

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA

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WPX Energy Williston LLC,

Civil Action No. \_\_\_\_\_

Plaintiff,

**COMPLAINT**

-VS-

Gabriel Fettig, Howard Fettig, Charles Fettig,  
Morgen Fettig, the Honorable B.J. Jones, in his  
capacity as Associate Judge of the Three  
Affiliated Tribes District Court, and the Three  
Affiliated Tribes District Court,

Defendants.

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Plaintiff, WPX Energy Williston LLC, for its claims against Defendants, Gabriel Fettig, Howard Fettig, Charles Fettig, Morgen Fettig (hereafter collectively referred to as Fettigs), the Honorable B.J. Jones, in his capacity as Associate Judge of the Three Affiliated Tribes District Court, and the Three Affiliated Tribes District Court (hereafter collectively referred to as Tribal Court) alleges as follows:

**PARTIES**

1. WPX Energy Williston, LLC (hereafter referred to as WPX) is a Delaware limited liability company with its principal place of business at 333 West Sheridan Ave., Oklahoma City, OK 73102.

2. Gabriel Fettig is an enrolled member of the Three Affiliated Tribes on the Fort Berthold Reservation and, upon information and belief, he resides in North Dakota.

3. Howard Fettig is an enrolled member of the Three Affiliated Tribes on the Fort Berthold Reservation and, upon information and belief, he resides in North Dakota.

4. Charles Fetting is an enrolled member of the Three Affiliated Tribes on the Fort Berthold Reservation and, upon information and belief, he resides in North Dakota.

5. Morgen Fetting is an enrolled member of the Three Affiliated Tribes on the Fort Berthold Reservation and, upon information and belief, he resides in North Dakota.

6. The Honorable B.J. Jones, is an Associate Judge of the Three Affiliated Tribes District Court on the Fort Berthold Reservation in North Dakota; the Three Affiliated Tribes District Court on the Fort Berthold Reservation is the judicial arm of the Mandan, Hidatsa and Arikara Nation, with its chambers, courtrooms, and offices located in New Town, North Dakota.

### **JURISDICTION AND VENUE**

7. This Court has jurisdiction over the federal questions raised herein pursuant to 28 USC § 1331. Tribal adjudicative authority is controlled by federal law. *Plains Commerce Bank v. Long Family Land & Cattle*, 554 U.S. 316, 317-324 (2008); *Nevada v. Hicks*, 533 U.S. 353, 357-58 (2001).

8. An actual case and controversy exists between the parties as described herein. Therefore, a declaration from this Court is warranted under 28 U.S.C. § 2201.

9. WPX is not required to exhaust tribal remedies because it is plain the Tribal Court lacks jurisdiction, or exhaustion would serve no purpose other than delay. *See Strate v. A-1 Contractors*, 520 U.S. 438, 449, 453 (1997); *see also Kodiak Oil & Gas (USA) Inc. v. Burr*, 932 F.3d 1125, 1133 (8<sup>th</sup> Cir 2019).

10. The Tribal Court is not protected by sovereign immunity because this lawsuit is for declaratory and injunctive relief from the unlawful exercise of jurisdiction. *See Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 796 (2014); *see also Kodiak*, 932 F.3d at 1132.

11. Venue lies in this Court under 28 U.S.C. § 1391. All or a substantial part of the events or omissions giving rise to the claims herein occurred in this judicial district. Upon information and belief, this judicial district is the location where all Defendants reside, have their principle place of business, or hold their official office.

#### **MATERIAL FACTS AND LEGAL ASSERTIONS**

12. Fettigs own four trust allotments that were numbered and named for oil and gas production through the Secretary of the Interior, Bureau of Indian Affairs (BIA) as follows:

Allotment 1109A—Lead Woman;  
Allotment 1836-A—Nancy Dancing Bull;  
Allotment 921 Sweet Grass Woman;  
Allotment 853—Skunk Creek.

13. WPX is a non-Indian company that drills and operates oil and gas wells and owns mineral interests within Fort Berthold Indian Reservation.

14. Pursuant to 25 U.S.C. §§ 323-328, the BIA granted right-of-ways to WPX on Fettigs' allotments for oil well pads, well bores, access roads, pipelines, and other appurtenances; true and accurate copies of the right-of-way documents for each allotment are attached and incorporated hereto as Exhibits A, B, C, and D.

15. Under the BIA regulations, WPX was required to obtain Fettigs' consent to the right-of-ways, and their consent included additional restrictions and conditions negotiated by the Fettigs and WPX. *See* 25 C.F.R. § 169.107.

