

Rosanne Ogden

From: Zachary E. Pelham <zep@pearce-durick.com>
Sent: Friday, December 20, 2024 3:58 PM
To: 'rbakke@bgwattorneys.com'; Derrick Braaten; Steve Leibel; Bender, Lawrence
Cc: Schuh, John M.; David Knoll; Brad Wiederholt; Gludt, Tyler
Subject: PU-22-391 Appeal to District Court
Attachments: 22-391.pdf; 13. 2024.12.20 Notice - Appeal filed by Emmons County.pdf

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Thank you.
Sincerely,
Zack

Zachary Pelham | Attorney

925 PU-22-391 Filed 04/10/2025 Pages: 56
APPEAL - Exhibit 1 - Email Correspondence - Part 1 of 3
Knoll Leibel, LLP, on behalf of the Intervenor
Steven Leibel, Attorney

Exhibit 1
Case No.: 08-2024-CV-03622
Part 1 of 3

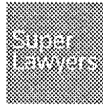
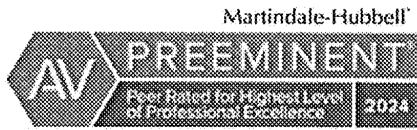
Pearce Durick PLLC

314 E. Thayer Avenue

Bismarck, ND 58502

Main 701.223.2890 | **Fax** 701.223.7865

www.pearce-durick.com



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Rosanne Ogden

From: Derrick Braaten <derrick@braatenlawfirm.com>
Sent: Friday, December 20, 2024 4:19 PM
To: Zachary E. Pelham; 'rbakke@bgwattorneys.com'; Steve Leibel; Bender, Lawrence
Cc: Schuh, John M.; David Knoll; Brad Wiederholt; Gludt, Tyler; Desirae Zaste
Subject: RE: PU-22-391 Appeal to District Court

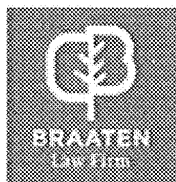
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Zack:

Does that estimate include the cost of transcripts, and if so can you give us that cost separately? For Emmons County, we do not believe a transcript is necessary for our appellate record and would request to stipulate to that.

Thanks,
Derrick

Derrick Braaten



BRAATEN LAW FIRM
109 N. 4th Street, Suite 100
Bismarck, ND 58501
Phone: 701-221-2911
Fax: 701-221-5842
www.braatenlawfirm.com

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To: 'rbakke@bgwattorneys.com' <rbakke@bgwattorneys.com>; Derrick Braaten <derrick@braatenlawfirm.com>; steve@bismarck-attorneys.com; Bender, Lawrence <LBender@fredlaw.com>
Cc: Schuh, John M. <jschuh@nd.gov>; david@bismarck-attorneys.com; Brad Wiederholt <bwiederholt@bgwattorneys.com>; Gludt, Tyler <TGludt@fredlaw.com>
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[Warning: External Sender]

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Zachary Pelham | Attorney

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Rosanne Ogden

From: Steve Leibel
Sent: Monday, December 23, 2024 11:27 AM
To: Zachary E. Pelham; 'rbakke@bgwattorneys.com'; Derrick Braaten; Bender, Lawrence
Cc: Schuh, John M.; David Knoll; Brad Wiederholt; Gludt, Tyler; 'Brian Jorde'; Rosanne Ogden
Subject: RE: PU-22-391 Appeal to District Court

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I hope you (and everyone else on this email) have a safe and happy holiday.

Steve



Steven J. Leibel, Partner
PO Box 858 · 1915 N. Kavaney Drive, Suite 3
Bismarck, ND 58502-0858
Phone 701-255-2010 · Fax 701-255-1980
Email steve@bismarck-attorneys.com
www.bismarck-attorneys.com

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Cc: Schuh, John M. <jschuh@nd.gov>; David Knoll <David@Bismarck-attorneys.com>; Brad Wiederholt

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Rosanne Ogden

From: Randall Bakke <rbakke@bgwattorneys.com>
Sent: Thursday, December 26, 2024 9:53 AM
To: pthompson@nd.gov; Lawrence Bender (lbender@fredlaw.com); bleonard@fredlaw.com; bdublinkske@fredlaw.com; John Schuh (jschuh@nd.gov); Zachary E. Pelham - Pearce & Durick Law Firm (zep@pearce-durick.com)
Cc: Kate Finck; Sarah Martin; bjorde@dominalaw.com; Steve Leibel; derrick@braatenlawfirm.com
Subject: Re: Civil No. 08-2024-CV-03614
Attachments: Notice to Appellant of Estimated Costs.pdf; Certificate of Service.pdf

