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STATE OF NORTH DAKOTA

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

Robert & Laurie Banderet, Carol Beck, Gerald Bosse, Matthew Bosse, Duane & Valera Hayen, Beverley Kelley, Leon Mallberg, Paul Mathews, Nancy Mathews, Katheryn Nelson, R & I Memorial Trust, Kathaleen R. Rehborg as Trustee, Gerald & Judith Ringdahl, and John & Beth Wentworth, Plaintiff/Appellant, and William E. Kurschet, and Jan Vold & Melanie Jones as Trustees of the Evergreen Trust, Plaintiffs v. Sargent County Water Resource District and Ransom County Water Resource District, Defendant/Appellee.	SUPREME COURT NO. 20180253 SARGENT COUNTY DISTRICT COURT NO. 41-2017-CV-00014

APPEAL FROM JUDGMENTS OF DISMISSAL

THE HONORABLE BRADLEY A. CRUFF

SOUTHEAST JUDICIAL DISTRICT

SARGENT COUNTY, NORTH DAKOTA

BRIEF OF APPELLEE SARGENT COUNTY WATER RESOURCE DISTRICT

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STATEMENT OF ISSUES PRESENTED

[¶1] Did the district court properly dismiss the complaint for declaratory and injunctive relief because Plaintiffs were required to appeal the challenged decision pursuant to N.D.C.C. § 28-34-01?

[¶2] Did the district court properly conclude the Project was being pursued under N.D.C.C. § 61-16.1-45, and the statutory procedures of N.D.C.C. §§ 61-16.1-17 to 61-16.1-19 were not applicable?

STANDARD OF REVIEW

[¶3] Statutory interpretation is a question of law, reviewed de novo on appeal with the primary purpose to determine the intention of the legislation from the plain language of the statute. See Zajac v. Traill Cty. Water Res. Dist., 2016 ND 134, ¶ 6, 881 N.W.2d 666.

[¶4] "When jurisdictional facts are not disputed, the issue of subject matter jurisdiction is a question of law, which [the North Dakota Supreme Court] reviews de novo." Garaas v. Cass Cty. Joint Water Res. Dist., 2016 ND 148, ¶ 6, 883 N.W.2d 436 (quoting In re Estate of Vaage, 2016 ND 32, ¶ 14, 875 N.W.2d 527).

STATEMENT OF CASE

[¶5] Plaintiffs improperly attempted to initiate service of the summons and complaint on April 20, 2017, via certified mail, return receipt requested. Court Doc. 2. However, after the Sargent County Water Resource District ("SCWRD") filed a motion to dismiss, that asserted, in part, improper service, Plaintiffs properly served the summons and complaint on the SCWRD. See Court Doc. 24-27. In addition to improper service, the SCWRD's motion to dismiss asserted Plaintiffs failed to timely appeal the challenged SCWRD decision as required by N.D.C.C. §§ 28-34-01; 61-16.1-54.

[¶6] On January 2, 2018, the district court denied the SCWRD's motion to dismiss. P-App-79. The district court found Plaintiff could not meet the requirements imposed by statute because they did not receive notice of the SCWRD decision. P-App-71.

[¶7] On February 2, 2018, following a hearing on Plaintiffs' motion for preliminary injunction, the SCWRD filed a motion to reconsider the January 2, 2018 order denying the motion to dismiss because the evidence received at the hearing demonstrated Plaintiffs had notice of the SCWRD decision but chose not to appeal. Court Doc. 121-23.

[¶8] On April 2, 2018, the district court granted the motion to reconsider, concluding the Project (relating to Drain 11 which has existed since 1917) and the maintenance levy were permitted by N.D.C.C. § 61-16.1-45. P-App-90. The district court found "[t]he statutory procedures for construction of a new legal drain, as argued by Plaintiffs, specifically [N.D.C.C. §§ 61-16.1-17; 61-16.1-18; and § 61-16.1-19], are not applicable to the [Project]." P-App-90. Finally, the district court determined Plaintiffs' were required to appeal the decision pursuant to N.D.C.C. §§ 28-34-01 and 61-16.1-54, yet failed to do so. P-App-91. As a result, Plaintiffs' complaint was dismissed. P-App-94.

STATEMENT OF FACTS

[¶9] Drain 11 is a legal assessment drain constructed in 1917 through Sargent County that drains into the Upper Wild Rice River. Court Doc. 3, ¶ 32. The assessment area for Drain 11 consists of land in the Upper Wild Rice River watershed that was determined to receive a benefit from the existence of the drain. Id. at ¶ 35.

[¶10] To determine the proper assessment of landowners and because culverts began to fail along the drain, the SCWRD requested the completion of the Upper Wild Rice Watershed Study ("Study") to allow maintenance of Drain 11 and replacement of failed culverts in compliance with crossing standards. TT-11:8-19; 12:5-25; 67:23 to 68:9[1]. The Study was pursued to ensure the drain remains open and to comprehensively plan for maintenance and replacement of failed culverts. TT-67:23 to 68:15; Court Doc. 98.

[¶11] In September 2014, the SCWRD commissioned engineering plans for Drain 11. P-App-120-121; Court Doc. 98.

[¶12] In February 2015, landowners met with the SCWRD to hear the engineer's preliminary report. Court Doc. 80, PL18-19. It was determined that Drain 11 was "inadequate, has sediment buildup, the drainage area is flat and water does not move efficiently and the culverts are undersized." Id.

[¶13] In April 2016, the SCWRD discussed the Study, which provided the "tool necessary for board members to use in proceeding with reconstruction of the drain." P-App-135.

[1] The Transcript of the hearing on Plaintiffs' Motion for Preliminary Injunction on January 9, 2018, filed as Court Doc. 125, will be referred to as TT, followed by the page number:line number.

[¶14] At the June 16, 2016, SCWRD meeting, the Study was presented with a phased maintenance plan for a total cost of $3,900,000 with $2,281,486 being allocated "from the local maintenance fund." P-App-138.

[¶15] At the October 20, 2016, SCWRD meeting, the "Resolution of Necessity Regarding Drain 11 Improvement Project No. 2016-01[2]" was considered and adopted. P-App-141-143. By this decision, the SCWRD approved going forward with the Project. This decision concluded "the Drain 11 Project will provide more effective and efficient drainage through Drain 11; increased drainage capacity through Drain 11; enhanced control over the Drain 11 watershed area; enhanced breakout protection for adjacent properties; improved drainage for the benefit of the Drain 11 watershed; and more effective and efficient operation and maintenance of Drain 11." Id. The SCWRD determined the Project would not require any new properties and does not require a vote or additional legal proceedings. Id. Plaintiffs did not attend this meeting. P-App-140-143; TT-40:18 to 41:1.

