

STATE OF SOUTH DAKOTA )  
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COUNTY OF DAY )

IN CIRCUIT COURT  
  
FIFTH JUDICIAL CIRCUIT

THAD DUERRE; CLINT DUERRE;  
ROBERT DUERRE; and LARON HERR;

Plaintiffs,

vs.

KELLY R. HEPLER, in his official capacity  
as Secretary of the State of South Dakota  
Game, Fish, and Parks Department; SOUTH  
DAKOTA DEPARTMENT OF GAME,  
FISH, AND PARKS; STATE OF SOUTH  
DAKOTA; and a class of individuals,  
similarly situated, who have used or intend to  
use the bodies of water described in this  
Complaint without the permission of the  
owners of the property over which the waters  
lie,

Defendants.

CIV. 14-43

**ORDER AND FINAL JUDGMENT  
GRANTING DECLARATORY RELIEF AND  
PERMANENT INJUNCTION TO PLAINTIFFS**

Plaintiffs Thad Duerre, Clint Duerre, Robert Duerre, and LaRon Herr filed this action seeking declaratory and injunctive relief against the State Defendants and a putative certified class.

On August 19, 2015, this Court entered an Order Granting Motion for Certification of Defendant Class in this action defined as follows: "All individuals who have entered or used, intend to enter or use, or have permitted others to enter or use the bodies of water that overlie private property owned by the Plaintiffs as detailed on Exhibits A and B to the Plaintiffs' Complaint for Declaratory and Injunctive Relief."

The private property covered by this judgment consists of the following property owned by Thad Duerre, Clint Duerre, and Robert Duerre:

All of Sections 13 and 23; the Northwest Quarter (NW1/4) and Southwest Quarter (SW1/4) of Section 12; the Northeast Quarter (NE1/4) and

Southeast Quarter (SE1/4) of Section 14; the East Half and Southwest Quarter of the Northeast Quarter (E1/2SW1/4) of Section 22; the North Half of the Southeast Quarter (N1/2SE1/4) of Section 22; and the North Half of the Southwest Quarter (N1/2SW1/4) of Section 22, Township 120 North, Range 58 West of the 5th P.M., Day County, South Dakota.

And the following property owned by LaRon Herr:

The Southeast and the East Half of the Northeast Quarter (E1/2NE1/4) of Section 21; the South Half of the Southeast Quarter (S1/2SE1/4) of Section 22; and the South Half of the Southwest Quarter (S1/2SW1/4) of Section 22, Township 120 North, Range 58 West of the 5th P.M., Day County, South Dakota.

No other property is covered by this judgment or grant of declaratory and injunctive relief.

On March 3, 2016, Plaintiffs Thad Duerre, Clint Duerre, Robert Duerre, and LaRon Herr filed a motion for summary judgment and the Defendants filed a cross-motion for summary judgment. A hearing on the motions was held on April 20, 2016, at 3:00 p.m. in the courtroom of the Day County Courthouse in Webster, South Dakota, the Honorable Jon Flemmer, Circuit Judge, presiding. Present at the hearing were Attorneys Ron Parsons and Jack Hieb, as counsel for the Plaintiffs, and Assistant Attorney General Ann F. Mines-Bailey, as counsel for the Defendants. Counsel for the Plaintiffs and Defendants each submitted briefs to the Court before the hearing. The parties agreed on the record that there are no disputed material facts and that the case presents a question of law amenable for summary judgment.

Based upon the arguments of counsel, the briefs, the pleadings and evidence in the record, and the applicable law, for the reasons stated on the record at the hearing, it is hereby

ORDERED, ADJUDGED, AND DECREED that:

The Defendants' cross-motion for summary judgment is DENIED; and

The Plaintiffs' motion for summary judgment is GRANTED as follows:

## DECLARATORY RELIEF

1. The Court finds and declares that:
  - (a) Pursuant to *Parks v. Cooper*, 2004 S.D. 27, 676 N.W.2d 823, in the absence of authorization from the Legislature, members of the general public are not legally authorized to enter or use any of the water or ice located on the Plaintiffs' private property for any recreational use such as hunting or fishing without the permission of the landowner.
  - (b) Any further declaratory relief is denied.

## INJUNCTIVE RELIEF

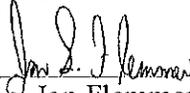
2. A permanent injunction is entered in favor of the Plaintiffs and against the named Defendants and certified class of defendants, consisting of all individuals who have entered or used, intend to enter or use, or have permitted others to enter or use the bodies of water that overlie private property owned by the Plaintiffs:
  - (a) Prohibiting the Defendants, the certified Class, and members of the public from entering or using for any recreational purpose, including hunting and fishing, the bodies of water or ice located on the private property owned by the Plaintiffs without the permission of the landowner.
  - (b) Prohibiting the Department of Game, Fish and Parks and other Defendants from facilitating access to members of the public to enter or use the bodies of water or ice on the Plaintiffs' private property for any recreational purpose, including hunting and fishing, in the absence of permission from the landowner or authorization from the Legislature.
  - (c) Any further injunctive relief is denied.

FINAL JUDGMENT ON ALL CLAIMS IS ENTERED ACCORDINGLY.

Dated this \_\_\_\_\_ day of April, 2016.

BY THE COURT:

Signed: 4/28/2016 6:05:04 PM



Hon. Jon Flemmer

Circuit Judge

ATTEST:

Attest:  
Claudette Opitz  
Clerk/Deputy

By: \_\_\_\_\_

(SEAL)