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Mr. Schuh:

Thank you for your email below with attached Notice to appellant with estimated hearing transcription costs. To be clear, the only written hearing transcript that Burleigh County may request includes the hearings on the following dates in the described locations:

March 14, 2023 - Bismarck

May 9, 2023 - Linton

June 2, 2023 - Bismarck

June 27, 2023 - Bismarck (Hearing on protection of information)

December 21, 2023 - Bismarck (Hearing on Motion to Declare Burleigh and Emmons County Ordinances Superseded and Preempted)

May 28-June 3, 2024 - Bismarck (Technical Hearings)

June 4, 2024 - Linton

Also, could you please advise which court reporter provided the estimate to you for preparation for a written transcript. We are requesting that a new estimate be provided for the written transcript for the above dates and hearings only.

Please do not request any hearing transcript to be prepared at the expense of Burleigh County until we have your estimate for the hearings described above, and we have thereafter obtained authority from Burleigh County and provided communication in that regard to you verifying our request for preparation of a hearing transcript for the applicable dates.

We, of course, do not speak on behalf of the other parties and cannot confirm what hearing transcript they wish to have prepared in relation to the hearings in this matter, if any.

Thank you for your consideration and we look forward to hearing from you.

Randall J. Bakke

Certified Civil Trial Specialist – National Board of Trial Advocacy

Fellow-Litigation Counsel of America

Board Certified Civil Practice Advocacy



300 West Century Avenue

PO Box 4247

Bismarck, ND 58502-4247

Phone: (701) 751-8188

Fax: (701) 751-7172

rbakke@bgwattorneys.com

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From: Thompson, Pamela J. <pthompson@nd.gov>

Sent: Friday, December 20, 2024 3:44 PM

To: Randall Bakke <rbakke@bgwattorneys.com>; Brad Wiederholt <bwiederholt@bgwattorneys.com>; lbender@fredlaw.com <LBender@fredlaw.com>; bleonard@fredlaw.com <bleonard@fredlaw.com>; bdublinski@fredlaw.com <bdublinski@fredlaw.com>; Schuh, John M. <jschuh@nd.gov>
Subject: Civil No. 08-2024-CV-03614

Attached please find the following documents that were filed via Odyssey Electronic Service and File System:

1. *Notice to Appellant of Estimated Costs; and*
2. *Certificate of Service*

Pamela Thompson

Executive Assistant

701.328.4096 • pthompson@nd.gov • www.psc.nd.gov



This transmission, email and any files transmitted with it, may be: (1) subject to the Attorney-Client Privilege, (2) an attorney work product, or (3) strictly confidential under federal or state law. If you are not the intended recipient of this message, you may not use, disclose, print, copy or disseminate this information. If you have received this transmission in error, notify the sender (only) and delete the message. This message may also be subject to disclosure under the North Dakota Open Records Laws.

Rosanne Ogden

From: Zachary E. Pelham <zep@pearce-durick.com>
Sent: Thursday, December 26, 2024 10:47 AM
To: Steve Leibel
Cc: rbakke@bgwattorneys.com; Derrick Braaten; Lawrence Bender; John M. Schuh; David Knoll; Brad Wiederholt; Tyler Gludt; Brian Jorde; Rosanne Ogden; Lawrence Bender; John M. Schuh; Tyler Gludt
Subject: Re: PU-22-391 Appeal to District Court

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Thank you.

Sincerely,

Zack

Zachary Pelham | Attorney

Pearce Durick PLLC

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On Dec 23, 2024, at 11:27 AM, Steve Leibel <Steve@bismarck-attorneys.com> wrote:

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<image003.jpg>

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To: Zachary E. Pelham
Cc: Derrick Braaten; Lawrence Bender; John M. Schuh; David Knoll; Tyler Gludt; Brian Jorde; Rosanne Ogden; Steve Leibel
Subject: Re: PU-22-391 Appeal to District Court