[¶16] The evidence established the Project will benefit the entire assessment district, including lands and properties owned by Plaintiffs. TT-77:14-25; 79:24-80:4.

[¶17] On October 28, 2016 – 8 days after the Resolution of Necessity was approved – Plaintiff Banderet sent an email to the North Dakota State Engineer/North Dakota State Water Commission, on whether the SCWRD was required to conduct a vote on the Project. TT-53:19-23; Court Doc. 100. He sought direction on whether a maintenance levy could fund the Project and if the landowners' should challenge the SCWRD's

[2] The Drain 11 Improvement Project No. 2016-01 shall be referred to as the "Project." The October 20, 2016 Resolution of Necessity Regarding Drain 11 Improvement Project No. 2016-01 shall be referred to as the "Resolution of Necessity."

decision. TT-53:24 to 54:8; Court Doc. 100. He understood the response was to seek legal advice. TT-54:9-12.

[¶18] The SCWRD held a special meeting on November 16, 2016. P-App-144; Court Doc. 102-103. The engineer for the Project facilitated the meeting. TT-41:2 to 42:5; 60:12-14. A power point was used to describe the Project. TT-64:4-16; Court Doc. 102. The presentation explained a landowner vote was not necessary because the maintenance levy would pay for the SCWRD's portion of the Project costs. TT-41:2 to 42:5; 64:20-25; Court Doc. 102.

[¶19] A number of Plaintiffs were in attendance at the November 16, 2016, meeting. TT-98:2-10; Court Doc. 103. This meeting reiterated the SCWRD decided, through the Resolution of Necessity, the Drain 11 Project would proceed without a vote and the maintenance assessment would pay the SCWRD's portion of the Project. TT-41:2 to 42:5; 64:17-25; 98:23 to 99:3; Court Doc. 102, p. 10. One Plaintiff expressed his disagreement with the SCWRD's decision after the meeting. TT-65:1-20.

[¶20] On November 17, 2016, the SCWRD held its regular meeting. P-App-145-148. During this meeting, the SCWRD approved the minutes from its October 20, 2016, meeting. TT-42:6-19; 95:15 to 96:9; P-App-145-148. A few Plaintiffs attended the meeting and it was admitted no one precluded them from receiving a copy of the October minutes, prior to, or at the meeting. TT-48:25 to 49:16; 50:11-15.

[¶21] During the November 17, 2016, SCWRD meeting, Plaintiffs presented concerns of the costs/benefits of the Project, the maintenance levy, whether landowners were in favor, and requested a vote. TT-44:13-22; 45:14-17; P-App-146. Again, the SCWRD stated a vote was not necessary. TT-46:24 to 47:4; P-App-146. Plaintiff Banderet

admitted by the November 17, 2016, meeting the details of the Project were known. TT-44:23 to 45:13; 53:19 to 54:12; Court Doc. 100. Plaintiffs requested a landowner vote at the November 17, 2016, meeting because they believed a vote was required to proceed with the Project. TT-46:5-10.

[¶22] According to the standard practice of the SCWRD, a week prior to a scheduled meeting a copy of the agenda and the prior month's draft minutes are sent to anyone who makes a request. TT-86:14 to 87:11-16; 88:3-11; Court Doc. 106. A request can be made by "a phone call, a text, anything, email." TT-112:12-19. Other than Plaintiff Bosse and Banderet, no Plaintiffs made any request to obtain minutes or agendas. See Court Doc. 106. However, Plaintiffs shared information regarding the Project, with Plaintiffs Banderet and Mathews being the most knowledgeable. TT-41:13-17; 57:16-17.

[¶23] Regardless of Plaintiffs' position, the SCWRD is required to maintain Drain 11, which consists of over 40 mile of assessment drain with culverts that are failing and slopes that are sloughing. TT-14:16 to 15:6; 67:23 to 68:9. The assessments made by the SCWRD for drains and projects are exercises of discretion required to ensure these drains remain safe, open and functional. TT-15:2-6; 17:23 to 18:3; 22:10-16; 23:8-11.

LAW AND ARGUMENT

I. THE DISTRICT COURT PROPERLY DISMISSED PLAINTIFFS' COMPLAINT BECAUSE THEY FAILED TO TIMELY APPEAL PURSUANT TO N.D.C.C. § 28-34-01.

[¶24] Plaintiffs assert the complaint for declaratory and injunctive relief was proper as the Resolution of Necessity contains language to "waive" statutory duties imposed upon the SCWRD and it was impossible to fairly litigate this issue on appeal, which made an appeal an inadequate remedy at law. Appellant Brief, ¶ 35. Plaintiffs' argument misconstrues the law in an attempt to impose mandatory duties upon the SCWRD that do

not exist. The facts in the record demonstrate there was more than sufficient notice or knowledge on the part of Plaintiffs after the passage of the Resolution of Necessity, and more than sufficient time at appeal within the 30 days required under N.D.C.C. § 28-34-01. Yet, Plaintiffs failed to timely appeal.

A. Plaintiffs Failed To Perfect An Appeal Pursuant To N.D.C.C. § 28-34-01.

[¶25] The decision of Cossette v. Cass Cty. Joint Water Res. Dist., 2017 ND 120, 894 N.W.2d 858, makes clear the Resolution of Necessity could not be challenged by means of an action for declaratory or injunctive relief but rather, Plaintiffs were mandated to bring an appeal under N.D.C.C. §§ 28-34-01; 61.16.1-54. The Cossette decision reasoned that a collateral attack on a Resolution of Necessity is not appropriate because "Chapter 61–16.1, N.D.C.C., governs water resource districts" and pursuant to "N.D.C.C. § 61–16.1–54, an appeal may be taken 'from any order or decision of the water resource board by any person aggrieved' [but] '[t]he appeal must be taken to the district court . . . and is governed by the procedure provided in section 28–34–01.'" Cossette, 2017 ND 120, ¶ 11. This is a well-settled principle of law. See Anderson v. Richland Cty. Water Res. Bd., 506 N.W.2d 362, 365 (N.D. 1993) ("declaratory judgment action was inappropriate because N.D.C.C. § 28–34–01 'governs any appeal . . . of a local governing body'"); Olson v. Cass Cty., 253 N.W.2d 179, 182 (N.D. 1977) (an appeal is an adequate remedy); Chester v. Einarson, 34 N.W.2d 418, 427 (N.D. 1948) (a right of appeal may not be disregarded to obtain injunctive relief); Krahl v. Nine Mile Creek Watershed Dist., 283 N.W.2d 538, 544-45 (Minn. 1979) (the availability of an appeal precludes the declaratory judgment action); see also 1995 N.D. Op. Att'y Gen. L-29.

