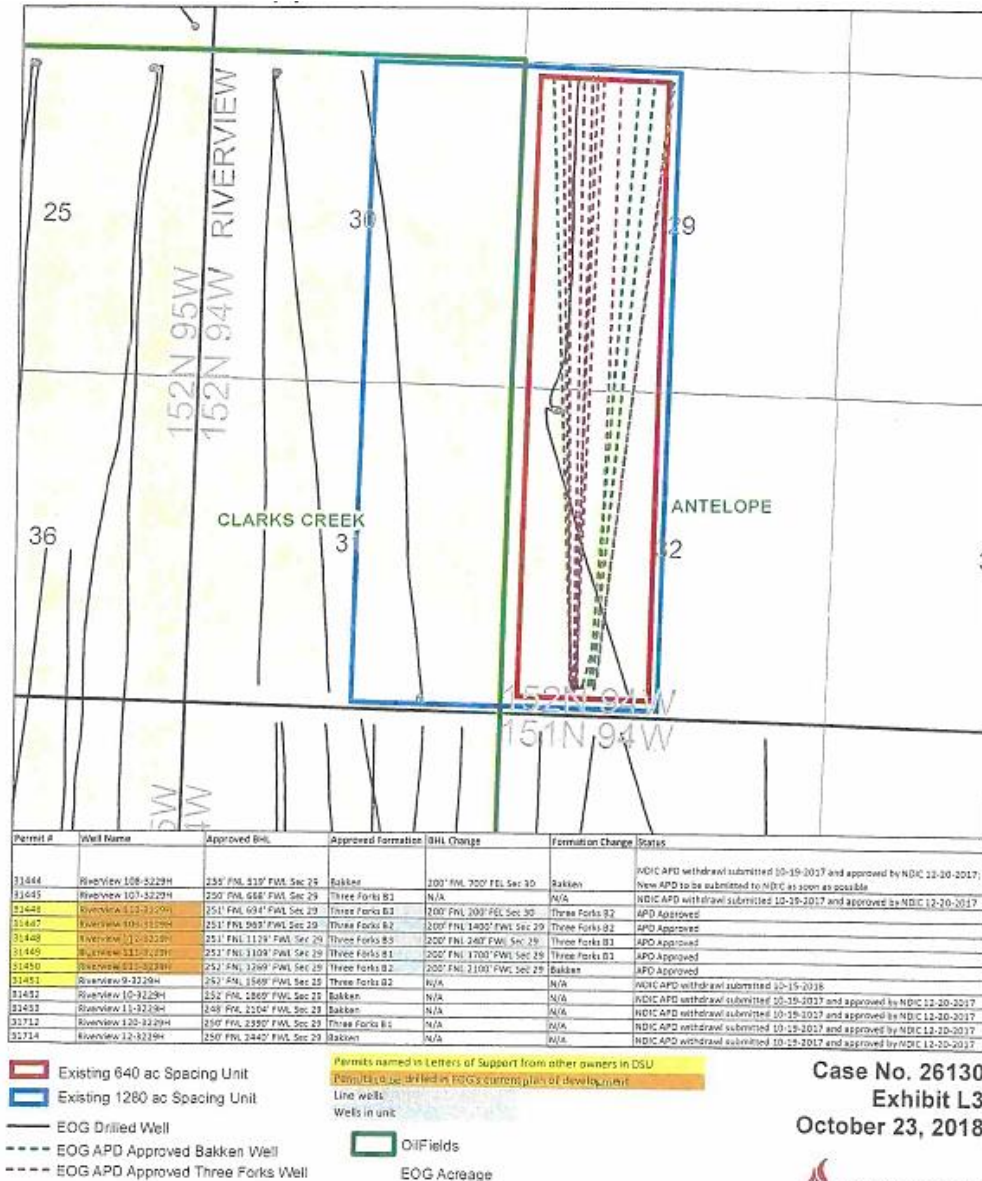


- EOG proposed to drill 9 wells on the 1280-acre spacing unit
- EOG files application to revoke PetroShale's permit on the 1280
- EOG files a lawsuit in the McKenzie County District Court, requesting injunctive relief and declaratory judgment

# Suspension and Revocation of Drilling Permits

- Court grants EOG's request for TRO
- Court denies EOG's request for preliminary injunction
  - Determines jurisdiction lies with the Commission
- Commission denies EOG's request for revocation:
  - Determines jurisdiction lies with the District Court
- Court has opportunity once again to interpret JOA and grant request for preliminary injunction

