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UND Energy Law Symposium

Case Update
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Paul Forster
Crowley Fleck PLLP
Bismarck, North Dakota
www.crowleyfleck.com

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Cases Covered

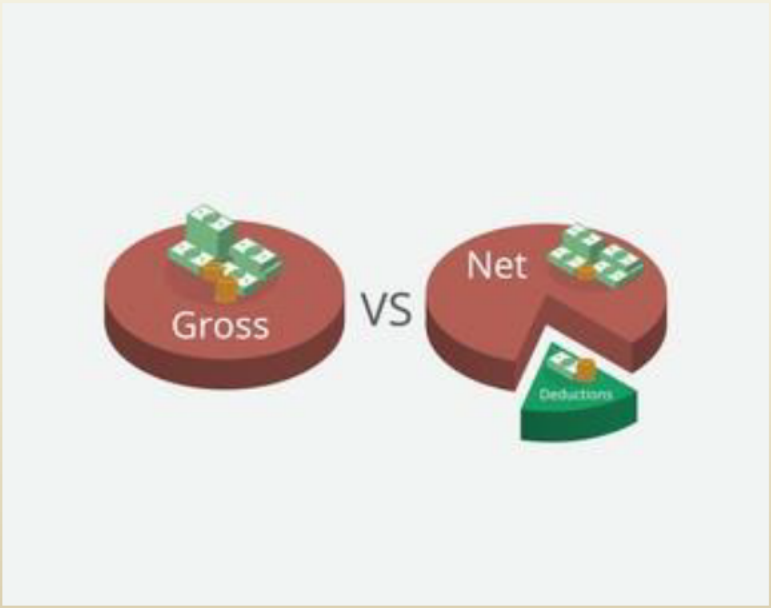
- **"Gross Proceeds" Gas Royalty**
  - *Newfield v. State of North Dakota*
    - 931 N.W.2d 478 (N.D. 2019)
    - 979 N.W.2d 913 (N.D. 2022)
- **"In the Pipeline" Oil Royalty**
  - *Blasi v. Bruin E&P Partners, LLC*, 959 N.W.2d 872 (N.D. 2021)
- **Royalty Interest Statute**
  - *Vic Christensen Mineral Trust v. Enerplus Resources*, 969 N.W.2d 175 (N.D. 2022)
- **Overlapping Spacing Units**
  - *Dominek v. Equinor Energy L.P.*, 982 N.W.2d 303 (N.D. 2022)

Background: Market Value at the Well *Bice v. Petro-Hunt, L.L.C.*

- **Issue: "At the well" gas royalties**
  - Petro-Hunt produced sour gas, treated it at its own plant, and sold it.
  - Class of royalty owners alleged Petro-Hunt improperly deducted PPCs incurred in treating sour gas
    - "the gas royalty clauses are substantially similar and call for gas royalty payments to be calculated based on the **market value of the gas at the well**."
    - "We join the majority of states adopting the 'at the well' rule and rejecting the first marketable product doctrine. Thus, we conclude … Petro-Hunt can deduct post-production costs from the plant tailgate proceeds prior to calculating royalty."