[¶26] A review of Plaintiffs' complaint reveals Plaintiffs sought to circumvent the mandated appeal process, and the standard of review imposed thereunder, with respect to

the Resolution of Necessity. The very relief sought by Plaintiffs are matters that should have been the subject of an appeal under N.D.C.C. §§ 28-34-01; 61-16.1-54. Yet, Plaintiff chose not to timely appeal. "The plain language of N.D.C.C. § 61–16.1–54 allows an aggrieved party to appeal from any order or decision of a water resource board." Cossette, 2017 ND 120, ¶ 13. Although the statute does not define an aggrieved party, this Court has defined an aggrieved party as "one who has some legal interest that may be enlarged or diminished by the appealed decision." Treiber v. Citizens State Bank, 1999 ND 130, ¶ 5, 598 N.W.2d 96. "The party's interest must be immediately, directly, and adversely affected, and an effect that is contingent or indirect, or that results merely in some possible, remote consequence, is insufficient." Id.

[¶27] N.D.C.C. § 61-16.1-54 mandates a landowner must appeal an adverse order or decision of a water resource board. Cossette, 2017 ND 120, ¶ 14. Here, the SCWRD, through the Resolution of Necessity, found the Project will provide more effective and efficient drainage, increase capacity, enhanced control over the watershed area, enhanced breakout protection, improve drainage for the benefit of the district, and allow for more effective and efficient operation and maintenance. P-App-141-143. The Resolution of Necessity further states the Project does not require a vote because the SCWRD "will manage, own, operate, and maintain Drain 11, including the [Project] . . . under Chapter 61-16.1 of the North Dakota Century Code." P-App-141-143. Accordingly, Plaintiffs "became aggrieved under N.D.C.C. § 61-16.1-54 upon the [SCWRD's] passage of the resolution of necessity." Cossette, 2017 ND 120, ¶ 15. Any argument to the contrary lacks merit, particularly when one considers Plaintiffs were assessed for the Project through their 2016 property statements. Court Doc. 96, 111.

[¶28] An appeal from a local governing body decision, like the SCWRD decision here, "invokes the appellate jurisdiction of the district court." Smith v. Burleigh County Bd. of Comm., 1998 ND 105, ¶ 6, 578 N.W.2d 533 (citing Reliable, Inc. v. Stutsman Cty. Comm'n, 409 N.W.2d 632, 634 (N.D. 1987)). Under Article VI, § 8, of the North Dakota Constitution, a district court has "such appellate jurisdiction as may be provided by law." Id.; see also Reliable, Inc., 409 N.W.2d at 634. Pursuant to N.D.C.C. § 28-34-01, to secure subject matter jurisdiction, Plaintiffs were required to file and serve the notice of appeal within thirty days of the SCWRD's adoption of the Resolution of Necessity.

[¶29] "Jurisdiction over the subject matter and jurisdiction over the parties are essential for a court to properly act in a case." Reliable, Inc., 409 N.W.2d at 634 (citing 20 Am.Jur.2d Courts § 105 (1965)). This Court has stated the following with respect to jurisdiction:

> [W]e have recognized the elementary principle that "[j]urisdiction of both the subject matter and the parties is essential to the rendition of a valid judgment...." Johnson v. Johnson, 86 N.W.2d 647, 651 (N.D.1957). Accord Reliable, Inc. v. Stutsman County Commission, 409 N.W.2d 632, 634 (N.D.1987); see also Matter of Estate of Hansen, 458 N.W.2d 264, 268 (N.D.1990) ("A judgment is void if the court lacked subject matter jurisdiction over the action or if the court lacked personal jurisdiction over the parties.")

Smith v. City of Grand Forks, 478 N.W.2d 370, 371 (N.D. 1991); see also Western Life Trust v. State, 536 N.W.2d 709, 712 (N.D. 1995) (without jurisdiction, "the court is powerless to do anything beyond dismissing without prejudice" (citations omitted)). In short, "[j]urisdiction precedes adjudication" and without jurisdiction "no one is bound by anything the court may say regarding the (de)merits of the case." Smith v. City of Grand Forks, 478 N.W.2d at 373 (citation omitted).

[¶30] "A court has subject matter jurisdiction if it has the authority, under the constitution and laws, to hear and determine cases of the general class to which the particular action belongs." Reliable, Inc., 409 N.W.2d at 634. Stated another way, "[t]he right of appeal is governed solely by statute, and without any statutory basis to hear an appeal, a court must take notice of the lack of jurisdiction and dismiss the appeal." Klindt v. Pembina Cty. Water Res. Bd., 2005 ND 106, ¶ 9, 697 N.W.2d 339; see also N.D.R. Civ. P. 12(h)(3) ("If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action").

[¶31] Plaintiffs failed to satisfy the statutory requirements under N.D.C.C. § 28-34-01 to appeal the Resolution of Necessity because there was no notice of appeal filed or served. See Klindt, 2005 ND 106, ¶ 9. Even if one assumes, solely for argument purposes, Plaintiffs' complaint could somehow be re-cast as an appeal under N.D.C.C. §28-34-01, Plaintiffs failed to timely appeal because the Resolution of Necessity was adopted on October 20, 2016, and the complaint was not filed until May 5, 2017 and proper service was not effected until June 13, 2017. Court Doc. 2 and 26. This Court is clear that when there is an untimely appeal to the district court from a decision of a local governing body, the court lacks jurisdiction and dismissal of the action is required. See Sandahl v. City Council of City of Larimore, 2016 ND 155, 882 N.W.2d 721; Zajac, 2016 ND 134. In Zajac, the Court held:

> The plain language of N.D.C.C. § 28–34–01 governs any appeal provided by statute from the decision of a local governing body and states the "notice of appeal must be filed ... within thirty days after the decision of the local governing body." N.D.C.C. § 28–34–01(1). We have recognized "[t]imely filing of an appeal from a decision of a [local governing body] is mandatory to invoke a district court's appellate subject matter jurisdiction over the appeal." Grand Forks Homes, Inc. v. State, 2011 ND 65, ¶ 20, 795 N.W.2d 335.

Zajac, 2016 ND 134, ¶¶ 7-8. Here, the SCWRD passed the Resolution of Necessity by unanimous vote on October 20, 2016. P-App-141-143. Therefore, for an appeal to be timely, Plaintiffs were required to file and serve a notice of appeal by November 19, 2017. That was not done.

