

IN THE SUPREME COURT OF THE STATE OF NORTH DAKOTA

Sargent County Water Resource District,)
a North Dakota Political Subdivision,)

Plaintiff,)

vs.)

Supreme Court No. 20220357

Gregory S. Beck and Carol L. Beck, as)
Co-Trustees of the Gregory S. Beck and)
Carol L. Beck Revocable Living Trust)
dated September 8, 2020, Gerald P. Bosse)
and 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, 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,)

Sargent County Case No. 41-2021-CV-00034

NOTICE OF CROSS-APPEAL

Defendants.)

TO: Defendants Paul Mathews as Personal Representative of the Estate of Nancy I. Mathews, Phyllis Delahoyde, Daniel G. Delahoyde, and their attorney, Derrick Braaten, Braaten Law Firm, 109 North 4th Street, Suite 100, Bismarck, ND 58501 (derrick@braatenlawfirm.com):

[¶1] PLEASE TAKE NOTICE that, pursuant to Rules 3 and 4 of the North Dakota Rules of Appellate Procedure, Plaintiff Sargent County Water Resource District (the “District”) hereby cross-appeals to the North Dakota Supreme Court from the oral rulings made via reliable electronic means on December 10, 2021; the Order Granting Defendant’s Motion to Compel, dated December 14, 2021 (Doc. #102); the oral rulings made via reliable electronic means on March 10, 2022; the Findings of Fact, Conclusions of Law, and Order for Judgment dated

April 20, 2022 (Doc. #219); and the Judgment dated April 21, 2022 (Doc. # 226), by the Honorable Jay Schmitz, District Court Judge for Sargent County, North Dakota, in Case No. 41-2021-CV-00034.

PRELIMINARY ISSUES

[¶2] Whether a defendant in an eminent domain action can challenge whether a use is public by collaterally attacking the “legality” of the underlying project, even if that same defendant and/or closely related parties failed to timely pursue an administrative appeal of the condemning authority’s decision to undertake the project.

[¶3] Whether the doctrines of res judicata and collateral estoppel preclude a defendant in an eminent domain action from raising the same arguments that were raised or could have been raised in prior actions involving the same defendant and/or closely related parties.

Dated this 23rd day of December, 2022.

/s/ Christopher M. McShane
Robert G. Hoy (ND ID # 03527)
Christopher M. McShane (ND ID # 06207)
Stephen J. Hilfer (ND ID # 09555)
Attorneys for Plaintiff

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CERTIFICATE OF SERVICE

Defendants.)
_____)

Karen Thompson, being first duly sworn, deposes and says that on the 23rd day of December, 2022, she served the following document(s):

1. Notice of Cross-Appeal;

with the Clerk of the North Dakota Supreme Court and served the same electronically as follows:

By North Dakota Supreme Court E-Filing Portal:

Derrick L. Braaten. derrick@braatenlawfirm.com

I declare under penalty of perjury that the foregoing is true and correct. I signed this Affidavit in the County of Cass, State of North Dakota, on this 23rd day of December, 2022.

/s/ Karen Thompson
Karen Thompson