

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
WESTERN DIVISION**

STATE OF NORTH DAKOTA,

Plaintiff,

v.

THE UNITED STATES DEPARTMENT OF THE INTERIOR; DEBRA HAALAND, in her official capacity as Secretary of the Interior; THE BUREAU OF LAND MANAGEMENT; NADA CULVER, in her official capacity as acting Director of the Bureau of Land Management; and JOHN MEHLHOFF, in his official capacity as the acting Director of the Montana-Dakotas Bureau of Land Management,

Defendants,

and

Center for Biological Diversity; Sierra Club; Western Organization of Resource Councils; and Dakota Resource Council,

Intervenor-Defendants.

Case No. 1:21-cv-00148-DMT-CRH (lead)
Case No. 1:23-cv-00004-DMT-CRH

**JOINT STATUS REPORT IN
RESPONSE TO ORDER
GRANTING, IN PART, AND
DENYING, IN PART, NORTH
DAKOTA’S MOTION FOR
PRELIMINARY INJUNCTION, ECF
NO. 98**

Pursuant to the Court’s Order Granting, in Part, and Denying, in Part, North Dakota’s Motion for Preliminary Injunction (Order), ECF No. 98, the Parties respectfully submit the following response to the Court’s Order directing them to “provide the Court [by April 10, 2023] a schedule of when lease sales will take place in 2023 in North Dakota,” Order at 81.

The Court has already scheduled an in-person status conference for April 24, 2023. The Parties report their understanding of the Order that they are to appear for in-

person status conferences at least one week before the 2023 statutory deadlines to issue a Notice of Competitive Lease Sale (*i.e.*, 52 days before the end of a quarter): or at least by August 9, 2023; and November 9, 2023. The Parties jointly represent that they are available on both August 9, 2023 and November 9, 2023 for an in-person status conference. If those dates are acceptable to the Court, the Parties would appreciate the Court setting those dates and specifying the courthouse in which those in-person conferences will occur so the parties can reserve the dates and travel arrangements.

Defendants' Statement on 2023 Schedule

The schedule for lease sales in North Dakota in 2023 was previously released on the Bureau of Land Management's (BLM's) National Fluid Lease Sale System, as memorialized in Exhibit 1 to Plaintiff's Second Complaint: June 27, 2023; September 12, 2023; and December 5, 2023.¹ While BLM presently anticipates holding sales on or around those dates, those specific sale dates may change as BLM responds to public input and comments during the preleasing evaluation process. Decl. of Merry Gamper ¶¶ 4–7. For example, the sale that was previously anticipated to occur on June 27, 2023, is now planned to occur on June 28, 2023. *Id.* ¶ 5.

Plaintiff's Statement on 2023 Schedule

North Dakota initiated conferral with counsel for Federal Defendants and Intervenor-Defendants on April 5, 2023, during which conferral counsel for Federal Defendants declined to elaborate on the future schedule for quarterly lease sales in North

¹ Case No. 1:23-cv-4, ECF No. 1-1.

Dakota in 2023. As such, North Dakota cannot comment on Federal Defendants’ anticipated schedule for future lease sales in 2023 as North Dakota is not ultimately responsible for scheduling and ensuring that the statutorily required quarterly lease sales will occur. North Dakota notes that it is disappointed that the Federal Defendants are declining at this time to provide any more certainty on the schedule for future quarterly lease sales. Exhibit 1 to North Dakota’s Second Complaint, as previously explained in these combined actions, was a download of anticipated future quarterly lease sales from BLM’s National Fluid Lease Sale System but is not a binding schedule nor a firm commitment by Federal Defendants to hold those future “anticipated” lease sales. In briefing before this Court, Federal Defendants indicated that beyond the scheduled Q2 2023 quarterly lease sale, “[t]he BLM Montana-Dakotas State Office presently anticipates holding two additional lease sales in Calendar Year 2023. Those sales are planned to occur in Q3 and Q4 2023.” ECF No. 74-1, Decl. of Nada Culver at ¶ 23. At this time, and to the best of North Dakota’s knowledge, Federal Defendants have not definitively committed to nor affirmatively scheduled any future lease sales beyond the schedule Q2, 2023 quarterly lease sale.

Intervenor-Defendants’ Statement on 2023 Schedule

Intervenor-Defendants take no position on the dates listed for the 2023 Schedule.

Respectfully submitted this 10th day of April 2023.

TODD KIM
Assistant Attorney General
Environment & Natural Resources Division
U.S. Department of Justice

/s/ Michael S. Sawyer

MICHAEL S. SAWYER
Senior Attorney, Natural Resources Section
Ben Franklin Station, P.O. Box 7611
Washington, D.C. 20044-7611
Telephone: (202) 514-5273
Fax: (202) 305-0506
Email: michael.sawyer@usdoj.gov

Counsel for Defendants

DREW H. WRIGLEY
ATTORNEY GENERAL
STATE OF NORTH DAKOTA

/s/ Paul M. Seby

Paul M. Seby
Special Assistant Attorney General
Greenberg Traurig, LLP
1144 15th St, Suite 3300
Denver, CO 80202
Phone: (303) 572-6584
Email: sebyp@gtlaw.com

Matthew Sagsveen
Assistant Attorney General
Director of Natural Resources and Indian Affairs
600 E. Boulevard Ave Dept. 125
Bismarck ND 58505
Phone: (701) 328-2595
Email: masagsve@nd.gov

*COUNSEL FOR PLAINTIFF
STATE OF NORTH DAKOTA*

/s/ Kyle Tisdel

Kyle Tisdel (*admitted pro hac vice*)
Rose Rushing (*admitted pro hac vice*)
Western Environmental Law Center
208 Paseo del Pueblo Sur, Unit 602
Taos, NM 87571
(575) 613-8050 (Kyle Tisdel)
(505) 278-9577 (Rose Rushing)
tisdel@westernlaw.org

rushing@westernlaw.org

/s/ Melissa Hornbein

Melissa Hornbein (*admitted pro hac vice*)
Western Environmental Law Center
103 Reader's Alley
Helena, MT 59601
(406) 708-3058
hornbein@westernlaw.org

*Counsel for Center for Biological Diversity,
Dakota Resource Council, and Western
Organization of Resource Councils*

/s/ Michael Freeman

Michael Freeman (*admitted pro hac vice*)
Earthjustice
633 17th Street, Suite 1600
Denver, CO 80202
(303) 996-9615
mfreeman@earthjustice.org

/s/ Thomas Delehanty

Thomas Delehanty (*admitted pro hac vice*)
Earthjustice
633 17th Street, Suite 1600
Denver, CO 80202
(303) 996-9628
tdelehanty@earthjustice.org

Counsel for Sierra Club