[¶32] In short, the district court properly determined Plaintiffs failed to timely appeal the Resolution of Necessity pursuant to N.D.C.C. §§ 28-34-01 and 61-16.1-54. P-App-91, ¶ 29. As such, the district court order must be affirmed, in total. P-App. 92-93, ¶ 30-32.

B. The Resolution Of Necessity Is Not Void For Lack Of Jurisdiction Because N.D.C.C. § 61-16.1-45 Controls The Actions Of The Sargent County Water Resource District.

[¶33] Plaintiffs assert the SCWRD's Resolution of Necessity "is void for lack of jurisdiction" because it "attempts to waive and ignore applicable state law in N.D.C.C. §§ 61-16.1-17 *et. seq* mandating detailed procedures for notice, a hearing, and a vote before proceeding to construct a project." Appellant Brief, ¶ 38. The SCWRD, through the Resolution of Necessity, is not attempting to "waive or ignore applicable law governing the procedures for the development of a project under N.D.C.C. ch. 61-16.1." Appellant Brief, ¶ 39. Rather, the applicable law that controls the actions of the SCWRD, as properly determined by the district court, is N.D.C.C. § 16-16.1-45 and Plaintiffs' assertion that any other law is applicable further illustrates why an appeal, and not an action for declaratory or injunctive relief, was the appropriate means to challenge the Resolution of Necessity.

[¶34] When considering an appeal from the decision of a local governing body under N.D.C.C. § 28-34-01, a district court's limited review is to determine whether the local body acted arbitrarily, capriciously, or unreasonably. Gowan v. Ward Cty. Comm'n, 2009 ND 72, ¶ 5, 764 N.W.2d 425. Contrary to Plaintiff's position, an appeal is the

proper means to challenge the SCWRD's application of N.D.C.C. ch. 61-16.1 because "a local governing body's failure to correctly interpret and apply controlling law constitutes arbitrary, capricious, and unreasonable conduct." Id. (citing City of Fargo v. Ness, 551 N.W.2d 790, 792 (N.D.1996)). Therefore, given Plaintiffs' substantive arguments can be concisely summarized as a challenge to the SCWRD's application of N.D.C.C. ch. 61-16.1, such matters should have been pursued through an appeal. See Cossette, 2017 ND 120, ¶ 8; Hector v. City of Fargo, 2014 ND 53, ¶ 23, 844 N.W.2d 542; Anderson, 506 N.W.2d at 364.

[¶35] Notwithstanding Plaintiffs attempt to ignore existing law, this Court's analysis in Cossette and Anderson controls the outcome of this appeal. An action for declaratory and injunctive relief is not available because an appeal pursuant to N.D.C.C. §§ 28-34-01 and 61-16.1-54 provides an adequate legal remedy for reviewing the decision of the SCWRD. See Cossette, 2017 ND 120, ¶ 8; Anderson, 506 N.W.2d at 364; see also Hector, 2014 ND 53, ¶ 23, ("a statutory appeal provides an adequate legal remedy for reviewing a local governing body's decision, and . . . an action for equitable relief generally is not available"). The fact Plaintiffs, for the first time on appeal, seek to argue "a writ of mandamus or prohibition," and only alternatively, a declaratory judgment and injunction[3], is the proper means to compel the SCWRD to perform a mandatory duty does not change the district court's analysis that Plaintiff were required to appeal pursuant to N.D.C.C. § 28-34-01. P-App 93, ¶ 32; see also Jury v. Barnes Cnty. Mun. Airport Auth., 2016 ND 106, ¶ 21, 881 N.W.2d 10 ("Arguments not previously raised will not be considered for the first time on appeal").

[3] Plaintiffs' complaint seeks only declaratory and injunctive relief. See P-App-12-31.

[¶36] This Court's decision in Olson v. Cass Cty., 253 N.W.2d 179 (N.D. 1977), further supports the dismissal of this action. In Olson, plaintiffs brought an action for declaratory and injunctive relief challenging the proposed installation of a particular culvert. Olson v. Cass Cty., 253 N.W.2d at 179. The decision recognizes "an action taken by a person or persons entirely lacking jurisdiction over the substance of the action may be challenged collaterally" through an action for declaratory or injunctive relief. Id. at 182-183. However, the decision is clear that if the challenged action "goes . . . to the correctness of the decision, then it cannot be litigated collaterally and must be attacked directly" by an appeal governed by N.D.C.C. § 28-34-01. Id. at 182–83.

[¶37] As in Olson, Plaintiffs' here asserted the SCWRD did not comply with the statutory requirements when it approved the Resolution of Necessity. See Id. at 183. This Court noted, "[w]hile engaging, these questions [raised by the complaint] do not go to the jurisdiction of the [SCWRD]" but rather "concern the necessity and propriety of the decision and the correctness of the method of decision-making and its final result." See Id. As such, the issues presented by Plaintiff concern only the correctness of the decision, not the SCWRD's authority to make those decisions. See Id. Plaintiffs' attempt to frame it as a jurisdictional issue does not change this fact.

[¶38] It is the responsibility of the SCWRD to "[p]lan, locate, relocate, construct, reconstruct, modify, maintain, repair, and control all dams and water conservation and management devices of every nature and water channels, and to control and regulate the same and all reservoirs, artificial lakes, and other water storage devices within the district." N.D.C.C. § 61-16.1-09; see also N.D.C.C. § 61-16.1-45. This responsibility includes the authority to exercise the actions outlined in the Resolution of Necessity. Id.

See also N.D.C.C. § 61-16.1-45; P-App-141-143. The SCWRD had authority to pass the Resolution of Necessity and the "jurisdiction to so decide regardless of whether it was wrong or right." See Olson v. Cass Cty., 253 N.W.2d at 183. Simply, the actions of the SCWRD were within its jurisdiction and cannot be collaterally attacked by Plaintiffs. See Id.

[¶39] Plaintiffs reliance on N.D.C.C. §§ 61-16.1-17 *et. seq* to argue the SCWRD must "follow very specific procedures when establishing a new 'project'" and as such "an action for declaratory judgment and injunction . . . is proper to compel the performance of a mandatory duty" is misplaced. Appellant Brief, ¶¶ 44, 51. As noted in the Resolution of Necessity, the SCWRD, or its predecessor, conducted the necessary "proceeding in accordance with North Dakota law to create, establish, construct, own, operate, manage, and maintain" this drain. Court Doc. 16, p. 4. Plaintiffs concede this fact. Appellant Brief, ¶ 43.

