

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

WPX Energy Williston, LLC.)	Civil No. 1:21-cv-00145
)	
Plaintiff,)	
vs.)	
)	
Gabriel Fettig, Howard Fettig, Charles)	SPECIAL ANSWER AND
Fettig, Morgan Fettig, the Honorable B.J.)	COUNTERCLAIM OF GABRIEL FETTIG,
Jones, in his capacity as Associate Judge of)	HOWARD FETTIG, CHARLES FETTIG
the Three Affiliated Tribes District Court,)	AND MORGAN FETTIG
and the Three Affiliated Tribes District)	
Court,)	
Defendants.)	

COMES NOW Defendants, Gabriel Fettig, Howard Fettig, Charles Fettig, and Morgan Fettig, (“Defendants Fettig”) by and through their attorney, Reed A. Soderstrom, and for their Special Answer and Counterclaim to Plaintiff, WPX Energy Williston, LLC’s Complaint (“WPX”) and object to the jurisdiction of this Federal Court. For purposes of Answering WPX’s Complaint, Defendants Fettig state as follows:

1. Except as otherwise answered or specifically admitted, each and every allegation and statement of WPX’s Complaint is denied.
2. Defendants Fettig admit paragraphs 1-6, 12-13, 15-16, 18, 20, and 22-23 of Plaintiff’s Complaint.
3. Defendants Fettig deny paragraphs 7-11, 15, 17, 19, and 24-32 of Plaintiff’s Complaint.
4. Defendants Fettig are without sufficient information to admit or deny paragraph 14 of Plaintiff’s Complaint.
5. Defendants Fettig admit in part and deny in part paragraph 21 of Plaintiff’s Complaint, and therefore, deny the allegation.

AFFIRMATIVE DEFENSES

6. Defendants Fettig assert any and all affirmative defenses available to them including but not limited to duress, estoppel, failure of consideration, fraud, illegality, license, and waiver.
7. This Court does not have jurisdiction over this matter as it involves a side agreement and not oil and gas leases between enrolled Tribal members and a non-Indian business that entered into numerous lease agreements on Indian trust lands.
8. The Complaint fails to state a claim for which relief may be granted.
9. Declaratory relief is not available to collaterally attack the decisions and jurisdiction of the Fort Berthold Tribal District Court or its Appellate Court. Exhaustion of Tribal Remedies is required. Plaintiff has a pending appeal in this action in the Fort Berthold Tribal Appellate Court docketed as #AP 2021-007 and CV 2020-0179.
10. The assertion of Tribal Court jurisdiction is not motivated by a desire to harass and is not conducted in bad faith. The Tribal Court action is not violative of jurisdictional prohibitions and tribal exhaustion is not futile as there is adequate future opportunity to challenge the Court's jurisdiction.
11. Tribal authority over the side agreements of large non-Indian companies is an important part of Tribal Sovereignty and civil jurisdiction presumptively lies with the Tribal Court unless affirmatively limited by a specific treaty provision or federal statute.
12. This case is ongoing and Defendants Fettig reserve the right to amend their Special Answer and to assert any other defenses or necessary counterclaims should this court mandate immediate jurisdiction

COUNTERCLAIM

13. In the event this matter is not dismissed and Defendants Fettig are denied the right to proceed in Tribal District Court, Defendants Fettig, by and through their attorney, Reed A. Soderstrom for their Counterclaim against Plaintiff will allege the following:

DEMAND FOR ACCOUNTING

14. Defendants Fettig re-allege the above paragraphs.

15. Plaintiff has intentionally violated the terms of use of Defendants Fettig lands and reduced or appropriated the value of the land against Defendants property.
16. Plaintiff must account to Defendants Fettig regarding the employees and vendors who have been on sight smoking, together with interest, court costs, and reasonable attorney's fees. Plaintiff's actions and omissions constitute a taking, entitling Defendants Fettig to an Order compelling the Plaintiff to make a complete accounting.
17. Plaintiff's actions and omissions warrant an accounting.

II. FRAUD

18. Defendants Fettig re-allege the above paragraphs.
19. Plaintiff committed fraud by entering into Side Letter Agreements with Defendants Fettig, then ignoring the mandates that were important to them.
19. Plaintiff intentionally and fraudulently deceived Defendants Fettig by allowing its employees to smoke at will and providing a connex/smoke-shack with an industrial sized ashtray for the smoking to proceed unabated.
20. Plaintiff made knowingly false statements to Defendants Fettig simply to gain access to their lands. Plaintiff's statements or omissions were intentionally false, and Plaintiff knew or should have known of the falsity of such statements.
21. Plaintiff fraudulently suppressed its knowledge of continuous smoking on Defendants Fettigs' lands in order to avoid paying them an amount owed or pay a significantly reduced amount compared to what the Side Letter Agreements imposed.
22. Defendants Fettig are damaged by Plaintiff's fraudulent actions and/or omissions and entitled to contractual damages, compensatory damages and punitive damages.

III. BREACH OF CONTRACT

23. Defendants Fettig re-allege the above paragraphs.
24. Plaintiff has breached its written and oral side agreements with Defendants Fettig and they are damaged by Plaintiff's actions and are entitled to compensatory damages.

IV. PUNITIVE DAMAGES

25. Defendants Fettig re-allege the above paragraphs.
26. Plaintiff intentionally hid smoking conducted on Defendants Fettigs' lands and then failed to pay them what was mandated in said side agreements. Plaintiff's actions encouraged the intentional violation of the mandated prohibition of smoking by placing a connex on site that served as a "smoke shack" then brought onto Defendants Fettigs' lands the industrial sized commercial ashtrays for its workers to violate the agreements of non-smoking on their property.
27. Plaintiff's actions show such a willful misconduct, malice, fraud, wantonness, oppression, or such want of care that would raise the presumption of conscious indifference to consequences. As a result of Plaintiff's conduct, Defendants Fettig are entitled to recover punitive damages in an amount to be determined at trial.

WHEREFORE DEFENDANTS FETTIG PRAY for judgment as follows:

1. That the matter be dismissed with prejudice and a denial of any relief thereunder;
2. Adjudge and declare that the Three Affiliated Tribes has jurisdiction over this matter;
3. That Defendants Fettig be awarded their costs, attorney fees and disbursements;
4. That Defendants Fettig be granted other relief as justice so requires.

Dated this 9th day of August, 2021.

PRINGLE & HERIGSTAD, P.C.

BY: /s/ Reed A. Soderstrom

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DEMAND FOR JURY TRIAL

Defendants Fettig hereby make a demand for trial by jury upon all issues.

/s/ Reed A. Soderstrom

Reed A. Soderstrom

CERTIFICATE OF SERVICE

I certify that on the 9th day of August, 2021, the following document:

Defendants, Gabriel Fettig, Howard Fettig, Charles Fettig, and Morgan Fettig's Special Answer and Counterclaim to Plaintiff's Complaint.

was filed electronically with the Clerk of Court through ECF filing system, and the ECF will send a Notice of Filing (NEF) to the following:

Robin Wade Forward
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/s/ Reed A. Soderstrom

Reed A. Soderstrom #04579