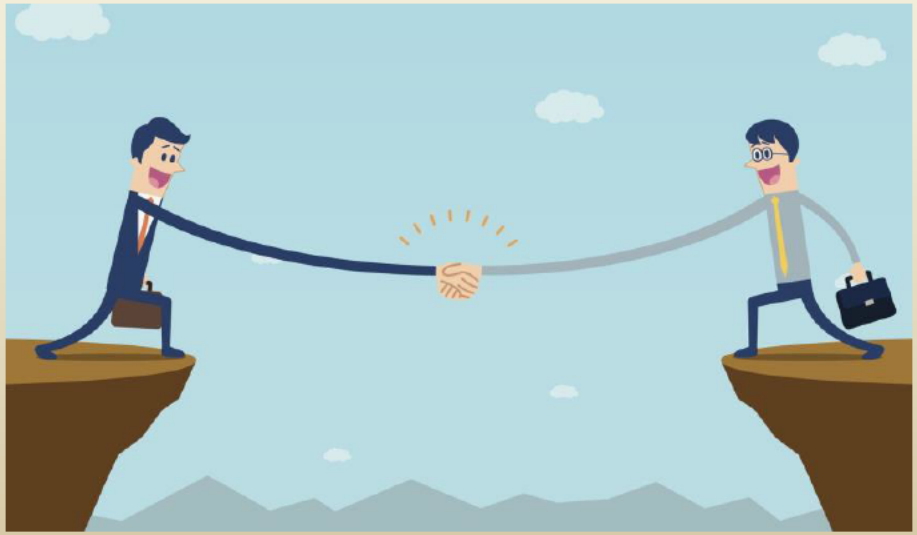
"Gross Proceeds"
Newfield v. State of North Dakota

- **At Issue**
  - State of North Dakota 1979 lease form
  - "Gross proceeds" gas royalty clause



"Gross Proceeds"
Newfield v. State of North Dakota

- **Background**
  - Arm's length, third party gas purchase contract with an unaffiliated entity, ONEOK Rockies Midstream, L.L.C.
  - Percentage of proceeds (POP) contract to process sweet gas.
  - State asserts claim following audit.
  - District Court rules in favor of Newfield; State appeals.



"Gross Proceeds"
Newfield v. State of North Dakota

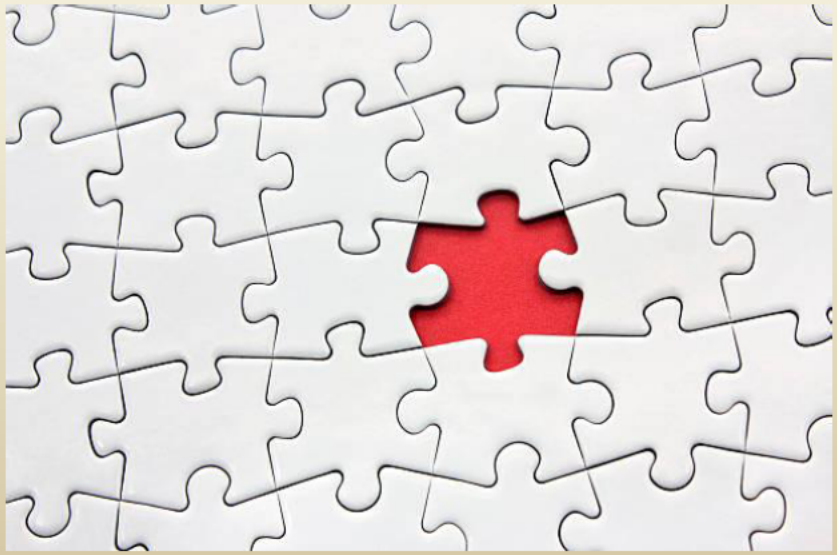
- **North Dakota Supreme Court** reverses the grant of summary judgment.
  - Assumes hydrogen sulfide must be removed to make the product marketable
  - "Gross proceeds" → "without deductions for making the product marketable"
  - Reliance on "all consideration" clause
- **Conclusion:** "Gross proceeds from which the royalty payments under the leases are calculated may not be reduced by an amount that either directly or indirectly accounts for post-production costs incurred to make the gas marketable."

"Gross Proceeds"
Newfield v. State of North Dakota

- **Remand**
  - The Legislative Assembly passed HB 1080 which limited lookback period and interest/penalties for unpaid royalties
    - The district court held HB 1080 to be constitutional; State did not appeal
  - The court concluded that the Supreme Court remanded for trial on breach of contract and not a trial on damages alone
  - Bench trial held in October 2021

"Gross Proceeds"
Newfield v. State of North Dakota

- **Trial Outcome**
  - District Court concluded the State did not prove the existence of a contract between Newfield and the State and the elements of a contract could not be presumed
  - District Court's order did not address the affirmative defenses raised by Newfield.