[¶40] Because the Project involves an established drain, and not the creation of a new drain, N.D.C.C. § 61-16.1-45, and not N.D.C.C. § 61-16.1-18, sets forth the requirements to comply with, and satisfy, the requirements of due process. Compare N.D.C.C. § 61-16.1-45 with N.D.C.C. § 61-16.1-18. As recognized by the district court, N.D.C.C. § 61-16.1-45 permits the very action taken by the SCWRD. P-App-92. Yet, Plaintiffs' assert it was necessary to notify every landowner within the Drain 11 assessment area of the Project. N.D.C.C. § 61-16.1-45 contains no notice requirement. Thus Plaintiffs seek to nullify N.D.C.C. § 61-16.1-45 or require an improper judicial re-write of this statute – a position inconsistent with statutory interpretation. See Pub. Serv. Comm'n v. Minnesota Grain, Inc., 2008 ND 184, ¶ 9, 756 N.W.2d 763; Olson v. Workforce Safety & Ins., 2008

ND 59, ¶ 23, 747 N.W.2d 71; Sandberg v. Am. Family Ins. Co., 2006 ND 198, ¶ 9, 722 N.W.2d 359.

[¶41] Plaintiffs further assert the passage of the Resolution of Necessity was made pursuant to N.D.C.C. § 61-16.1-17 which "set in motion very specific mandatory duties imposed by statute," specifically N.D.C.C. § 61-16.1-18 which requires a "public hearing on the proposed project," notice of the hearing sent to effected landowners and N.D.C.C. § 61-16.1-19 which requires a public vote. Appellant Brief, ¶¶ 44-47. However, this ignores the Resolution of Necessity was passed pursuant to N.D.C.C. § 61-16.1-45 to outline the intentions of the SCWRD, not to establish a new drain pursuant to N.D.C.C. § 61-16.1-17. Plaintiffs asserted, without legal authority, the Project must be a "new project" because only N.D.C.C. § 61-16.1-17 refers to a resolution of necessity, and "N.D.C.C. § 61-16.1-45 contains no discussion at all of the need for a resolution of necessity." Court Doc. 145, ¶ 15. However, the district court concluded "[t]he statutory procedures for construction of a new legal drain, as argued by Plaintiffs, specifically N.D.C.C. § 61-16.1-17; N.D.C.C. § 61-16.1-18 and N.D.C.C. § 61-16.1-19, are not applicable to the Drain 11 Project" because it is an established drain. P-App. 91, ¶ 28.

[¶42] The passage of a document labelled "Resolution of Necessity" does not control which statutes are applicable to the Project. Although in a different context, Kirkham, Michael & Assocs. v. City of Minot, 122 N.W.2d 862 (N.D. 1963), is instructive. In Kirkham, the City of Minot contracted with plaintiff for preparation of plans, specifications and estimated costs for a storm sewer project and approved the project by way of a "resolution of necessity." Kirkham, 122 N.W.2d at 862-63. Protests to the project were lodged and the city concluded that, with such protests, it could not move

forward with the project. Id. at 863. The plaintiff then sued for breach of contract and this Court ruled in favor of plaintiff. Id. at 864.

[¶43] This Court was unconcerned with the label given by the city to authorize the project—a "resolution of necessity." Id. Rather, this Court concluded the adoption of the "resolution of necessity" did not automatically subject the project to protests merely because of the label given by the city since the project was exempt from the protest process[4]. Id. This is the proverbial "a rose by any other name is still a rose." See N.D.C.C. § 31-11-05(19) ("The law respects form less than substance"). Here, Plaintiffs seek to change the substantive basis of the SCWRD's decision, and in turn, require the SCWRD to follow the actions required for the establishment of a new drain, even though Drain 11 has existed for more than a century. Plaintiffs' position is based solely on the SCWRD's label given the Resolution of Necessity document.

[¶44] As in Kirkham, the SCWRD's label of its decision does not require the Project to be controlled by statutes only applicable to establishments of new drains. Kirkham, 122 N.W.2d at 864. Rather, the SCWRD's decisions makes clear the Project will provide more effective and efficient drainage, increased capacity, enhanced control of the watershed, enhanced breakout protection, and improved drainage for Drain 11. P-App-141-143. The Resolution of Necessity further outlined the Project would not require acquisition of new properties and does not require a vote. P-App-141-143. Those decisions, decisions that should have been the subject of an appeal pursuant to N.D.C.C. § 28-34-01, are not changed because of a label.

[4] The question at issue in Kirkham was the effect of the protests and not whether the landowners had the right to appeal. Kirkham, 122 N.W.2d at 864.

[¶45] In short, the Resolution of Necessity is not void for lack of jurisdiction and Plaintiffs did not have an absolute right to compel the actions of the SCWRD. The decision of the district court must be affirmed because an action for declaratory or injunctive relief are not proper to restrain the actions of the SCWRD from performing its statutory duties pursuant to N.D.C.C. § 61-16.1-45.

C. The Sargent County Water Resource District Complied With The Letter And Spirit Of North Dakota's Open Record Laws.

[¶46] In a section of the order entitled Case Synopsis and Court Commentary, the district court harshly criticized the SCWRD and its actions – even calling the actions of these public servants "morally deficient" and intending to "subvert the intent of [North Dakota's] sunshine laws. Court Doc. 188, ¶ 6. Plaintiffs seize on this language. These comments are, at best, dicta because despite the criticism, the district court dismissed the action. However, given the harshness of the comments directed at the SCWRD, and now Plaintiffs' use of such language to support their argument, the SCWRD must respond so the record reflects its disagreement with the portrayal of its actions. First, there is no evidence the SCWRD failed to comply with the requirements of North Dakota's sunshine laws, or that its actions were "morally deficient." Rather, as will be outlined below, the SCWRD complied with the letter and spirit of the law. Although the district court may disagree with the current statutory requirements, as this Court noted in Sandahl, it is the duty of the legislature, not the courts, to determine what requirements must be adhered to by local governing bodies. Sandahl, 2016 ND 155, ¶ 9. The district court's criticism of SCWRD, and Plaintiffs doing the same, is not warranted.