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Mr. Pelham,

In response to your email below, and with respect to the record on appeal to be prepared by the Commission, N.D.C.C. § 28-32-44 states in relevant part, “the administrative agency concerned shall prepare and file in the office of the clerk of the district court in which the appeal is pending the original or a certified copy of the entire record of proceedings before the agency, or an abstract of the record as may be agreed upon and stipulated by the parties.” (Underline Added) The Century Code clearly contemplates that the parties may agree and stipulate to an appropriately smaller record on appeal, focused on the issues being appealed. Given the number, length, and varying topics and locations of the hearing days held in this matter, much of which is irrelevant to this appeal, this seems to be an ideal case to agree to an appropriate stipulation limiting the testimony to be transcribed as part of the record on appeal. This would potentially avoid tens of thousands of dollars of unnecessary transcription expenses and save time in waiting for the transcript to be completed. If this flexibility in the statute serves any purpose at all, certainly it is to avoid needlessly transcribing days’ worth of testimony unrelated to the issues on appeal. We request that you reconsider your position that “there is no ‘a la carte’ transcript preparation option for the Commission to certify the record on appeal,” and agree to an appropriate stipulation by the parties relating to the transcripts to include in the record on appeal.

Regardless of whether you reconsider that position, in response to my prior email, we would appreciate if you would identify who provided the estimated costs of transcription and the rates they used, as has been previously requested.

Regarding your inquiry about consolidation of this appeal before Judge Nesvig, I expect a response from Burleigh County soon on this issue. I will let everyone know once I hear. However, if in the meantime if you could circulate a stipulation for consolidation as you offered for Judge Nesvig to handle the case, that would be great.

Randall J. Bakke

Certified Civil Trial Specialist – National Board of Trial Advocacy

Fellow-Litigation Counsel of America



**Bakke
Grinolds
Wiederholt**
ATTORNEYS AT LAW

300 West Century Avenue

PO Box 4247

Bismarck, ND 58502-4247

Phone: (701) 751-8188

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To: Steve Leibel <Steve@bismarck-attorneys.com>

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Subject: Re: PU-22-391 Appeal to District Court

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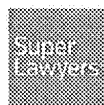
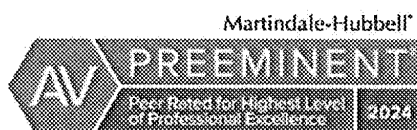
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Steve

<image003.jpg>

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From: Zachary E. Pelham <zep@pearce-durick.com>

Sent: Friday, December 20, 2024 3:58 PM

To: 'rbakke@bgwattorneys.com' <rbakke@bgwattorneys.com>; Derrick Braaten <derrick@braatenlawfirm.com>; Steve Leibel <Steve@Bismarck-attorneys.com>; Bender, Lawrence <LBender@fredlaw.com>

Cc: Schuh, John M. <jschuh@nd.gov>; David Knoll <David@Bismarck-attorneys.com>; Brad Wiederholt <bwiederholt@bgwattorneys.com>; Gludt, Tyler <TGludt@fredlaw.com>

Subject: PU-22-391 Appeal to District Court

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Thank you.
Sincerely,
Zack

Zachary Pelham | Attorney

Pearce Durick PLLC

314 E. Thayer Avenue
Bismarck, ND 58502
Main 701.223.2890 | **Fax** 701.223.7865
www.pearce-durick.com

<image004.png>

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Rosanne Ogden

From: Brian Jorde <BJorde@dominalaw.com>
Sent: Thursday, December 26, 2024 4:49 PM
To: Randall Bakke; Zachary E. Pelham
Cc: Derrick Braaten; Lawrence Bender; John M. Schuh; David Knoll; Tyler Gludt; Rosanne Ogden; Steve Leibel
Subject: RE: PU-22-391 Appeal to District Court

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All:

1. The Landowners concur with Mr. Bakke's interpretation below and are happy to work towards a joint stipulation to prevent unnecessarily clogging the record with superfluous testimony.

Brian

From: Randall Bakke <rbakke@bgwattorneys.com>
Sent: Thursday, December 26, 2024 3:25 PM
To: Zachary E. Pelham <zep@pearce-durick.com>
Cc: Derrick Braaten <derrick@braatenlawfirm.com>; Lawrence Bender <LBender@fredlaw.com>; John M. Schuh <jschuh@nd.gov>; David Knoll <david@bismarck-attorneys.com>; Tyler Gludt <TGludt@fredlaw.com>; Brian Jorde <BJorde@dominalaw.com>; Rosanne Ogden <Rosanne@Bismarck-attorneys.com>; Steve Leibel <Steve@Bismarck-attorneys.com>
Subject: Re: PU-22-391 Appeal to District Court