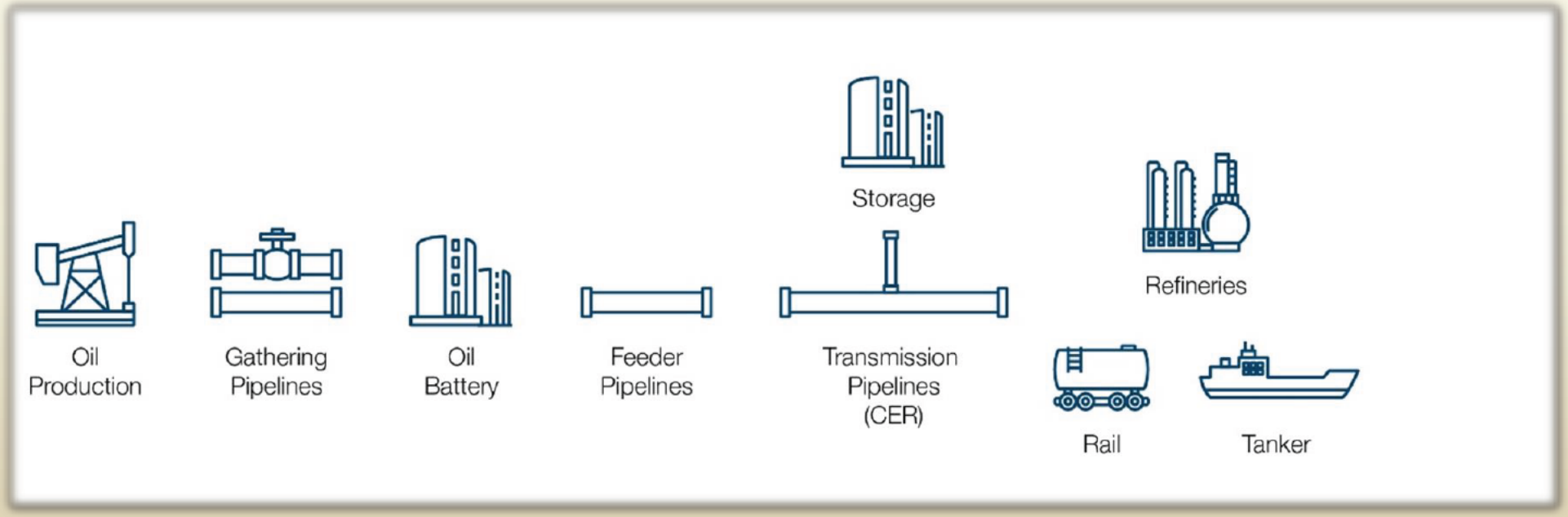


"Gross Proceeds"
Newfield v. State of North Dakota

- **Second Appeal to ND Supreme Court**
  - The Supreme Court concluded that the contract was not relevant because Newfield had statutory duty as operator to pay royalties:
    - N.D.C.C. 47-16-39.1 "requires a lessee or well operator to pay royalties under an oil and gas lease. . . . The statute requires an operator to pay royalties to a mineral interest owner whether the interest is leased or unleased."
    - "[A]s the well operator, Newfield owed the State an obligation to pay royalties according to the State's leases.
  - The Court reversed and remanded for rulings on the State's damages and Newfield's defenses.

