

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

EDWARD “SULLY” DANKS, SR., and)	
GEORGIANNA DANKS, as Land Owners)	
)	
Plaintiffs,)	
)	
v.)	Case No. 1:18-cv-186-CSM
)	
SLAWSON EXPLORATION COMPANY, INC.,)	
and WHITE BUTTE OIL OPERATIONS, LLC,)	
)	
Defendants.)	

DEFENDANTS’ RESPONSE TO SHOW CAUSE ORDER

Defendants Slawson Exploration Company, Inc. and White Butte Oil Operations, LLC (collectively, the “Defendants”), by and through their undersigned counsel, hereby submit this Response to the Court’s *Order Denying Plaintiffs’ Motion to Dismiss, Order Requiring Plaintiffs to Show Cause Why Case Should Not Be Dismissed for Failure to Prosecute, and Other Orders* (Dkt. No. 42, the “Show Cause Order”), and state as follows:

- 1) Defendants do not dispute the Court’s statement in the Show Cause Order that common law claims for trespass and nuisance on Indian lands arise under federal common law and thereby create federal questions.
- 2) Defendants have reviewed Plaintiffs’ submissions (Dkt. Nos. 43 and 44) in response to the Show Cause Order and respectfully submit that:

- a. In addition to being based on a fundamental misapprehension that a jury¹ will divine the amount of damages, Plaintiffs' submissions are devoid of good cause (or even an effort to demonstrate good cause) to alter the conclusion that they have demonstrated a pattern of failing to comply with the Scheduling Order and Court Rules—including the undisputed failures to timely prosecute their claims, to abide by their obligations in fact or expert discovery, and to provide a substantive response to Defendants' summary judgment motion—warranting dismissal on the merits. *Alau v. Morse*, 2018 WL 10231432, at *1 (D.N.D. Jan. 29, 2018) (dismissing Plaintiff's claims pursuant to F.R.C.P. 41(b) for demonstrated pattern of failure to comply with rules and orders of the court, where Plaintiff failed to make disclosures required by the Scheduling Order and “wholly failed to respond to the defendants' interrogatories”); and
- b. Plaintiffs' acknowledgement that they have “no experts, and no evidence” (Dkt. No. 43, p. 3), coupled with Plaintiffs' inability to call witnesses or introduce exhibits due to their election not to participate in discovery, mandates the conclusion that “trial would be a futile waste of judicial resources and that dismissal [is] the appropriate response.” *Hunt v. City of Minneapolis*, 203 F.3d 524, 527 (8th Cir. 2000).

¹ In the proposed Scheduling Order, the parties agreed to have Judge Miller conduct a “nonjury” trial in this matter. Dkt. No. 28 at 4.

Respectfully submitted this 25th day of August, 2021.

s/ Jeffrey M. Lippa

Jeffrey M. Lippa

WILLIAMS WEESE PEPPLER & FERGUSON

1801 California Street, Suite 3400

Denver, CO 80202

Telephone: 303-861-2828

Email: jlippa@williamsweese.com

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day August, 2021, a true and correct copy of the foregoing **DEFENDANTS' RESPONSE TO SHOW CAUSE ORDER** was filed with the Court and served upon the following counsel of record:

Donald G. Bruce
BRUCE LAW OFFICE
P.O. Box 674
Belcourt, ND 58316
Telephone: (701) 477-8755
Email: michif0@yahoo.com

ATTORNEYS FOR PLAINTIFFS

s/ Jeffrey M. Lippa

Jeffrey M. Lippa