

# Oil and Gas/Surface Use Agreement: Federal Appellate Court Addresses Authority to Place Water Pipeline



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The United States Court of Appeals for the Eighth Circuit (“Eighth Circuit”) addressed an interpretive dispute regarding a Surface Use Agreement (“SUA”) pertaining to oil and gas operations in a July 23rd opinion. See *Mikkelson Land, LLLP v. Cont’l Res., Inc.*, 108 F.4th 1042 (8th Cir. 2024).

The question considered was whether the SUA gave Continental the authority to lay a water pipeline across the area governed by the SUA.

Continental Resources, Inc. (“Continental”) is described as a large-scale energy corporation. It secured mineral rights to several tracts in McKenzie County, North Dakota.

Continental entered into a SUA with the landowners of the surface estates. Mikkelson Land, LLLP (“Mikkelson”) was on one of the landowners.

An SUA was needed to facilitate the oil and gas operations. The SUA between Mikkelson and Continental entered into in 2012 provided the right:

...to go upon and across the Property as [Continental] may reasonably require for well locations, roads and associated facilities, related to its Operations.”

The parties executed an addendum to the SUA in 2015. It expanded Continental’s rights in exchange for monetary compensation.

The SUA and the relevant addendum included specific easements for the construction of water pipelines. They were denoted in a map attached to the agreement.

Continental, in 2018, initiated installation of a water pipeline system to assist in the hydraulic fracturing process. Mikkelson objected to this installation. It argued that the SUA did not allow for the construction of the pipeline.

Continental continued constructing the pipeline.

Mikkelson filed an action in federal district court asserting the following causes of action:

- Breach of contract for installation of excess pipelines.
- Trespass for installation of pipelines.
- Breach of contract for failure to compensate for roads and well sites.
- Breach of contract for failure to reclaim.
- Breach of contract for failure to consult.

- Breach of contract for failure to make reasonable efforts.
- Breach of contract for failure to install access gates.
- Claim for injunctive relief.

The district court granted summary judgment on certain claims to Continental. It held that the SUA was unambiguous and explicitly allowed the installation of the disputed water pipelines.

Mikkelson appealed the grant of summary judgment to the Eighth Circuit.

Mikkelson argued that the SUA and the addendum unambiguously limited Continental to the installation of “certain oil and gas pipelines that were specifically referenced.” Further, it asserted that general rights granted under the SUA’s provisions must yield to the specific provisions of the addendum.

The Eighth Circuit affirmed the district court’s grant of summary judgment.

The Eighth Circuit applied North Dakota law. It holds that contractual language governs the interpretation insofar as determining clarity and ambiguity. Further, it noted that issues of this matter are in which the Court is to “interpret the contract as a whole” to effectuate provisions, words, and intent of the parties.

The Eighth Circuit first concluded that if the SUA were read to mean that no pipelines could be installed other than those included on the original map, then there would not have been a need to include detail regarding the manner of compensation for “any additional, future right of way.”

Second, the Eighth Circuit failed to find a conflict in the language of the SUA and the addendum. Therefore, the contract was construed to grant Continental the right to lawfully construct and use the water pipeline system.

The Eighth Circuit affirmed the district court’s decision. It held that the district court did not err in granting summary judgment to Continental.

A copy of the opinion can be downloaded [here](#).