16. Included in the conditions and restrictions that Fettigs and WPX negotiated is a smoking ban on the right-of-way property. Here is the pertinent language:

GRANTEE will not allow its employees, representatives, vendors, or others to hunt on the premises nor will GRANTEE allow smoking. Additionally, GRANTEE will post "No Hunting", "No Trespassing" and "No Smoking" signs. If GRANTEE, its employees, representatives, vendors or others smoke on premises, GRANTEE will pay a fine of \$5,000 per incident.

17. All the additional conditions and restrictions listed in Fettigs' consent documents, including the one set out in the previous paragraph, are expressly incorporated into, and became a part of, the right-of-ways issued by the BIA to WPX. Here is the pertinent language:

**ADDITIONAL CONDITIONS OR RESTRICTIONS.** This grant incorporates by reference the conditions or restrictions set out in the GRANTOR, attached here.

18. In addition, under the BIA regulations, Fettigs and WPX were allowed to negotiate pre-ordained remedies for right-of-way violations, such as the remedy of \$5,000 per incident for violations of the smoking ban that is set out in paragraph 16 above. *See* 25 C.F.R. § 169.403(b).

19. The BIA regulation that allows negotiation of remedies for right-of-way violations, 25 C.F.R. § 169.403(b), provides that those remedies are only allowed in a right-of-way grant if the Indian landowner's "consent also specifies the manner in which those remedies may be exercised by or on behalf of the Indian landowners." Fettigs' consent documents do not contain any such specification, nor do any other right-of-way documents.

20. In June 2020, Fettigs sued WPX in Tribal Court, alleging violations of the smoking ban that is set out in paragraph 16 above; the case is *Gabriel Fettig, Howard Fettig, Charles Fettig and Morgen Fettig v. WPX Energy*, Case No. CV-2020-0179.

21. WPX moved to dismiss Fettigs' lawsuit in Tribal Court because the Tribal Court lacks jurisdiction to hear the dispute. Among other things, WPX argued that Fettigs' case cannot be heard in Tribal Court because Congress has not expressly given Indian tribes jurisdiction over right-of-ways on allotted land and jurisdiction lies with the BIA; in addition, WPX is not subject to the Tribal Court's jurisdiction because WPX is a non-Indian entity.

22. In June 2021, the Tribal Court determined that it has jurisdiction over the dispute between WPX and Fettigs, and it denied WPX's motion to dismiss.

23. To preserve all opportunities to challenge the jurisdiction of the Tribal Court, WPX has filed a notice of appeal with the Mandan, Hidatsa and Arikara Nation Supreme Court regarding the Tribal Court's denial of WPX's motion to dismiss.

24. The Tribal Court does not have jurisdiction over the dispute between WPX and Fettigs because Congress has not expressly given Indian tribes jurisdiction over right-of-ways on allotted land held in trust by the United States; instead, only the Secretary of the Interior—through the BIA—has been authorized to administer and enforce the right-of-ways. *See* 25 U.S.C. §§ 323-28.

25. In addition, under *Montana v. United States*, 450 U.S. 544 (1981), WPX is not subject to the Tribal Court's jurisdiction because WPX is not an Indian person or entity, and no exception to the *Montana* rule is applicable.

#### **COUNT I: DECLARATORY RELIEF**

26. An actual controversy exists between WPX and Defendants regarding the jurisdiction of the Tribal Court over the dispute between WPX and Fettigs.

27. WPX is entitled to judgment from this Court that declares the Tribal Court has no jurisdiction over the dispute between WPX and Fettigs.

#### **COUNT II: INJUNCTIVE RELIEF**

28. The assertion and exercise of the Tribal Court's jurisdiction over the dispute between WPX and Fettigs is unlawful.

29. Fettigs' prosecution and maintenance of their lawsuit against WPX in Tribal Court is unlawful.

30. Absent injunctive relief, WPX faces irreparable injury because it would be forced to litigate in a forum that does not have jurisdiction, with no realistic way to recoup the expenditure of time, effort, and money of such litigation.

31. Injunctive relief that enjoins Defendants' unlawful conduct will not harm Fettigs because they may pursue the administrative remedies available through the BIA.


32. WPX is entitled to injunctive relief that enjoins Defendants' unlawful conduct regarding the Tribal Court's jurisdiction.

### **PRAYER FOR RELIEF**

WHEREFORE, WPX requests judgment that:

1. Declares the Tribal Court has no jurisdiction over the dispute between WPX and Fettigs;
2. Enjoins the Tribal Court from exercising jurisdiction over the dispute between WPX and Fettigs;
3. Enjoins Fettigs from prosecuting and maintaining their lawsuit against WPX in Tribal Court;
4. Awards WPX its costs, disbursements, attorney's fees, and such further relief as the Court deems just and proper.

Dated July 6, 2021.

By:   
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