Mr. Pelham,

In response to your email below, and with respect to the record on appeal to be prepared by the Commission, N.D.C.C. § 28-32-44 states in relevant part, "the administrative agency concerned shall prepare and file in the office of the clerk of the district court in which the appeal is pending the original or a certified copy of the entire record of proceedings before the agency, or an abstract of the record as may be agreed upon and stipulated by the parties." (Underline Added) The Century Code clearly contemplates that the parties may agree and stipulate to an appropriately smaller record on appeal, focused on the issues being appealed. Given the number, length, and varying topics and locations of the hearing days held in this matter, much of which is irrelevant to this appeal, this seems to be an ideal case to agree to an appropriate stipulation limiting the testimony to be transcribed as part of the record on appeal. This would potentially avoid tens of thousands of dollars of unnecessary transcription expenses and save time in waiting for the transcript to be completed. If this flexibility in the statute serves any purpose at all, certainly it is to avoid needlessly transcribing days' worth of testimony unrelated to the issues on appeal. We request that you reconsider your position that "there is no 'a la carte' transcript preparation option for the Commission to certify the record on appeal," and agree to an appropriate stipulation by the parties relating to the transcripts to include in the record on appeal.

Regardless of whether you reconsider that position, in response to my prior email, we would appreciate if you would identify who provided the estimated costs of transcription and the rates they used, as has

been previously requested.

Regarding your inquiry about consolidation of this appeal before Judge Nesvig, I expect a response from Burleigh County soon on this issue. I will let everyone know once I hear. However, if in the meantime if you could circulate a stipulation for consolidation as you offered for Judge Nesvig to handle the case, that would be great.

Randall J. Bakke

Certified Civil Trial Specialist – National Board of Trial Advocacy

Fellow-Litigation Counsel of America

Board Certified Civil Practice Advocacy



300 West Century Avenue

PO Box 4247

Bismarck, ND 58502-4247

Phone: (701) 751-8188

Fax: (701) 751-7172

rbakke@bgwattorneys.com

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From: Zachary E. Pelham <zep@pearce-durick.com>

Sent: Thursday, December 26, 2024 10:46 AM

To: Steve Leibel <Steve@bismarck-attorneys.com>

Cc: Randall Bakke <rbakke@bgwattorneys.com>; Derrick Braaten <derrick@braatenlawfirm.com>; Lawrence Bender <LBender@fredlaw.com>; John M. Schuh <jschuh@nd.gov>; David Knoll <David@bismarck-attorneys.com>; Brad Wiederholt <bwiederholt@bgwattorneys.com>; Tyler Gludt <TGludt@fredlaw.com>; Brian Jorde <BJorde@dominalaw.com>; Rosanne Ogden <Rosanne@bismarck-attorneys.com>; Lawrence Bender <LBender@fredlaw.com>; John M. Schuh <jschuh@nd.gov>; Tyler Gludt <TGludt@fredlaw.com>

Subject: Re: PU-22-391 Appeal to District Court

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NDCC 28-32-44 provides the transcript is part of the record the Commission must certify. The statute also provides that payment of the estimated cost of preparation must be paid to the Commission prior to certification of the record to the district court. Once the Commission receives the estimated cost to prepare the transcript, preparation of the transcript will begin.

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Sincerely,

Zack

Zachary Pelham | Attorney

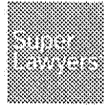
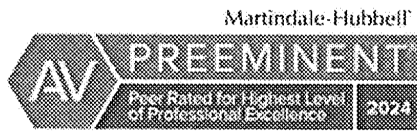
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On Dec 23, 2024, at 11:27 AM, Steve Leibel <Steve@bismarck-attorneys.com> wrote:

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Sent: Friday, December 20, 2024 3:58 PM

To: 'rbakke@bgwattorneys.com' <rbakke@bgwattorneys.com>; Derrick Braaten <derrick@braatenlawfirm.com>; Steve Leibel <Steve@Bismarck-attorneys.com>; Bender, Lawrence <LBender@fredlaw.com>

Cc: Schuh, John M. <jschuh@nd.gov>; David Knoll <David@Bismarck-attorneys.com>; Brad Wiederholt

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Thank you.

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Rosanne Ogden

From: Zachary E. Pelham <zep@pearce-durick.com>
Sent: Friday, December 27, 2024 9:37 AM
To: Randall Bakke
Cc: Derrick Braaten; Lawrence Bender; John M. Schuh; David Knoll; Tyler Gludt; Brian Jorde; Rosanne Ogden; Steve Leibel
Subject: RE: PU-22-391 Appeal to District Court

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Good morning Randy.