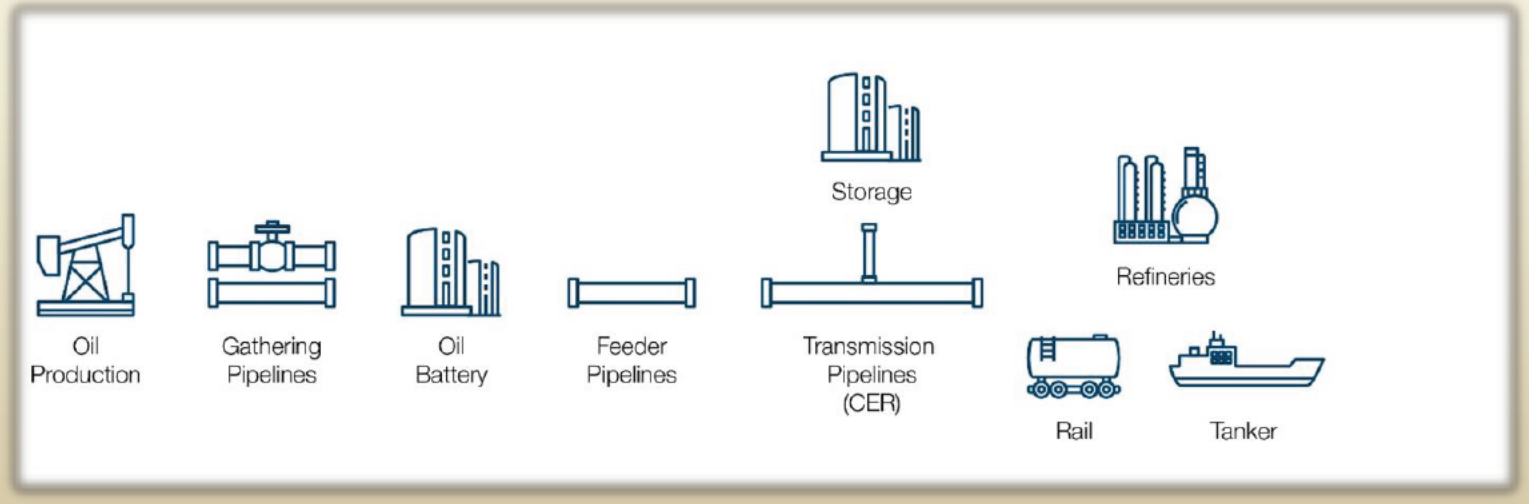
"In the Pipeline" Oil Valuation
Blasi v. Bruin E&P Partners, LLC

- **At Issue**
  - Standard "in the pipeline" oil royalty clause
  - Valuation point?



"In the Pipeline" Oil Valuation
Blasi v. Bruin E&P Partners, LLC

- Blasi sued various operators in separate putative class actions in U.S. District Court for the District of North Dakota for underpaid oil royalties.
  - Lease language obligates the lessee to "deliver to the credit of the Lessor, free of cost, in the pipeline to which Lessee may connect wells on said land, the equal [fractional] part of all oil produced and saved from the leased premises."



"In the Pipeline" Oil Valuation
Blasi v. Bruin E&P Partners, LLC

- Royalty owner claimed the royalties should be "free of cost" to a downstream valuation point where oil enters a transmission pipeline.
- The federal court certified question to the ND Supreme Court: Whether the royalty clause at issue "establishes a royalty valuation point at the well or whether the valuation point is at some other place downstream."

"In the Pipeline" Oil Valuation
Blasi v. Bruin E&P Partners, LLC

- **Blasi Holding – clause values oil at the well**
  - The use of "pipeline" in this context connotes a location in relation to the well; it does not designate a specific type of pipe as "the pipeline."
  - Blasi's interpretation would introduce uncertainty, requiring parties to analyze pipeline characteristics.
  - Irrational to construe the delivery point in a way that changes depending on means of transportation
  - "We hold, as a matter of law, that the oil royalty provision in this case unambiguously sets a valuation point at the well."

Disclaimer: Crowley Fleck PLLP represented several defendants in this litigation.

