

UNITED STATES DISTRICT COURT  
DISTRICT OF NORTH DAKOTA  
SOUTHWEST DIVISION

DAKOTA RESOURCE COUNCIL,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No. 1:12-CV-064
	)	
NORTH DAKOTA PUBLIC SERVICE	)	
COMMISSION,	)	
	)	
Defendant,	)	
	)	
SECRETARY OF THE INTERIOR SALLY	)	
JEWELL, in her official capacity,	)	
	)	
Intervenor-Defendant.	)	
_____	)	

**MOTION FOR EXTENSION OF TIME TO FILE MOTION FOR  
CLAIM OF ATTORNEY’S FEES AND COSTS**

Defendant North Dakota Public Service Commission (“NDPSC”), by and through undersigned counsel, respectfully moves the Court to extend until October 11, 2013 NDPSC’s deadline to file a Motion for Claim of Attorney’s Fees and Costs. In support of its Motion the NDPSC states as follows:

1. Plaintiff brought its action under 30 U.S.C. § 1270(a). *See* Complaint at ¶ 4 (Document 1). Plaintiff’s Complaint and in its Brief in Support of its Motion for Summary Judgment alleged that Policy Memoranda issued by the NDPSC are amendments to the State’s federally approved surface mining program which have not been submitted to or approved by the U.S. Department of the Interior’s Office of Surface Mining Reclamation and Enforcement. *See* Complaint at ¶ 17. Plaintiff asked that the Court find that NDPSC has and continues to violate the federal Surface

Mining Control and Reclamation Act of 1977, 30 U.S.C. §§ 1201, *et seq.* and to compel NDPSC to refrain from giving further effect to the Policy Memoranda. *See* Complaint at p. 7.

2. Plaintiff filed a Motion for Summary Judgment in support of its claims.

3. The NDPSC and Intervenor-Defendant filed separate Motions for Summary Judgment in opposition to Plaintiff's Motion for Summary Judgment.

4. By Order dated September 3, 2013, the Court granted Defendant and Intervenor-Defendant's Motions for Summary Judgment and denied Plaintiff's Motion for Summary Judgment. *See* Document 52.

5. In its Order granting Defendant and Intervenor-Defendant's Motions for Summary Judgment, the Court denied Plaintiff's Motion because a) Plaintiff failed to invoke the Court's subject matter jurisdiction because Plaintiff failed to establish Article III standing to pursue its claims, (Order at 15); b) Plaintiff failed to assert a ripe challenge for judicial review, (Order at 20); c) Plaintiff's allegation that the NDPSC's Policy Memoranda are amendments to North Dakota's federally -approved surface mining program was without merit since the Policy Memoranda "simply provide further explanation or clarification concerning the approved state program, and do not substantively change the operation of that program..." (Order at 17); and d) Plaintiff's claims are "clearly barred by the three-year statute of limitations applicable to claims brought against the state," (Order at 20).

6. In its Answer to Plaintiff's Complaint, NDPSC requested that the Court enter an order dismissing Plaintiff's lawsuit with prejudice, and awarding NDPSC its litigation costs and expenses, including reasonable attorney fees. Answer at 5, Document 9.

7. In the NDPSC's Memorandum of Law In Support of Its Motion for Summary Judgment (Document 23-1 at 40) and in its Memorandum of Law In Support of its Reply in Opposition to

Plaintiff's Motion for Summary Judgment (Document 42 at 21), the NDPSC requested that the Court award to NDPSC the cost of its attorney's fees and expenses pursuant to 30 U.S.C. § 1270(d).

8. Pursuant to 30 U.S.C. § 1270(d), the Court may, when issuing a final order in an action brought under 30 U.S.C. § 1270(a), "award costs of litigation (including attorney and expert witness fees) to any party, whenever the court determines such award is appropriate."

9. Fed. R. Civ. P. 54(2)(A) provides that a claim for "attorney's fees and related nontaxable expenses must be made by motion." Such motion must be filed no later than 14 days after the entry of judgment. Fed. R. Civ. P. 54(2)(B). The current deadline for NDPSC to file a Motion for Claim of Attorney's Fees and Costs is September 17, 2013.