I appreciate what you and others are requesting. I really do. And if I were in your position, I may be requesting the same.

From my client's perspective and position as appellee, we need the record. I don't know what will be precisely argued by appellants (yes, I have a very good idea). And the record contains a lot of argument and testimony that is extended and varied. Put another way, the Commission is not taking the position it is without having merit to do so. The Commission simply cannot agree to a limitation of the record relating to arguments and testimony received during all portions of the siting case. And, for whatever it may be worth, on every appeal I have ever been involved in I have always requested all transcripts of substantive hearings related to the matter (granted, this matter has had much more in terms of hearings than any other past matter I have had, but the foundational reason for having a transcript remains true here).

Lisa Hulm provided an estimate of approximately \$48,880 and 3 months. Additional time would be necessary to break the filings down for court certification. Denise Andahl estimated \$70,000-90,000 in 3 to 4 months.

If you or others have a lesser estimate from a reputable court reporter, let us know and we can review that (no 1-800-Transcript.com). If there is a more economical option, the Commission will consider that option.

I am out of the office on vacation this week, but will prepare and circulate a stipulation related to consolidation on Monday.

Again, Randy, I appreciate the fact your client (and other appellants) may not need the entire hearing record transcribed. The Commission's position comes strictly from the perspective that there are portions of the hearings that may need to be highlighted in the briefing. While this will likely be a low percentage of the overall hearing record, I cannot

say which portions will be used but I can tell you that I would not be serving the interests of my client if I stipulated to only portions of the hearing record being transcribed. Stated another way, the Commission is taking this position with the strategic mindset as an appellee.

Thank you Randy.
Zack

Zachary Pelham | Attorney

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**Bakke
Grinolds
Wiederholt**
ATTORNEYS AT LAW

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Sent: Thursday, December 26, 2024 10:46 AM

To: Steve Leibel <Steve@bismarck-attorneys.com>

Cc: Randall Bakke <rbakke@bgwattorneys.com>; Derrick Braaten <derrick@braatenlawfirm.com>; Lawrence Bender <LBender@fredlaw.com>; John M. Schuh <jschuh@nd.gov>; David Knoll <David@bismarck-attorneys.com>; Brad Wiederholt <bwiederholt@bgwattorneys.com>; Tyler Gludt <TGludt@fredlaw.com>; Brian Jorde <BJorde@dominalaw.com>; Rosanne Ogden <Rosanne@bismarck-attorneys.com>; Lawrence Bender <LBender@fredlaw.com>; John M. Schuh <jschuh@nd.gov>; Tyler Gludt <TGludt@fredlaw.com>

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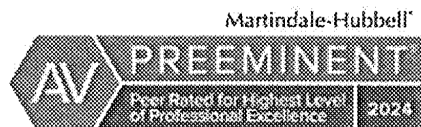
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From: Zachary E. Pelham <zep@pearce-durick.com>

Sent: Friday, December 20, 2024 3:58 PM

To: 'rbakke@bgwattorneys.com' <rbakke@bgwattorneys.com>; Derrick Braaten <derrick@braatenlawfirm.com>; Steve Leibel <Steve@Bismarck-attorneys.com>; Bender, Lawrence <LBender@fredlaw.com>

Cc: Schuh, John M. <jschuh@nd.gov>; David Knoll <David@Bismarck-attorneys.com>; Brad Wiederholt <bwiederholt@bgwattorneys.com>; Gludt, Tyler <TGludt@fredlaw.com>

Subject: PU-22-391 Appeal to District Court

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Rosanne Ogden

From: Zachary E. Pelham <zep@pearce-durick.com>
Sent: Tuesday, December 31, 2024 11:42 AM
To: Derrick Braaten; Lawrence Bender; Randall Bakke; Steve Leibel
Cc: John M. Schuh; David Knoll; Tyler Gludt; Brian Jorde; Rosanne Ogden
Subject: PU-22-391 Appeal to District Court; Stipulation to Consolidate
Attachments: 2024.12.31 Stipulation to Consolidate.docx

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Good morning:

Attached is a draft stipulation to consolidate the appeals into the appeal before Judge Nesvig. Please let me know if I can insert your e-signature for filing.