Royalty Interest Statute
Vic Christensen Mineral Trust v. Enerplus Resources

- **At Issue**
  - North Dakota's royalty interest statute
  - Title dispute safe harbor

Royalty Interest Statute
Vic Christensen Mineral Trust v. Enerplus Resources

- **Royalty Interest Statute, N.D.C.C. 47-16-39.1**

  If the operator under an oil and gas lease fails to pay oil or gas royalties to the mineral owner or the mineral owner's assignee within one hundred fifty days after oil or gas produced under the lease is marketed . . . the operator thereafter shall pay interest on the unpaid royalties . . . at the rate of eighteen percent per annum until paid.

  . . .

  This section does not apply . . . in the event of a dispute of title existing that would affect distribution of royalty payments . . . .

Royalty Interest Statute
Vic Christensen Mineral Trust v. Enerplus Resources

- **Background**
  - Operator's title examiner found discrepancy affecting payments a reserved royalty interest; Operator suspended the entire interest.
  - VCMT and Trust Defendants sued each other for quiet title.
    - The Trust Defendants sought statutory interest from Operator for suspending their royalty payments.
  - The District Court granted summary judgment against Operator holding it liable for suspending payments.

Royalty Interest Statute
Vic Christensen Mineral Trust v. Enerplus Resources

- In awarding statutory interest, the district court stated:
  - The dispute of title between VCMT and the Trust Defendants comes solely as a result of the actions of [Operator] and its title attorney. Had the title opinion been correct in the first place . . . there would have been no dispute.
- Operator appealed arguing the "safe harbor" provision of N.D.C.C. 47-16-39.1 allows operators to suspend royalties "in the event of a dispute of title existing that would affect distribution of royalty payments"

Royalty Interest Statute
Vic Christensen Mineral Trust v. Enerplus Resources

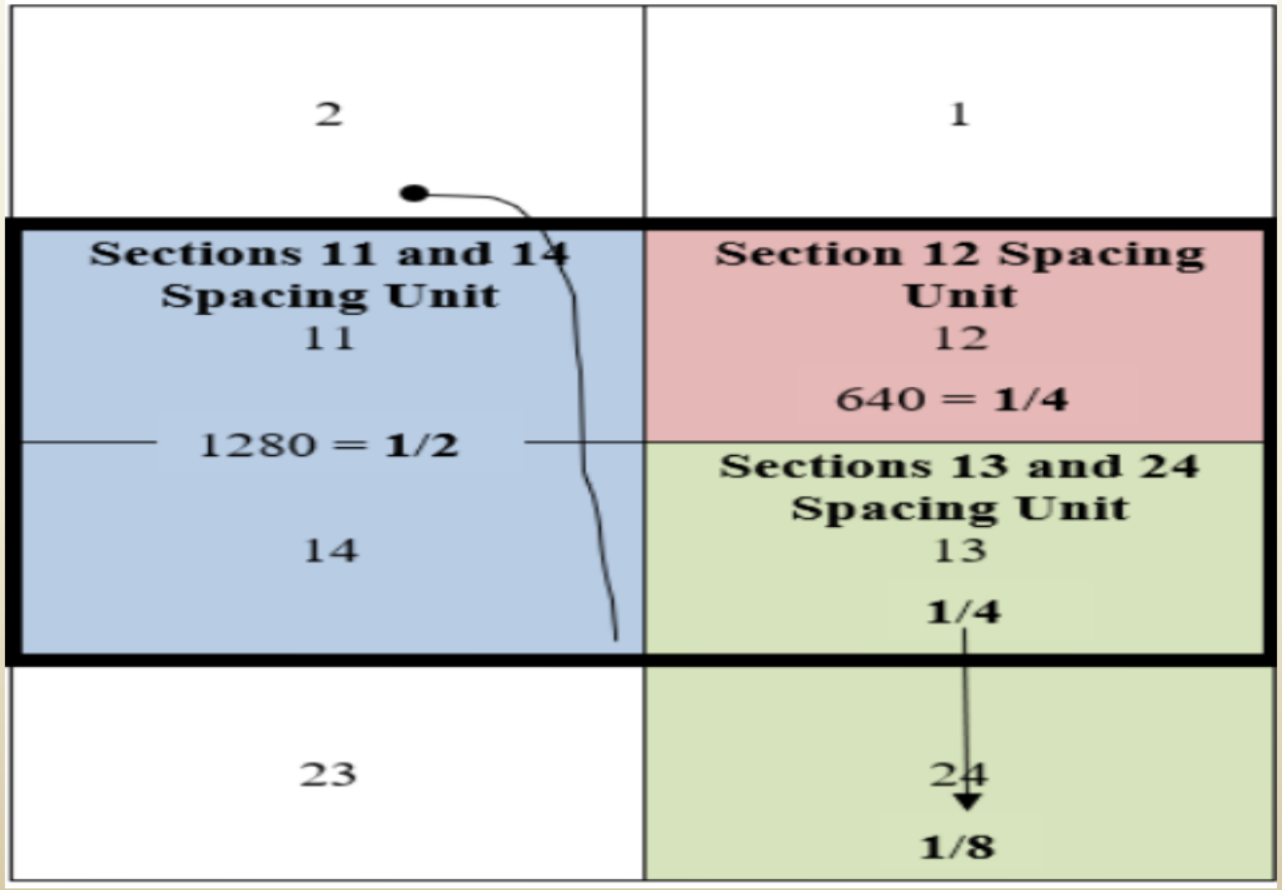
- **Holding – a dispute existed regardless of its source**
  - The district court read a heightened standard into the safe harbor provision, requiring a successful title claim to be advanced by Operator, as opposed to merely a dispute of title existing.
  - Regardless of how the dispute started, "VCMT and the Trust Defendants sued each other to quiet title, undoubtedly creating a 'dispute of title' that would affect their royalty payments."