[¶47] After conceding Plaintiffs failed to "raise a due process claim in their complaint," Plaintiffs assert the Resolution of Necessity could not have been fairly litigated on appeal

and an appeal was not an adequate remedy at law because the SCWRD "intentionally made no effort to apprise the public of its Resolution of Necessity." Appellant Brief, ¶¶ 52-55 (quoting Olson v. Cass Cty., 253 N.W.2d at 182). Plaintiffs' argument is based on the theory this Court "left open the question of whether an appeal is required if a government body does not give notice to the public." Appellant Brief, ¶ 53 (citing Zajac, 2016 ND 134). This argument fails as Plaintiffs' had notice of the SCWRD's actions. Furthermore, the SCWRD was not required to provide notice pursuant to N.D.C.C. § 61-16.1-45. Finally, there is no argument presented that the SCWRD failed to comply with the requirements of North Dakota's open records laws.

[¶48] As previously noted, Plaintiffs failed to satisfy the requirements of N.D.C.C. § 28-34-01 to file and serve a notice of appeal within thirty days of the challenged decision. See supra, ¶¶ 25-32. Plaintiffs have attributed this failure to not receiving notice. Yet, even if notice was required, which it was not, Plaintiffs fail to explain why the requirements of N.D.C.C. § 28-34-01 were not accomplished within 30 days of when they claim to have of acquired the knowledge of the decision. Rather, Plaintiffs took no action until May 5, 2017, 198 days following the Resolution of Necessity or 157 days after Plaintiffs admitted they received the October 2016 meeting minutes. It should not go unnoticed that these minutes, and in turn the Resolution of Necessity, were posted by the SCWRD on its website for the public to readily obtain—which Plaintiffs admit they accessed. P-App-22; Court Doc. 44, ¶ 5; Court Doc. 45, ¶ 5.

[¶49] This Court has recognized "an abbreviated time frame for a party to appeal from a decision by a local governing body . . . imposed under the plain language of N.D.C.C. § 28–34–01." Sandahl, 2016 ND 155, ¶ 9; Zajac, 2016 ND 134, ¶ 10. Yet, Plaintiffs'

argument alleges the time requirement of N.D.C.C. § 28-34-01 is tolled until notice of the decision to be appealed. Appellant Brief, ¶¶ 56. "The 30–day time limit for appealing a local governing body decision under N.D.C.C. § 28–34–01 is not a statute of limitation; rather, it is a statute conferring appellate subject-matter jurisdiction upon a reviewing court." Zajac, 2016 ND 134, ¶ 10. In noting the time limit of N.D.C.C. § 28-34-01 is not tolled, this Court held it is the legislature, not the courts, that should "consider extending the time for appeal or consider triggering the time for appeal from . . . service of the notice of the decision on the affected party or from publication of the decision." Sandahl, 2016 ND 155, ¶ 9. The legislature has chosen not to impose this requirement.

[¶50] Although the SCWRD disagrees that notice or knowledge of the decision is the triggering event for the time limit set forth in N.D.C.C. § 28-34-01, even if one assumes for argument purposes this trigger exists, the facts and existing law mandate an obligation to keep yourself informed of governmental actions and justified dismissal of Plaintiffs' complaint. Plaintiffs' argument completely ignores North Dakota open records and meeting laws. Under N.D.C.C. § 44-04-20, "public notice must be given in advance of all meeting of a public entity," however, public notices "need not be published." N.D.C.C. § 44-04-20(1). The public notice must simply "contain the date, time, and location of the meeting" and "be posted at the principal office" of the SCWRD. N.D.C.C. §§ 44-04-20(2), (4). Significantly, "the lack of an agenda in the notice, or a departure from, or an addition to, the agenda at a meeting, does not affect the validity of the meeting or the actions taken thereat." N.D.C.C. § 44-04-20(2).

[¶51] Because the SCWRD's meetings are public, "[m]inutes must be kept." N.D.C.C. § 44-04-21(2). If a request is made to the SCWRD, "the disclosure of minutes . . . may

not be conditioned on the approval of the minutes by the governing body." N.D.C.C. § 44-04-21. Pursuant to N.D.C.C. § 44-04-18, unless excepted, all of the records of the SCWRD are "public records, open and accessible for inspection during reasonable office hours." N.D.C.C. § 44-04-18(1). "Upon request for a copy of specific public records," the SCWRD "shall furnish the requester one copy of the public records requested." N.D.C.C. § 44-04-18(2). A request for agendas or minutes can be made by telephone, text or email, as the request "need not be made in person or in writing." N.D.C.C. § 44-04-18(2); see TT-112:14-19. There is no allegation the SCWRD failed to satisfy any open records laws.

[¶52] When construing the North Dakota's open records laws, this Court relies "heavily upon the plain language of the provision and the statute." Adams Cty. Record v. Greater N. Dakota Ass'n, 529 N.W.2d 830, 833 (N.D. 1995). Relying upon the clear and unambiguous statutory language, this Court identified the legislative purpose for North Dakota open records laws:

> What the Legislature was attempting to accomplish was to provide the public with the right and the means of informing itself of the conduct of the business in which the public has an interest, in order that the citizen and taxpayer might examine public records to determine whether public money is being properly spent, or for the purpose of bringing to the attention of the public irregularities in the handling of public matters.

Id. (quoting Grand Forks Herald v. Lyons, 101 N.W.2d 543, 546 (N.D.1960)). Thus, open records and meetings laws are intended to provide the citizenry of North Dakota, like Plaintiffs, the right and the means to inform themselves of the business and decisions of governmental bodies, like the SCWRD. However, these laws place the burden squarely upon the citizenry to take the affirmative steps to acquire keep informed of governmental actions. Id.

[¶53] Plaintiffs reliance on Zajac to imply a requirement of notice is misplaced. See Appellant Brief, ¶ 56. In Zajac, this Court did not state, or even imply, it was the duty of a public entity to ensure actual notice was provided to the citizenry as a whole. Rather, the holding of Zajac and its progeny recognize the burden to remain informed resides with the individual who seeks to challenge the actions of a public entity. Zajac, 2016 ND 134, ¶¶ 9-10; Sandahl, 2016 ND 155, ¶ 9. Plaintiffs' argument, if taken to its logical conclusion, would allow individuals to challenge and delay the implementation of governmental projects while bypassing the statutory method to appeal the decision by simply locating one effected individual and argue lack of notice. Existing law does not permit this result, nor is such a result in the public interest.

[¶54] The law does not require the SCWRD to take active, or affirmative, steps to notify every individual within its jurisdiction of every decision that may or may not affect them. Rather, North Dakota's open record and meeting laws required Plaintiffs to take affirmative steps to inform themselves of the SCWRD's actions and decisions. Adams Cty. Record, 529 N.W.2d at 833. Given the law requires such affirmative steps taken by Plaintiffs, the failure to satisfy this requirement cannot form the basis to excuse an untimely appeal. Gonzalez v. Tounjian, 2003 ND 121, ¶ 20, 665 N.W.2d 705 (Ignorance of the law is no excuse).