Thank you and Happy New Year!
Zack

Zachary Pelham | Attorney

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Rosanne Ogden

From: Steve Leibel
Sent: Monday, January 6, 2025 9:51 AM
To: Zachary E. Pelham; Derrick Braaten; Lawrence Bender; Randall Bakke
Cc: John M. Schuh; David Knoll; Tyler Gludt; Brian Jorde; Rosanne Ogden
Subject: RE: PU-22-391 Appeal to District Court; Stipulation to Consolidate
Attachments: 010625 Stipulation to Consolidate (SJL).docx

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I hope everyone had a safe and enjoyable holiday.

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Bismarck, ND 58502-0858
Phone 701-255-2010 · Fax 701-255-1980
Email steve@bismarck-attorneys.com
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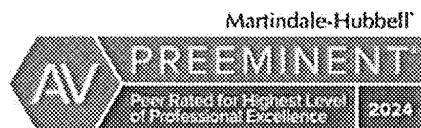
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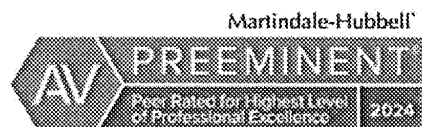
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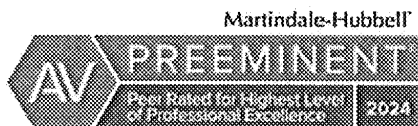
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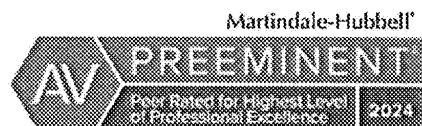
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Cc: John M. Schuh; David Knoll; Tyler Gludt; Brian Jorde; Rosanne Ogden; Desirae Zaste
Subject: RE: PU-22-391 Appeal to District Court; Stipulation to Consolidate

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Thank you Derrick.

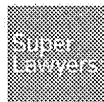
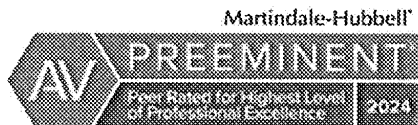
I do not have any issue with this.

Zack

Zachary Pelham | Attorney

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Subject: RE: PU-22-391 Appeal to District Court; Stipulation to Consolidate

Yes sorry, Steve reminded me that we also filed an additional appeal after the final decision, in addition to the previously filed appeal into which we are consolidating. So we need to add the additional appeal filed by Emmons, and I also noticed now that this is consolidating into the newer Emmons action, and should consolidate into the older Emmons action so that all the recent actions get consolidated into the original.

0624 is the original case.

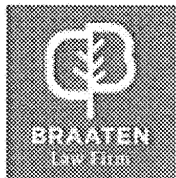
3610 is the second Emmons case.

So we should add 3610 as one of the cases being consolidated, and the stip should be filed in 0624, and then similar stips and motions filed in the other cases by each of us as Steve suggested.

Let me know if this makes sense and I can circulate a redline, but wanted to ensure we are on the same page before I do that. Please also copy Desirae Zaste, my litigation manager, on these emails.

Thank you,
Derrick

Derrick Braaten



BRAATEN LAW FIRM
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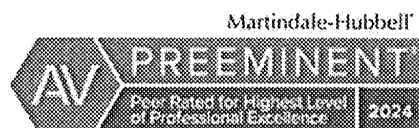
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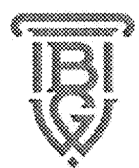
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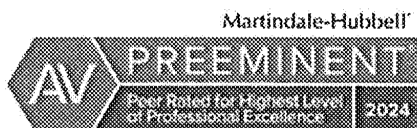
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Rosanne Ogden

From: Steve Leibel
Sent: Tuesday, January 7, 2025 9:51 AM
To: Zachary E. Pelham; Derrick Braaten; Randall Bakke; Lawrence Bender
Cc: John M. Schuh; David Knoll; Tyler Gludt; Brian Jorde; Rosanne Ogden; Desirae Zaste
Subject: RE: PU-22-391 Appeal to District Court; Stipulation to Consolidate

Sounds good Derrick.



