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ENERGY IN THE LAW

NEWS ALERT

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North Dakota State Law Controls Where United States Reacquired Formerly Private Lands; Sovereign Immunity Waived



In *Continental Resources, Inc. v. North Dakota Board of University and School Lands*, the Eighth Circuit resolved a dispute between North Dakota and the United States over entitlement to royalties from minerals extracted from beneath Lake Sakakawea, and ruled in favor of the State of North Dakota. 2025 U.S. App. LEXIS 10619 (8th Cir. 2025).

When North Dakota was admitted as a state in 1889, it acquired title to the bed of the Missouri River, which extended to the river's ordinary high water mark ("OHWM"). This title also included the underlying mineral interests. Subsequently, the United States patented and conveyed lands above the OHWM to private third parties. As a result of eminent domain and purchases, the United States *reacquired* some of that land above the OHWM to construct the Garrison Dam and create Lake Sakakawea, vesting the United States with mineral interests

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underlying some of these lands. Based on discrepancies between the surveys used by the United States and the Bureau of Land Management, and those commissioned by the North Dakota Board of University and School Lands (“Land Board”), the parties disputed the boundary line of the OHWM.

Continental Resources leased minerals from both the Land Board and United States, and brought an interpleader action in state court to resolve the United States’ and Land Board’s competing claims to over 3.5 million dollars in royalty proceeds. The United States removed the case to federal court, and moved to dismiss based on sovereign immunity. The Eighth Circuit was tasked with resolving whether the United States waived its claim to sovereign immunity, and a choice of law issue: does federal or state law apply to the question of land ownership?

The choice of law issue is important. If state law controlled, the state survey determining the OHWM would control, and North Dakota would be entitled to a larger share. Federal law originally fixed the location of the OHMW, which determined the boundary between the riverbed (owned by North Dakota) and lands above the OHMW (owned by the federal government). *Id.* at 12. However, “lands... having passed from the Federal Government are subject to the laws of the State in which they lie.” *Id.* at 12 (citing *Oregon ex rel. State Land Bd. v. Corvallis Sand & Gravel Co.*, 429 U.S. 363, 377 (1977)). Because “the United States yielded title to the uplands above the OHWM and the OHWM has moved since the admission of North Dakota into the Union, North Dakota law governs the current location of the OHWM.” *Id.* at 12-13. Therefore, North Dakota’s commissioned survey governs the location of the OHWM. *Id.* at 16.

As a jurisdictional matter, the court held that under the plain language of North Dakota statute, the United States had a lien on the disputed minerals, which waived its sovereign immunity claim. Reading federal and North Dakota law together, the court agreed with the district court’s

reading of the statute: “if the United States owns minerals in North Dakota, it has a continuing state-law lien on proceeds derived from those minerals until the lien is satisfied.... Because the United States claims an interest in the [d]isputed [m]inerals, it cannot argue it does not have or claim a lien on unpaid royalties produced from those minerals.” *Id.* at 8-9.

Judge Stras dissented in part. He explained that a new survey of the riverbed in 2017 had expanded the amount of land North Dakota actually owned, thereby decreasing the amount owned by the United States, trumping the previous survey from the 1950s. North Dakota legislation left the United States with less land and no route to dispute it. Judge Stras argued that the Supremacy Clause of the United States Constitution means that the United States is no ordinary landowner, and North Dakota did not have the power to unilaterally limit or restrict the United States’ land. However, as the majority opinion discussed, the state governs the lands in question because they had been voluntarily relinquished to the State before their reacquisition. Therefore, the location of the OHWM is subject to the laws of the State of North Dakota. *Cont’l Res. v. N.D. Bd. of Univ.*, 2025 U.S. App. LEXIS 10619 at 14 (8th Cir. 2025).

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