

IN THE SUPREME COURT  
STATE OF NORTH DAKOTA

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Sargent County Water Resource District, a	)	
North Dakota Political Subdivision,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
Gregory S. Beck and Carol L. Beck, as Co-	)	Supreme Court No. _____
Trustees of the Gregory S. Beck and Carol	)	
L. Beck Revocable Living Trust dated	)	Sargent County Case No. 41-2021-CV-
September 8, 2020, Gerald P. Bosse and	)	00034
Diana Bosse, as Co-Trustees of the Gerald	)	
and Diana Bosse Irrevocable Land Trust	)	
dated the 13th day of January, 2021, Gerald	)	
P. Bosse, Diana Bosse, Mathew J. Bosse,	)	<b>NOTICE OF APPEAL</b>
Brent P. Bosse, Paul Mathews as Personal	)	
Representative of the Estate of Nancy I.	)	
Mathews, Phyllis Delahoyde, Daniel G.	)	
Delahoyde, and all other persons unknown	)	
claiming an estate or interest in or lien or	)	
encumbrance upon the real property	)	
described in the Complaint, whether as	)	
heirs, legatees, devisees, personal	)	
representatives, creditors or otherwise,	)	
	)	
Defendants.	)	

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[¶1] PLEASE TAKE NOTICE that Defendants Paul Mathews as Personal Representative of the Estate of Nancy I. Mathews, Phyllis Delahoyde, and Daniel G. Delahoyde, by and through their counsel, hereby give notice of their appeal to the North Dakota Supreme Court under Rule 3 of the North Dakota Rules of Appellate Procedure of the District Court’s Order granting in part and denying in party Defendant’s Motion to Compel (Doc ID #102), dated December 14, 2021, the oral findings provided on March 10, 2022, the Findings of Fact, Conclusions of Law, and Order for Judgment (Doc ID#219), dated April 20, 2022, Judgment (Doc

ID #226), dated April 21, 2022, Order Authorizing Sargent County Water Resource District to Take Possession (Doc ID #229), dated May 3, 2022, the oral ruling denying Defendants Motion for New Trial provided on October 14, 2022, Order Denying Defendants' Motion for New Trial and/or Amendment of Judgment and Granting Defendants' Motion for Attorney's Fees (Doc ID #289), dated November 10, 2022, in the above-captioned matter.

### **PRELIMINARY STATEMENT OF ISSUES**

[¶2] Defendants Paul Mathews as Personal Representative of the Estate of Nancy I. Mathews, Phyllis Delahoyde, and Daniel G. Delahoyde present the following preliminary statement of issues for appeal:

A. Whether the District Court erred in ruling that no evidence was presented to indicate that the Drain 11 Improvement Project is an illegal project in violation of N.D.C.C. § 32-15-05(1) because it exceeds the maximum maintenance levy pursuant to N.D.C.C. § 61-16.1-45, which states: "If the cost of, or obligation for, the cleaning and repairing of any drain exceeds the total amount that may be levied by the board in any six-year period, the board shall obtain the approval of the majority of the landowners as determined by chapter 61-16.1 before obligating the district for the costs." The cost of and the obligations for the Drain 11 Improvement Project (which has been deemed "maintenance" by the District) far exceeds the maximum cost pursuant to the six-year levy, and Defendants submitted this evidence via briefing as agreed upon by the parties and the District Court. Despite this agreement, the District Court ruled that no such evidence had been submitted, despite it having been submitted specifically as Undisputed Facts per the parties' and District Court's agreement and there having been no dispute raised as to the facts by the District. Additionally, it was error for the District Court to deny Defendants' Rule 56f motion for

a continuance and additional discovery as this might have allowed Defendants to uncover the new facts that were later discovered post-trial. (*See* R:219:5:¶22).

B. Whether the District Court erred in ruling that Defendants did not show that new evidence exists and was discovered which existed at the time of trial, and which indicates that the District cannot afford to complete its Drain 11 Improvement Project and therefore does not have, and will not have any use for the Mathews-Delahoyde property for years, if ever. Condemnation of the Mathews-Delahoyde parcel is an unconstitutional taking because it is not necessary as required by N.D.C.C. § 32-15-05(2) and regardless of whether evidence is “new” the District Court is without authority to authorize a condemnation in violation of N.D.C.C. § 32-15-05 and the North Dakota Constitution, as the District Court did here. The District Court also incorrectly decided that the evidence discovered post-trial was not “new” as required by the rules.

DATED this 13<sup>th</sup> day of December, 2022.

**BRAATEN LAW FIRM**

*/s/ Derrick Braaten*

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Paul Mathews as Personal  
Representative of the Estate of Nancy I.  
Mathews, Phyllis Delahoyde, Daniel G.  
Delahoyde*

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and Diana Bosse Irrevocable Land Trust	)	
dated the 13th day of January, 2021, Gerald	)	
P. Bosse, Diana Bosse, Mathew J. Bosse,	)	<b>DECLARATION OF SERVICE</b>
Brent P. Bosse, Paul Mathews as Personal	)	
Representative of the Estate of Nancy I.	)	
Mathews, Phyllis Delahoyde, Daniel G.	)	
Delahoyde, and all other persons unknown	)	
claiming an estate or interest in or lien or	)	
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described in the Complaint, whether as	)	
heirs, legatees, devisees, personal	)	
representatives, creditors or otherwise,	)	
	)	
Defendants.	)	

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[¶1] I hereby certify that true and correct copies of the following documents:


- **Notice of Appeal;**
- **Order for Transcript; and**
- **Declaration of Service.**

were, on the 13<sup>th</sup> day of December, 2022, electronically filed with the Clerk of the Supreme Court through the North Dakota Supreme Court E-Filing Portal, and that the North Dakota Supreme Court E-Filing Portal will send a copy to:

- Robert Hoy at [rhoy@ohnstadlaw.com](mailto:rhoy@ohnstadlaw.com)
- Christopher McShane at [cmcshane@ohnstadlaw.com](mailto:cmcshane@ohnstadlaw.com)
- Stephen Hilfer at [SHilfer@ohnstadlaw.com](mailto:SHilfer@ohnstadlaw.com)

I declare, under penalty of perjury under the law of North Dakota, that the foregoing is true and correct.

Signed on this 13<sup>th</sup> day of December, 2022 at Bismarck, North Dakota.

  
\_\_\_\_\_  
Desirae Zaste