# Suspension and Revocation of Drilling Permits

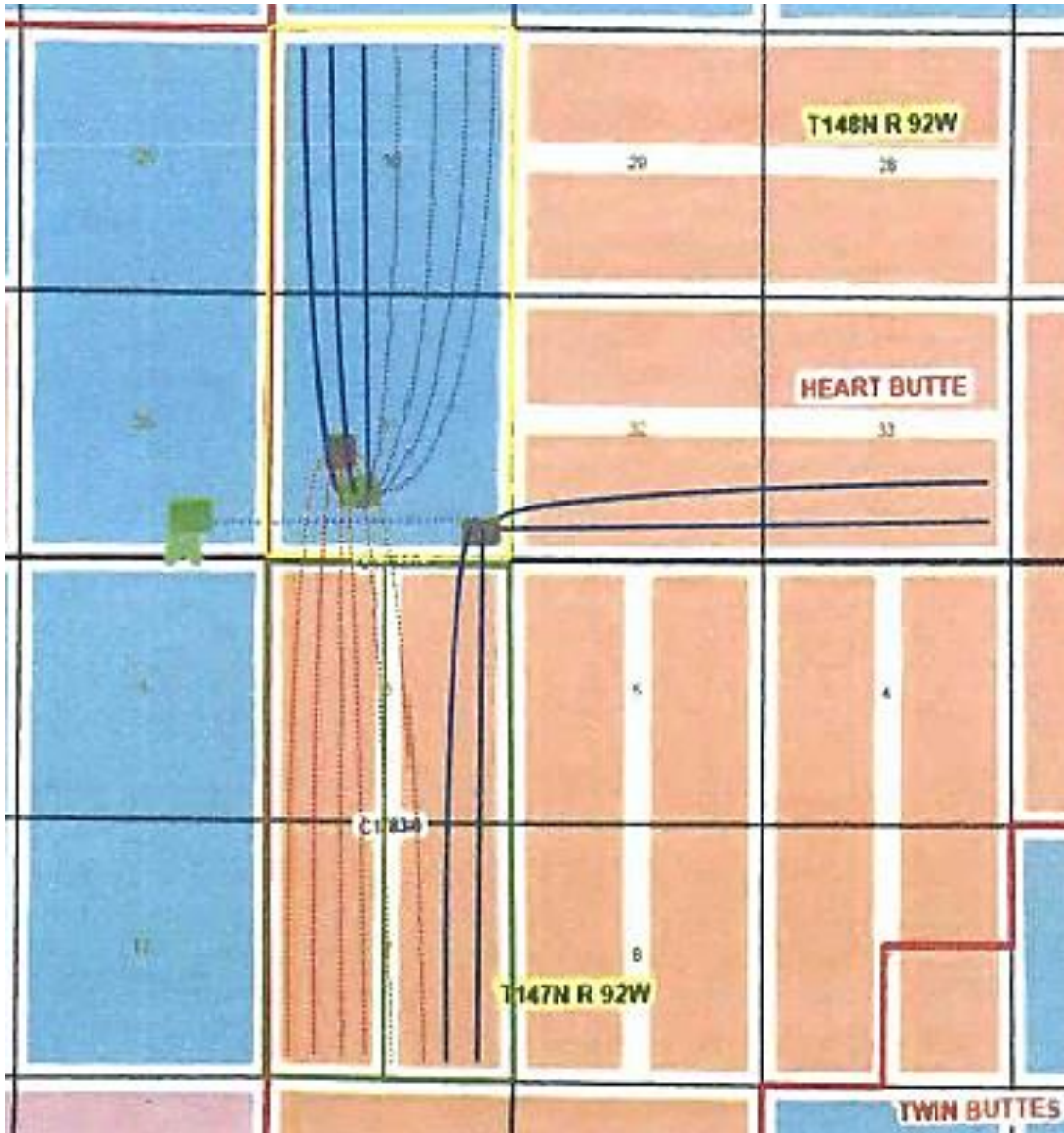


- EOG and PetroShale ultimately reach a settlement
- 1280-acre spacing unit is split into two 640-acre spacing units
- EOG operates east 640
- PetroShale operates west 640