10. NDPSC requests an enlargement of time of 24-days to file its Motion for Claim of Attorney's Fees and Costs by no later than October 11, 2013. Due to the time necessary to compile the billing records, and the numerous other litigation and client obligations counsel to NDPSC has had and will have between now and October 4, 2013, an enlargement of time to file the Motion for Claim of Attorney's Fees and Costs is respectfully requested.

11. Counsel filed on September 12, 2013 in the United States District Court for the District of North Dakota a Complaint against the U.S. Environmental Protection Agency ("EPA" or "Agency") in the matter of the EPA Administrator's failure to take a nondiscretionary duty under the federal Clean Air Act. *See State of North Dakota et al v. McCarthy*, 1:13-cv-00109-CSM.

12. On September 13, Counsel is appearing before the Colorado Office of Administrative Courts in a Setting Conference in the matter of London Mine LLC, Notice of Violation/Cease and Desist Order Number IO-130321-1.

13. Counsel to NDPSC returned from travel to Dallas, Texas on September 5 in which they participated in a meeting with Region 6 EPA officials concerning a client's Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) matter pending before the Agency.

14. Further, counsel to NDPSC have client commitments in Phoenix, Arizona on September 15 and 16 and Mr. Seby is scheduled to give a presentation at the Energy Council's 2013 Annual Meeting in Jackson Hole, Wyoming on September 19 and 20.

15. Counsel is preparing to file a Motion to Intervene in a complex federal Clean Air Act case pending in the United States District Court in the North District of California.

16. Counsel to NDPSC are also in the midst of preparing detailed written comments in response to an EPA proposed rule, the Approval of Air Quality Implementation Plans; Navajo Nation; Regional Haze Requirements for Navajo Generating Station, 78 Fed. Reg. 8274, Docket ID No. EPA-R09-OAR-2013-0009, which are due October 4.

17. These and other pending client deadlines and commitments prevent counsel to NDPSC from being able to complete and file by September 17 the NDPSC's Motion for Claim of Attorney's Fees and Costs. Counsel, working with the NDPSC, must prepare for submission to the Court the time entries related to this matter in a format that the Court can easily review. Further, counsel must review the NDPSC invoices for attorney's fees and determine whether the description of work included in the invoices is attorney-client privileged and, if so, whether such descriptions may need to be filed under seal with the Court. Accordingly, the amount of time necessary to conduct the appropriate review and preparation of the Motion for Claim of Attorney's Fees and Costs is significant and counsel to NDPSC requires additional time to prepare such a filing.

WHEREFORE, NDPSC respectfully requests that this Court grant an enlargement of time of 24-days, through and including October 11, 2013, in which to file its Motion for Claim of Attorney's Fees and Costs.

Dated: September 12, 2013

Respectfully submitted,

**STATE OF NORTH DAKOTA  
WAYNE STENEHJEM  
ATTORNEY GENERAL**

/s/Paul M. Seby

Paul M. Seby  
Special Assistant Attorney General  
Marian C. Larsen  
Special Assistant Attorney General  
Seby Larsen LLP  
165 Madison Street  
Denver, CO 80206  
Telephone: (303) 248-3772  
Email: paul.seby@sebylarsen.com  
Email: mimi.larsen@sebylarsen.com

Office of Attorney General  
500 North 9th Street  
Bismarck, ND 58501-4509  
Telephone: (701) 328-3640  
Facsimile: (701) 328-4300

*Attorneys for Defendant North Dakota Public  
Service Commission*

**CERTIFICATE OF SERVICE**

I hereby certify that on September 12, 2013, the foregoing Motion for Extension of Time to File Motion For Claim Of Attorney's Fees And Costs was served electronically to all counsel of record through the Court's ECF System.

s/ Paul M. Seby \_\_\_\_\_

Paul M. Seby  
Special Assistant Attorney General

*Attorneys for Defendant North Dakota  
Public Service Commission*