

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHWESTERN DIVISION**

DACOTAH CHAPTER OF SIERRA)
CLUB and DAKOTA RESOURCE)
COUNCIL,)

Plaintiffs,)

v.)

Civil No. 1:12-cv-065

SECRETARY OF THE INTERIOR)
KEN SALAZAR,)

Federal Defendant,)

NORTH DAKOTA PUBLIC SERVICE)
COMMISSION,)

Intervenor-Defendant.)

PROPOSED SCHEDULING PLAN

Pursuant to Rule 26(f), counsel for the parties certify that on September 19, 2012, they conferred by telephone to discuss the nature and basis of their clients' claims and defenses, the possibilities for a prompt settlement or resolution of the case, and a proposed scheduling plan. After conferring, counsel for the parties have agreed upon the following:

1. The parties agree that this case is properly characterized as an action for review on an administrative record. As such, the parties are exempt from initial disclosures pursuant to Fed. Rule Civ. P. 26(a)(1)(B)(i).

2. Because this is an action for review on an administrative record, the parties agree that there is no need for a discovery plan. Federal Defendant will file the administrative record in accordance with the schedule proposed in paragraph 3. The parties propose that any disputes regarding the sufficiency of the record be resolved in accordance with the schedule set forth in paragraph 3(B).

3. In lieu of the general deadlines and schedule requested in the standard form Rule 26(f) report, the parties respectfully propose the following schedule for further proceedings:

A. Filing and Service of the Administrative Record. Federal Defendant will manually file with the Court and serve on all parties the administrative record in electronic format (i.e., on CD- or DVD-ROM) on or before December 10, 2012. Because the administrative record may be voluminous, Federal Defendant believes that it would be most efficient and economical for the record to be filed manually on a CD- or DVD-ROM and served by Federal Defendant via overnight mail. Federal Defendant will concurrently file a Certificate of Service electronically via the Court's CM/ECF system.

B. Disputes Regarding the Completeness of the Administrative Record or the Need for Extra-Record Evidence. Should a dispute arise regarding the completeness of the administrative record or the need for judicial review of extra-record materials, then the parties will first attempt to negotiate an informal resolution. If any party believes the administrative record is incomplete or that judicial review of extra-record material is necessary, and the parties fail to reach an informal resolution of the dispute, then the party raising the dispute shall file a

motion to supplement the record or to submit extra-record material within 21 days of being served with the record.

C. Summary Judgment Briefing Schedule. The parties believe and agree that the claims in this lawsuit will likely be fully resolved through cross-motions for summary judgment. Accordingly, the parties respectfully request the Court to adopt the following proposed briefing schedule:

- i. Plaintiffs will file a motion for summary judgment not later than 30 days after being served with the administrative record. However, if any party has disputed the completeness of the administrative record or the need for extra-record review, and filed a motion regarding that dispute with the Court, then the Plaintiffs' motion for summary judgment shall be due within 30 days of the Court's resolution of that motion.
- ii. Federal Defendant and Intervenor-Defendant will file their oppositions to the Plaintiffs' motion for summary judgment and cross-motion for summary judgment not later than 30 days following the filing of Plaintiffs' motion for summary judgment.
- iii. Plaintiffs will file their opposition to Federal Defendant and Intervenor-Defendant's cross-motion and reply brief not later than 30 days after the filing of the cross-motions.

iv. Federal Defendant and Intervenor-Defendant will file their reply briefs not later than 30 days after the filing of Plaintiffs' combined opposition and reply brief.

4. The parties do not anticipate that expert witnesses will be required in this action.

5. The parties do not anticipate that depositions will be required in this action.

6. The parties do not presently anticipate the need to join additional parties.

However, should any party feel it necessary to join additional parties, then the parties propose that the deadline to do so be concurrent with the deadline to file a motion challenging the completeness of the administrative record or seek judicial review of extra-record documents (i.e., 21 days after service of the record). The parties request that the same deadline apply for moving to amend pleadings to add claims or defenses, or to file other nondispositive or threshold motions.

7. The parties do not anticipate that interrogatories will be served.

8. The parties do not anticipate the need for any discovery depositions or depositions taken for presentation at trial.

9. Counsel have discussed among themselves and explored with their clients early involvement in settlement discussions or alternative dispute resolution. While the parties are committed to exploring whether settlement may be a viable option in this case, the parties do not commit to a formal alternative dispute resolution process.

10. The parties will not need a mid-discovery status conference, as discovery is not anticipated in this case.

11. The parties will not voluntarily waive their rights to proceed before a district judge and consent to have a magistrate judge conduct any and all further proceedings in the case, including the trial, and order the entry of a final judgment.

12. The parties agree that this case presents primarily legal issues which are appropriately resolved through cross-motions for summary judgment. Therefore the parties do not anticipate the need for a trial in this case. However, in the unlikely event a trial would be necessary, the parties agree that any such trial would be nonjury.

13. As stated above, the parties do not anticipate the need for a trial. The parties estimate that the case will be resolved through cross-motions for summary judgment and a single day for hearing argument on those motions.

Respectfully submitted this 5th day of October, 2012.

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ORDER

The above scheduling plan is approved with no additions or modifications.

Dated this 10th day of October, 2012.

/s/ Charles S. Miller, Jr.
Charles S. Miller, Jr.
United States Magistrate Judge