Case No. 26130  
Exhibit L3  
October 23, 2018



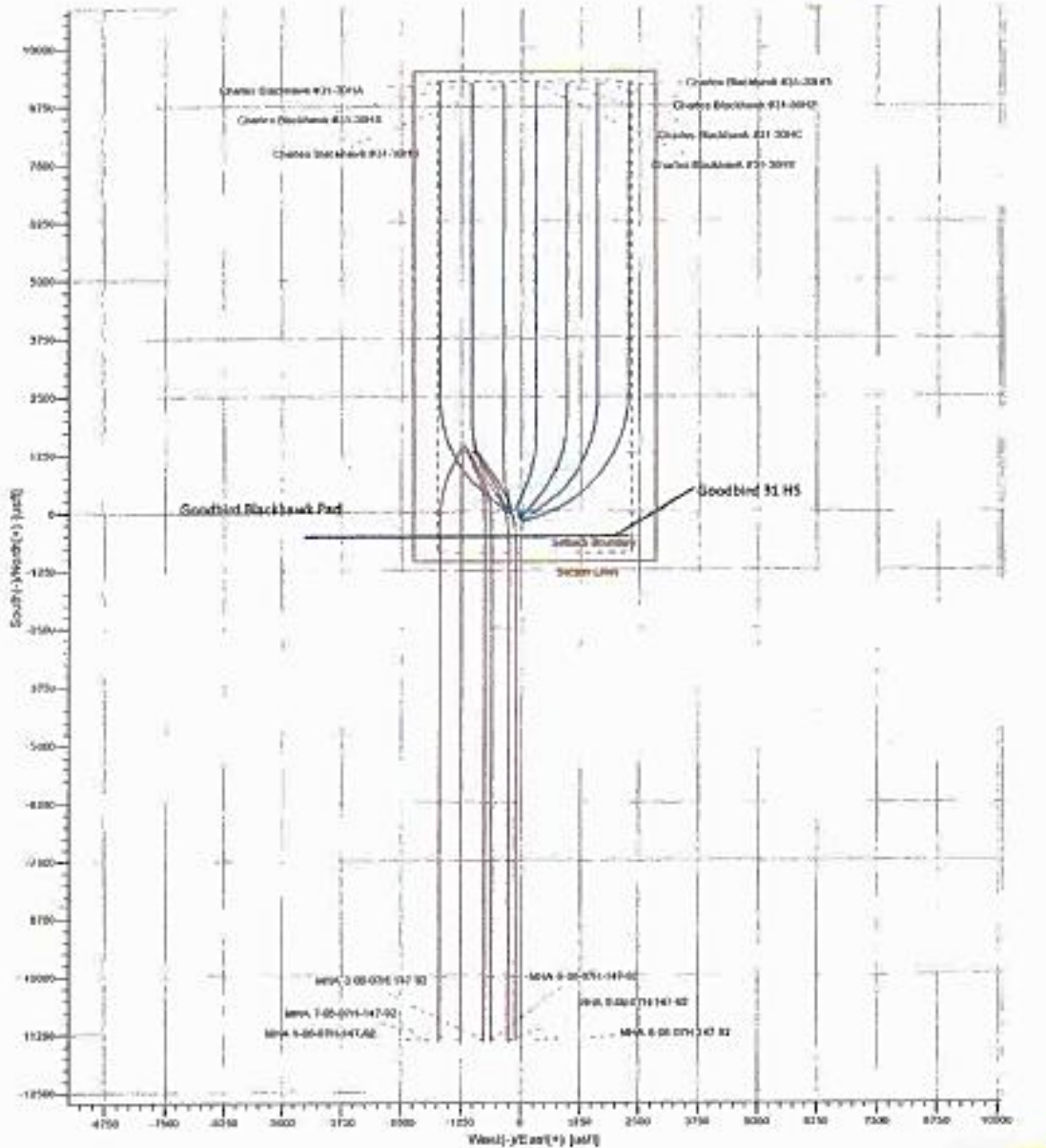
# Suspension and Revocation of Drilling Permits



- WPX Energy is operator of 1280-acre spacing unit Secs. 30 and 31-T148N-R92W
- QEP Energy is operator of 1280 Secs. 6 and 7-T147N-R92W
- QEP permits well with surface location in WPX Spacing Unit
- WPX files application to suspend and revoke QEP permits