Steven J. Leibel, Partner
PO Box 858 · 1915 N. Kavaney Drive, Suite 3
Bismarck, ND 58502-0858
Phone 701-255-2010 · Fax 701-255-1980
Email steve@bismarck-attorneys.com
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From: Zachary E. Pelham <zep@pearce-durick.com>
Sent: Monday, January 6, 2025 3:26 PM
To: Derrick Braaten <derrick@braatenlawfirm.com>; Randall Bakke <rbakke@bgwattorneys.com>; Steve Leibel <Steve@Bismarck-attorneys.com>; Lawrence Bender <LBender@fredlaw.com>
Cc: John M. Schuh <jschuh@nd.gov>; David Knoll <David@Bismarck-attorneys.com>; Tyler Gludt <TGludt@fredlaw.com>; Brian Jorde <BJorde@dominalaw.com>; Rosanne Ogden <Rosanne@Bismarck-attorneys.com>; Desirae Zaste <desirae@braatenlawfirm.com>
Subject: RE: PU-22-391 Appeal to District Court; Stipulation to Consolidate

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Thank you Derrick.

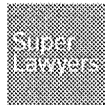
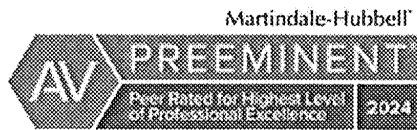
I do not have any issue with this.

Zack

Zachary Pelham | Attorney

Pearce Durick PLLC

314 E. Thayer Avenue
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From: Derrick Braaten <derrick@braatenlawfirm.com>

Sent: Monday, January 6, 2025 3:14 PM

To: Zachary E. Pelham <zep@pearce-durick.com>; Randall Bakke <rbakke@bgwattorneys.com>; Steve Leibel <Steve@Bismarck-attorneys.com>; Lawrence Bender <LBender@fredlaw.com>

Cc: John M. Schuh <jschuh@nd.gov>; David Knoll <david@bismarck-attorneys.com>; Tyler Gludt <TGludt@fredlaw.com>; Brian Jorde <BJorde@dominalaw.com>; Rosanne Ogden <Rosanne@Bismarck-attorneys.com>; Desirae Zaste <desirae@braatenlawfirm.com>

Subject: RE: PU-22-391 Appeal to District Court; Stipulation to Consolidate

Yes sorry, Steve reminded me that we also filed an additional appeal after the final decision, in addition to the previously filed appeal into which we are consolidating. So we need to add the additional appeal filed by Emmons, and I also noticed now that this is consolidating into the newer Emmons action, and should consolidate into the older Emmons action so that all the recent actions get consolidated into the original.

0624 is the original case.

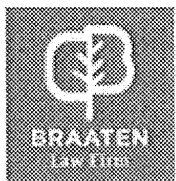
3610 is the second Emmons case.

So we should add 3610 as one of the cases being consolidated, and the stip should be filed in 0624, and then similar stips and motions filed in the other cases by each of us as Steve suggested.

Let me know if this makes sense and I can circulate a redline, but wanted to ensure we are on the same page before I do that. Please also copy Desirae Zaste, my litigation manager, on these emails.

Thank you,
Derrick

Derrick Braaten



BRAATEN LAW FIRM
109 N. 4th Street, Suite 100
Bismarck, ND 58501
Phone: 701-221-2911
Fax: 701-221-5842
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From: Zachary E. Pelham <zep@pearce-durick.com>

Sent: Monday, January 6, 2025 2:39 PM

To: Randall Bakke <rbakke@bgwattorneys.com>; Steve Leibel <Steve@Bismarck-attorneys.com>; Derrick Braaten <derrick@braatenlawfirm.com>; Lawrence Bender <LBender@fredlaw.com>

Cc: John M. Schuh <jschuh@nd.gov>; David Knoll <david@bismarck-attorneys.com>; Tyler Gludt

<TGludt@fredlaw.com>; Brian Jorde <BJorde@dominalaw.com>; Rosanne Ogden <Rosanne@Bismarck-attorneys.com>

Subject: RE: PU-22-391 Appeal to District Court; Stipulation to Consolidate

[Warning: External Sender]

Thank you Steve and Randy for the edits you've provided.

Derrick and Lawrence...any edits?

Zack

Zachary Pelham | Attorney

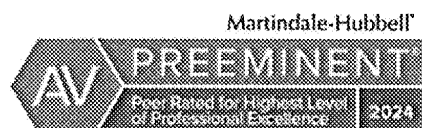
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From: Randall Bakke <rbakke@bgwattorneys.com>

Sent: Monday, January 6, 2025 1:50 PM

To: Steve Leibel <Steve@Bismarck-attorneys.com>; Zachary E. Pelham <zep@pearce-durick.com>; Derrick Braaten <derrick@braatenlawfirm.com>; Lawrence Bender <LBender@fredlaw.com>

Cc: John M. Schuh <jschuh@nd.gov>; David Knoll <david@bismarck-attorneys.com>; Tyler Gludt

<TGludt@fredlaw.com>; Brian Jorde <BJorde@dominalaw.com>; Rosanne Ogden <Rosanne@Bismarck-attorneys.com>

Subject: Re: PU-22-391 Appeal to District Court; Stipulation to Consolidate

Counsel,

Please be advised that Burleigh County agrees to the revised Stipulation provided by attorney Leibel.

