

The North Dakota Public Service Commission (“NDPSC”) respectfully requests the Court set the course of oral argument in Civil No. 1:12-CV-064 to be twenty minutes for each party for a total of sixty minutes. The NDPSC further requests the Court set the course of oral argument in Civil No. 1:12-CV-065 to be twenty minutes for each party for a total of sixty minutes. In support of its Motion the NDPSC states as follows:

1. By Order dated April 4, 2013, the Court set oral argument in the matter of Dakota Resource Council v. North Dakota, Civil No. 1:12-CV-064, for August 16, 2013 at 9:00 am, setting aside two hours for argument.

2. Dacotah Chapter of Sierra Club and Dakota Resource Council v. Secretary of the Interior et al., Civil No. 1:12-CV-065, is a companion case to Civil No. 1:12-CV-064.

Both Civil No. 1:12-CV-064 and Civil No. 1:12-CV-065 address issues of implementation of the federal Surface Mining Control and Reclamation Act (“SMCRA”), in North Dakota. The parties to Civil No. 1:12-CV-064 and Civil No. 1:12-CV-065 are the same, except that the Dacotah Chapter of the Sierra Club is a party to Civil No. 1:12-CV-065 and not Civil No. 1:12-CV-064.

3. Briefing by the parties in Civil No. 1:12-CV-065 concluded June 28, 2013.

4. In its Reply in Opposition to Plaintiffs’ Reply Memorandum in Support of Plaintiffs’ Motion for Summary Judgment and in Opposition to Defendants’ Cross-Motions for Summary Judgment in 1:12-CV-065, Intervenor-Defendant NDPSC requested the Court set the case for oral argument. *See* NDPSC’s Reply at p. 10.

5. On July 17, 2013, counsel to the NDPSC contacted the Court’s chambers and inquired whether the Court expected to separately set oral argument in Civil No. 1:12-CV-065.

6. By email dated July 17, 2013, Ms. Linda Reis, Judicial Assistant to District Judge Hovland, advised counsel to the parties that because Civil No. 1:12-CV-064 and Civil No. 1:12-CV-065 are companion cases, and because the Court had already scheduled oral argument in Civil No. 1:12-CV-064 for August 16 at 9:00 am, the Court will also hear argument in Civil No. 1:12-CV-065 on August 16 at 9:00 am.

7. Civil No. 1:12-CV-064 and Civil No. 1:12-CV-065 each pertains to separate and distinct claims made by Plaintiffs in connection to the implementation of SMCRA in North Dakota. Due to the complexities of the issues involved in Civil No. 1:12-CV-064 and Civil No. 1:12-CV-065, and the unique, separate and specific authority that the NDPSC and the Secretary of the Interior have under SMCRA, it is necessary that the NDPSC and the Secretary of the Interior each have sufficient time for argument before the Court.

8. NDPSC proposes the following course of oral argument in Civil No. 1:12-CV-064.

- a. Plaintiff will be allotted twenty minutes for argument in support of its motion for summary judgment and in opposition to Defendant and Intervenor-Defendant's motions for summary judgment.
- b. Defendant NDPSC will be allotted twenty minutes for argument in support of its motion for summary judgment and in opposition to Plaintiff's motion for summary judgment.
- c. Intervenor-Defendant Secretary of the Interior will be allotted twenty minutes for argument in support of its motion for summary judgment and in opposition to Plaintiff's motion for summary judgment.

9. NDPSC proposes the following course of oral argument in Civil No. 1:12-CV-065.
 - a. Plaintiffs will be allotted twenty minutes for argument in support of its motion for summary judgment and in opposition to Defendant and Intervenor-Defendant's motions for summary judgment.
 - b. Defendant the Secretary of the Interior will be allotted twenty minutes for argument in support of its motion for summary judgment and in opposition to Plaintiffs' motion for summary judgment.
 - c. Intervenor-Defendant the NDPSC will be allotted twenty minutes for argument in support of its motion for summary judgment and in opposition to Plaintiffs' motion for summary judgment.

10. The NDPSC has consulted with counsel to the Secretary of the Interior and Plaintiffs. Counsel to the Secretary of the Interior supports the NDPSC's proposed course of oral argument. Counsel to Plaintiffs objects to the NDPSC's proposed course of oral argument.

For the reasons set forth above, NDPSC respectfully requests that the Court set the course of oral argument in Civil No. 1:12-CV-064 to be twenty minutes for each party, and in Civil No. 1:12-CV-065 to be twenty minutes for each party for a total of two hours of oral argument at 9:00 am on August 16, 2013.

Respectfully submitted this 23rd day of July, 2013.

**STATE OF NORTH DAKOTA
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CERTIFICATE OF SERVICE

I hereby certify that on July 23, 2013, the foregoing North Dakota Public Service Commission's Motion For Setting Course of Oral Argument Set for August 16, 2013 was served electronically to all counsel of record through the Court's ECF System.

s/ Paul M. Seby
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