



## West Virginia E-Filing Notice

CC-33-2023-P-12

Judge: Debra McLaughlin

**To:** Lawrence M. Schultz  
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# NOTICE OF FILING

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IN THE CIRCUIT COURT OF MORGAN COUNTY, WEST VIRGINIA

Dale Kirchner v. Brett W. McMillion

CC-33-2023-P-12

The following proposed order - case - rtf editor was FILED on 4/17/2023 2:20:48 PM

Notice Date: 4/17/2023 2:20:48 PM

Melanie Shambaugh  
CLERK OF THE CIRCUIT COURT  
Morgan County  
77 Fairfax St Rm 302  
BERKELEY SPRINGS, WV 25411

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**In the Circuit Court of Morgan County, West Virginia**

**Dale Kirchner,**  
Plaintiff,

v.

Case No. CC-33-2023-P-12  
Judge Debra McLaughlin

**Brett W. McMillion,**  
**The West Virginia Division of Natural**  
**Resources,**  
Defendants

**Agreed Order to Dismiss**

Now comes the Plaintiff, Dale Kirchner, by counsel, Lawrence M. Schultz, and the Defendants, Brett W. McMillion, Director of the West Virginia Division of Natural Resources, and the West Virginia Division of Natural Resources, by counsel, Katie Franklin, Assistant Attorney General, and do jointly **move** this Court to dismiss this case from the docket.

In support of this motion, counsel for the Defendants sets forth as follows: The Defendants maintain that the West Virginia Division of Natural Resources has provided lawful notice, pursuant to §§ 20-5-16 and 59-3-2 of the West Virginia Code, and would prevail on the merits. However, the Defendants do not wish to proceed if there is an **appearance** of impropriety, but instead desire to assure the public that it is in full compliance with any and all notice requirements. Accordingly, the Defendants find it fitting to cancel the meeting scheduled for April 18, 2023. Any future public meeting will be noticed in such a way as to alleviate the concerns set forth in the *Petition for Writ of Mandamus*. As the Plaintiff is receiving his requested remedy, the Plaintiff agrees that this matter is now moot, and does not object to dismissal.

**WHEREUPON**, this Court does herein **FIND** that by canceling the public

meeting scheduled for April 18, 2023, this matter is now moot. The Court does **GRANT** the joint motion, and does **ORDER** this matter **DISMISSED** and stricken from the docket. The hearing on the rule to show cause scheduled for April 17, 2023, at 4:00 p.m. is **anceled**. Nothing in this *Agreed Order to Dismiss* prohibits the Defendants from rescheduling a new meeting at a later date.

The Circuit Court of this Clerk shall provide a true and accurate copy of this Order to: (1) Lawrence M. Schultz, counsel for the Plaintiff; and (2) Katie Franklin, counsel for the Defendants.

**BY PLAINTIFF,**

Dale Kirchner

/s/ Lawrence M. Schultz

Lawrence M. Schultz, Esquire

BURKE, SCHULTZ, HARMAN & JENKINSON

WV State Bar No. 4293

P.O. Box 1938

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**BY DEFENDANTS,**

Brett W. McMillion, Director of W.Va. DNR; and

The West Virginia Division of Natural Resources,

By Patrick Morrissey, Attorney General,

/s/ Katie Franklin

Katie Franklin

Assistant Attorney General

c/o Division of Natural Resources

WV State Bar No. 10767

324 4th Avenue, Room 339

South Charleston, WV 25303

(304) 558-2754

558-2768 (fax)

/s/JudgeName

Circuit Court Judge

23rd Judicial Circuit

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