However, we have made one change to paragraph 4 of the proposed Stipulation. That change merely adds the civil numbers for the Burleigh County appeal and the Landowners appeal for clarity. A copy of the proposed revised Stipulation which is agreeable to Burleigh County is attached.

Kindly please advise whether the Stipulation is acceptable to all parties.

Randall J. Bakke

Certified Civil Trial Specialist – National Board of Trial Advocacy

Fellow-Litigation Counsel of America

Board Certified Civil Practice Advocacy



300 West Century Avenue

PO Box 4247

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From: Steve Leibel <Steve@Bismarck-attorneys.com>

Sent: Monday, January 6, 2025 9:51 AM

To: Zachary E. Pelham <zep@pearce-durick.com>; Derrick Braaten <derrick@braatenlawfirm.com>; Lawrence Bender <LBender@fredlaw.com>; Randall Bakke <rbakke@bgwattorneys.com>

Cc: John M. Schuh <jschuh@nd.gov>; David Knoll <David@Bismarck-attorneys.com>; Tyler Gludt <TGludt@fredlaw.com>; Brian Jorde <BJorde@dominalaw.com>; Rosanne Ogden <Rosanne@Bismarck-attorneys.com>

Subject: RE: PU-22-391 Appeal to District Court; Stipulation to Consolidate

All,

Attached are my revisions to the stipulation. My revisions address two issues. First, I think we should make sure that the stipulation is clear that we are consolidating into Judge Nesvig's case. Second, I believe the stipulation should say that Appellants' attorneys (Randy and I) will be filing the stipulations in our individual appeals to request consolidation in those cases too. This is done to avoid a potential procedural issue that I have run into before when trying to consolidate multiple cases into one.

I would like to get the stipulation and our individual motions filed in the next few days so we can work to resolve the issues with the record, etc. Please let me know if anyone has any comments.

I hope everyone had a safe and enjoyable holiday.

Steve



Steven J. Leibel, Partner
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From: Zachary E. Pelham <zep@pearce-durick.com>

Sent: Tuesday, December 31, 2024 11:42 AM

To: Derrick Braaten <derrick@braatenlawfirm.com>; Lawrence Bender <LBender@fredlaw.com>; Randall Bakke <rbakke@bgwattorneys.com>; Steve Leibel <Steve@Bismarck-attorneys.com>

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Subject: PU-22-391 Appeal to District Court; Stipulation to Consolidate

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Good morning:

Attached is a draft stipulation to consolidate the appeals into the appeal before Judge Nesvig. Please let me know if I can insert your e-signature for filing.

Thank you and Happy New Year!

Zack

Zachary Pelham | Attorney

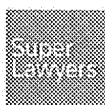
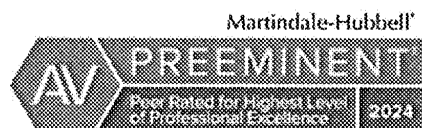
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Rosanne Ogden

From: Randall Bakke <rbakke@bgwattorneys.com>
Sent: Tuesday, January 7, 2025 1:40 PM
To: 'Zachary E. Pelham'; Derrick Braaten; Steve Leibel; Lawrence Bender
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Subject: RE: PU-22-391 Appeal to District Court; Stipulation to Consolidate

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Derrick:

I agree to your requested changes to the Stipulation.

Randall J. Bakke

Certified Civil Trial Specialist – National Board of Trial Advocacy

Fellow-Litigation Counsel of America

Board Certified Civil Practice Advocacy



**Bakke
Grinolds
Wiederholt**
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Bismarck, ND 58502-4247
Phone: (701) 751-8188
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Subject: RE: PU-22-391 Appeal to District Court; Stipulation to Consolidate

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Zachary Pelham | Attorney

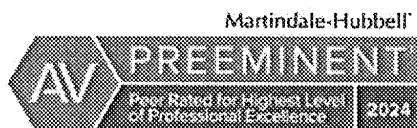
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Derrick