[¶55] In addition, it is clear the information possessed by Plaintiffs during the 30 days after the Resolution of Necessity was approved was more than sufficient to establish Plaintiffs had notice and/or knowledge of the decision in time to bring an appeal. "[A]fter acquiring knowledge of facts sufficient to put a person of ordinary intelligence on inquiry, a party has a responsibility to promptly find out what legal rights result from

those facts, and failure to do so will be construed against the party." Holverson v. Lundberg, 2016 ND 103, ¶ 19, 879 N.W.2d 718; see also Frith v. Park Dist. of City of Fargo, 2016 ND 213, ¶ 11, 886 N.W.2d 836. Similarly, "[e]very person generally is charged with knowledge of the provisions of statutes and regulations and must take notice thereof." Gonzalez, 2003 ND 121, ¶ 20 (citing Berg v. Hogan, 322 N.W.2d 448, 452 n. 1 (N.D. 1982); Lumpkin v. Streifel, 308 N.W.2d 878, 880 (N.D. 1981)). Plaintiffs are considered to have notice of the Resolution of Necessity and the Project when they possessed information sufficient to give rise to inquiry and the need to stay appraised of the actions of the SCWRD if there was a concern about the Project. See Nygaard v. Robinson, 341 N.W.2d 349, 355-56 (N.D. 1983); see also Swanson v. Swanson, 2011 ND 74, ¶ 12, 796 N.W.2d 614.

[¶56] The following facts clearly outline Plaintiffs had notice and obtained sufficient knowledge during this 30 day period that would have permitted Plaintiffs to bring a timely appeal. Plaintiff Mathews was aware of the Project as early as July 2016. Court Doc. 44. Plaintiff Banderet was aware of the Project by June 2016. Court Doc. 45. Plaintiff Hayen became aware of the Project on November 5, 2016. Court Doc. 46. By October 28, 2016 –8 days after the Resolution of Necessity was adopted – Plaintiff Banderet communicated with a state official seeking information on how to challenge the actions of the SCWRD and was directed to seek legal advice. TT-50:16 to 54:12; Court Doc. 100. Yet, Plaintiff Banderet admitted he never considered filing an appeal. TT-55:10-11. Plaintiffs' decision not to seek legal advice cannot now be used as a means to ignore N.D.C.C. § 28-34-01. Gonzalez, 2003 ND 121, ¶ 20.

[¶57] On November 16, 2016, a number of Plaintiffs attended a special SCWRD meeting where the Project was the only topic of discussion. TT-41:2 to 42:5; 64:17-25; 65:11-20; 98:23 to 99:3. The information presented made three things clear: (1) the Project was moving forward; (2) there would be no vote; and, (3) a maintenance levy would be utilized. TT- 41:2 to 42:5; 98:23 to 99:3.

[¶58] The next day, November 17, 2016, the SCWRD held its regular meeting and a few Plaintiffs attended. P-App-146. During this meeting, the meeting minutes – that included the Resolution of Necessity – were approved. P-App-146. During this meeting, Plaintiffs expressed concerns about the costs and benefits of the Project, the maintenance levy, whether landowners were in favor, and requested a vote. TT-44:1 to 47:12; P-App-146. The SCWRD informed these parties no vote would occur. Id.

[¶59] Finally, the standard practice of the SCWRD is to send meeting agendas and the draft minutes to anyone who makes a request for the information. TT-88:3-11; Court Doc. 106. An individual may make a request by "a phone call, a text, anything, email." TT-112:12-19. At least one Plaintiff has been on the list since February 19, 2015 and there has been no allegation that any Plaintiff was precluded from calling, writing, emailing, or personally requesting a copy of the meeting minutes. TT-90:4-12; 50:11-15.

[¶60] These facts establish a timely appeal of the Resolution of Necessity under N.D.C.C. § 28-34-01 was legally and factually possible. At the very least, these facts are sufficient to have put "a person of ordinary intelligence on inquiry" and placed a responsibility on Plaintiffs "to promptly find out what legal rights result from those facts." Frith, 2016 ND 213, ¶ 11. The SCWRD recognizes the concept of due process "is flexible and must be analyzed on a case-by-case basis." Kilber v. Grand Forks Pub.

Sch. Dist., 2012 ND 157, ¶ 17, 820 N.W.2d 96. However, "[j]udicial review is the ultimate due process protection accorded persons aggrieved by the decisions of local government bodies or administrative agencies." Am. Crystal Sugar Co. v. Traill Cty. Bd. of Comm'rs, 2006 ND 118, ¶ 8, 714 N.W.2d 851.

[¶61] In sum, the facts demonstrate more than sufficient notice or knowledge on the part of Plaintiffs of the passage of the Resolution of Necessity, and more than sufficient time under N.D.C.C. § 28-34-01 to have brought an appeal. Plaintiffs did not do so. Therefore, the district court properly dismissed Plaintiffs' complaint.

D. Plaintiffs' Complaint Seeks An Expanded Appeal Right.

[¶62] "The plain language of N.D.C.C. § 61–16.1–54 allows an aggrieved party to appeal from any order or decision of a water resource board." Cossette, 2017 ND 120, ¶ 13. Here, the adverse decision of the SCWRD was the Resolution of Necessity that determined the Project would move forward without a vote and the assessment would be at the $4.00/acre rate. See Court Doc. 112.

[¶63] A proper appeal from the decision of the SCWRD decision would have "invoke[d] the appellate jurisdiction of the district court." Smith v. Burleigh County Bd. of Comm., 1998 ND 105, ¶ 6. Plaintiffs' failure to timely satisfy the statutory requirements of N.D.C.C. § 28-34-01 to appeal results in a lack of jurisdiction. See Klindt, 2005 ND 106, ¶ 9. In seeking reversal of the district court order, Plaintiffs seek to circumvent this jurisdictional requirement which renders the text of N.D.C.C. § 28-34-01 and the body of law regarding the standard of review of local governing body decisions superfluous.

[¶64] The review of a decision of a local governing body, like the Resolution of Necessity, is limited by the doctrine of separation of powers. Pic v. City of Grafton, 1998

ND 202, ¶ 6, 586 N.W.2d 159. A district court may not substitute its judgment for that of the local governing body, rather review is limited to determine if the decision was arbitrary, capricious, or unreasonable. Id. A local governing body decision "is not arbitrary, capricious, or unreasonable if the exercise of discretion is the product of a rational mental process by which the facts and the law relied upon are considered together for the purpose of achieving a reasoned and reasonable interpretation." Tibert v. City of Minto, 2006 ND 189, ¶ 8, 720 N.W.2d 921.