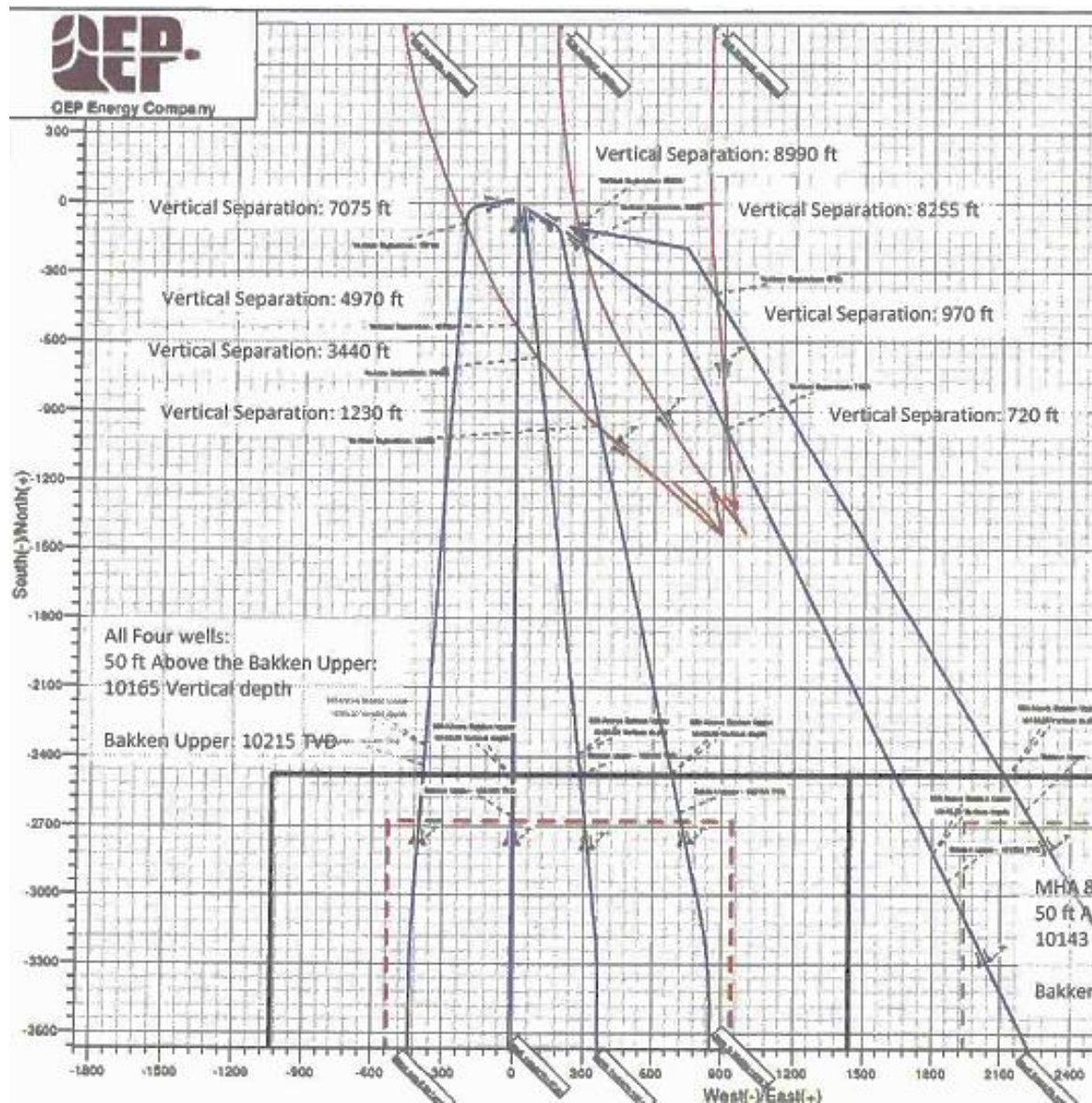


# Suspension and Revocation of Drilling Permits



- QEP's well pad is located in SW/4 of Section 31 north of WPX's existing pad
- QEP's proposed wells could result in potential collision with WPX's wells
- QEP's proposed wells may prevent WPX from effectively and efficiently developing its spacing unit
- Allowing QEP to drill from its proposed pad in Section 31 may cause physical and economic waste, limit the ultimate recovery of WPX's wells

# Suspension and Revocation of Drilling Permits



- QEP and WPX reach an agreement that eliminates risk of collisions
- QEP and WPX stipulate to dismiss Commission case

Lawrence Bender  
Fredrikson & Byron, P.A.  
1133 College Drive, Suite 1000  
Bismarck, ND 58501  
lbender@fredlaw.com  
(701) 221-8700