Royalty Interest Statute
Vic Christensen Mineral Trust v. Enerplus Resources

- **Holding – interest did not accrue on any undisputed fraction**
  - According to Trust Defendants, Operator suspended payments from the disputed 5/128 royalty interest, and the undisputed 123/128 royalty interest.
    - When there is a dispute of title, "the operator shall make royalty payments to those mineral owners whose title and ownership interest is not in dispute." N.D.C.C. 47-16-39.1
    - "Because the Trust Defendants are mineral owners whose title and ownership interest was in dispute, this provision, by its plain language, does not apply."

OVERLAPPING SPACING UNITS
DOMINEK V. EQUINOR ENERGY

- **At Issue**
  - Allocation of production from overlapping spacing unit



OVERLAPPING SPACING UNITS
DOMINEK V. EQUINOR ENERGY

- North Dakota's Pooling Statute:

"That portion of the production allocated to each tract included in a spacing unit covered by a pooling order must, when produced, be deemed for all purposes to have been produced from such tract by a well drilled thereon."

N.D.C.C. 38-08-08(1)

OVERLAPPING SPACING UNITS
DOMINEK V. EQUINOR ENERGY

- Federal court certified five questions to NDSC:
- (1) Does N.D.C.C. 38-08-08(1) require allocation of production to base unit?
- (2&3) Do pooling orders requiring owners receive "their just and equitable share of production from the spacing unit" require or prohibit allocation to base unit?
- (4&5) Does overlapping pooling order that "does not . . . require the reallocation of production allocated to separately owned tracts within any spacing unit by any existing pooling orders or any pooling agreements" require or prohibit allocation to base unit?

OVERLAPPING SPACING UNITS
DOMINEK V. EQUINOR ENERGY

- Holding
  - N.D.C.C. 38-08-08(1), by itself, does not require allocation to base unit
    - "But the federal court has not asked us to determine whether the statute, read together with other documents, requires the allocation method advanced by Equinor."
  - NDSC declined to answer other four questions because Equinor raised administrative exhaustion issues that were not certified by the federal court
  - Case returned to federal court

Disclaimer: Crowley Fleck PLLP filed an amicus brief in this case.

QUESTIONS?