

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

WPX Energy Williston, LLC.	)	Civil No. 1:24-cv-00021-DLH-CRH
	)	
Plaintiff,	)	
vs.	)	SPECIAL ANSWER AND COUNTER
	)	CLAIM OF:
Gabriel Fettig, Howard Fettig, Charles	)	DEFENDANTS GABRIEL FETTIG,
Fettig, Morgan Fettig, the Honorable B.J.	)	HOWARD FETTIG, CHARLES FETTIG
Jones, in his capacity as Associate Judge of	)	AND MORGAN FETTIG
the Three Affiliated Tribes District Court,	)	
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 thru 6, 12, 13, 19 thru 27
3. Defendants Fettig deny paragraphs: 7 thru 11, 17, 18, 30, 31 thru 38.
4. Defendants Fettig admit in part and deny in part paragraphs: 14, 15, 16, 28, 29 and therefore, deny the allegations.

**AFFIRMATIVE DEFENSES**

5. 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.
6. 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.
7. The Complaint fails to state a claim for which relief may be granted.
8. 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.

9. This case is ongoing, and Defendants Fettig reserve the right to amend their Special Answer and Counterclaim should this Court exercise its jurisdiction.

### **COUNTERCLAIM**

10. 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 the Counterclaim against Plaintiff alleges the following:

### **DEMAND FOR AN ACCOUNTING**

11. Defendants re-allege the above paragraphs.
12. Plaintiff has intentionally violated the terms of use of Defendants Fettig lands and reduced or appropriated the value of the land against said lands.
13. 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 fees. Plaintiff's actions and omissions constitute a taking, entitling Defendants Fettig to an Order compelling the Plaintiff to make a complete accounting.

### **FRAUD**

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

### **BREACH OF CONTRACT**

20. Defendants Fettig re-allege the above paragraphs.

21. Plaintiff has breached its written and oral side agreements with Defendants Fettig; they are damaged by Plaintiff's actions and are entitled to compensatory damages as set forth in the side letter agreements drafted by Plaintiff and relied upon by Defendant Fettig's.

**PUNITIVE DAMAGES**

22. Defendants Fettig re-allege the above paragraphs
23. Plaintiff intentionally hid smoking conducted on Defendants Fettig 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 smoke shack on site that served the purpose of on-site smoking with industrial sized ashtrays for its workers to violate the agreements of non-smoking on their property.
24. 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:

25. That this federal matter be dismissed with prejudice and a denial of Plaintiff's requested relief;
26. Adjudge and declare that the Three Affiliated Tribes have jurisdiction over this matter;
27. That Defendants Fettig be awarded their costs, attorney fees and disbursements;
28. That Defendants Fettig be granted other relief as justice requires.
29. That the counter claim be honored if this court exercises jurisdiction over the proceedings and that a jury trial be granted.

Dated this 17th day of March 2024.

SODERSTROM LAW, P.C.

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**DEMAND FOR JURY TRIAL IF THE MATTER REMAINS IN FEDERAL COURT.**

Defendant Fettig provide notice of its demand for a jury trial for resolution of its counterclaim in the event this Federal Court retains jurisdiction over the matter.

*Reed Soderstrom*

Reed A. Soderstrom

**CERTIFICATE OF SERVICE**

I certify that on the 18<sup>th</sup> day of March 2024, this document 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:

Rob Wade Forward, Attorney at Law, 424 S 3<sup>rd</sup> St., Ste. 206, Bismarck, ND 58504.  
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*Reed Soderstrom*

Reed A. Soderstrom