[¶65] Accordingly, had Plaintiffs timely appealed, the scope of the appeal would have been limited to whether the SCWRD's decision was arbitrary, capricious, or unreasonable – which would have required Plaintiffs to show a complete absence of law, evidence or reason to support the decision of the SCWRD. See Trollwood Vill. Ltd. P'ship v. Cass Cty. Bd. of Cty. Comm'rs, 557 N.W.2d 732, 734 (N.D. 1996). However, having failed to timely appeal, Plaintiffs now seek to expand this narrow scope to a much broader standard of review for declaratory and injunctive relief. Court Doc. 3. Even if due process permits review of the SCWRD's actions past the time prescribed in N.D.C.C. § 28-34-01, there is no law to support an expanded scope of review. See Cossette, 2017 ND 120, ¶¶7-9 and11; Anderson, 506 N.W.2d at 365; Olson v. Cass Cty., 253 N.W.2d at 182; Chester, 34 N.W.2d at 427.

[¶66] As such, this Court must affirmed the decision of the district court dismissing Plaintiffs' complaint to ensure the decision does not render the requirements of N.D.C.C. § 28-34-01 superfluous.

II. THE DISTRICT COURT PROPERLY CONCLUDED THE PROJECT WAS BEING PURSUED UNDER N.D.C.C. § 61-16.1-45.

[¶67] Plaintiffs' assert the district court erred, as a matter of law, when it concluded the Project consisted of maintenance:

> The Drain 11 Project … is permitted and is being pursued under N.D.C.C. § 61-16.1-45. ... The statutory procedures for construction of a new legal drain, as argued by Plaintiffs, specifically N.D.C.C. § 61-16.1-17; N.D.C.C. § 61-16.1-18 and N.D.C.C. § 61-16.1-19, are not applicable to the Drain 11 Project. … Pursuant to the plain language of N.D.C.C. § 61-16.1-45, the Sargent County Water Board was not required to provide notice of the Resolution of Necessity to all landowners within the Drain 11 assessment area.

P-App. 90-92, ¶¶ 28, 34. Plaintiffs assert this is an improper decision on the merits because the district court determined it lacked subject-matter jurisdiction. Appellant Brief, ¶ 57.

[¶68] If Plaintiffs' argument is correct, the district court's decision is only in error if this Court affirms the dismissal of this matter for lack of subject matter jurisdiction. See In re Vaage, 2016 ND 32, ¶ 19. However, if this Court determines "the district court erred in its conclusion on subject matter jurisdiction ..., remand is not necessary because the [district] court alternatively addressed the merits of the [case]." Id. As admitted by Plaintiffs, "[i]f the activity is mere maintenance, then a vote and hearing is not required." Appellant Brief, ¶ 57. This is exactly what the district court concluded when it determined the Project was maintenance. P-App. 90-92, ¶¶ 28, 34.

[¶69] It was not error for the district court, based upon the evidence in the record, to conclude the actions taken, and planned, are maintenance. Drain 11 has been in existence for more than 100 years. P-App. 90, ¶ 28. It is the requirement of the SCWRD to maintain this drain, which consists of over 40 miles of failing culverts and slopes that are sloughing. TT-14:16 to 15:6; 67:23 to 68:9. The assessments made by the SCWRD for

drains and project are done in the exercise of discretion to ensure these drains remain safe, open and functional. TT-15:2-6; 17:23 to 18:3; 22:10-16; 23:8-11. The record establishes the Project decisions related to maintenance of Drain 11. As such, if this Court determines the district court erroneously dismissed this matter based upon a lack of subject matter jurisdiction, this Court must affirm the dismissal of this matter because the acts of the SCWRD constitute maintenance pursuant to N.D.C.C. 61-16.1-45.

CONCLUSION

[¶70] The district court properly dismissed the complaint for lack of subject matter jurisdiction. In the alternative, the district court properly dismissed the complaint as the actions taken by the SCWRD were permitted by N.D.C.C. § 61-16.1-45. Therefore, the Sargent County Water Resource District respectfully requests this Court affirm, in total, the district court's orders and the judgment of dismissal.

[¶71] Dated this 29th day of August, 2018.

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CERTIFICATE OF COMPLIANCE

[¶72] The undersigned, as attorney for Appellees in the above matter, and as the author of the above brief, hereby certifies, in compliance with Rule 32(a)(8) of the North Dakota Rules of Appellate Procedure, the above brief was prepared with proportional type face and the number of words in the above brief, excluding words in the table of contents, table of authorities, and certificate of compliance, totals 7,996 words.

Dated this 29th day of August, 2018.

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IN THE SUPREME COURT
STATE OF NORTH DAKOTA

Robert & Laurie Banderet, Carol Beck, Gerald Bosse, Matthew Bosse, Duane & Valera Hayen, Beverley Kelley, Leon Mallberg, Paul Mathews, Nancy Mathews, Katheryn Nelson, R & I Memorial Trust, Kathaleen R. Rehborg as Trustee, Gerald & Judith Ringdahl, and John & Beth Wentworth, Plaintiff/Appellant, and William E. Kurschet, and Jan Vold & Melanie Jones as Trustees of the Evergreen Trust, Plaintiffs v. Sargent County Water Resource District and Ransom County Water Resource District, Defendant/Appellee.	SUPREME COURT NO. 20180253 SARGENT COUNTY DISTRICT COURT NO. 41-2017-CV-00014 **AFFIDAVIT OF SERVICE**

STATE OF NORTH DAKOTA)
: SS.
COUNTY OF GRAND FORKS)

[¶1] Jen O'Hara, being first duly sworn on oath, deposes and says that she is of legal age and is a resident of Grand Forks, North Dakota; that on the 29th day of August, 2018, she served by electronic mail a copy of the following documents in the above-entitled matter:

- **Brief of Appellee Sargent County Water Resource District**

[¶2] Served by Electronic Mail:
Derrick Braaten: derrick@braatenlawfirm.com
JJ England: jj@braatenlawfirm.com
Kyra Hill: Kyra@braatenlawfirm.com
Jane Dynes: jdynes@serklandlaw.com
Kasey McNary: kmcnary@serklandlaw.com

Jen O'Hara

[¶3] Subscribed and sworn to before me in Grand Forks County, North Dakota, this 29th day of August, 2018.

RAQUEL LINDSETH
Notary Public
State of North Dakota
My Commission Expires Jan. 17, 2022

Notary Public, North Dakota