

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT COURT

THE NEW MEXICO LEGISLATIVE COUNCIL,

Plaintiff,

v.

No. D-101-CV-2018-_____

**KEN McQUEEN, Secretary of the Energy, Minerals
and Natural Resources Department,
CHRISTY TAFOYA, Director of State Parks Division,
ALEXA SANDOVAL, Director of Department of Game and Fish,
and AUBREY DUNN, Commissioner of Public Lands,**

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

This is an action by the New Mexico Legislative Council, acting on behalf of the New Mexico Legislature when it is not in session, challenging the elimination of the Mesilla Valley Bosque State Park (“MVBS Park”) by named Defendant state executive branch officials without legislative approval. Defendants transferred the ownership of the MVBS Park’s land and capital improvements to the Department of Game and Fish for use as its southern New Mexico headquarters. Defendants acted in excess of their authority and violated the separation of powers doctrine established by Article III, Section 1 of the New Mexico Constitution.

The Legislature is the branch of government charged with developing state policy and appropriating money to carry out that policy. State statutes provide that once a park is approved and funded by the Legislature, the park and its assets will be preserved for the people of the state and will continue to be maintained by the State Parks Division for public use as a recreational area. Absent legislative action, a park

cannot be eliminated and state-owned assets acquired with appropriations for the park cannot be transferred to a different executive agency for that agency's use.

In this action, the Legislative Council seeks both declaratory and injunctive relief from this Court: (1) declaring null and void the quitclaim deed transferring the 13.39-acre Park property to the Department of Game and Fish ("DGF"); (2) declaring that the Secretary of the Energy, Minerals and Natural Resources Department ("EMNRD") lacks authority to eliminate a state park or to transfer park assets valued at more than \$100,000 to another agency without the prior approval of our Legislature; and (3) prohibiting any construction or other changes to the MVBS Park or its land or buildings to facilitate use for anything other than park purposes.

Plaintiff also seeks preliminary and permanent injunctive relief to prevent the Department of Game and Fish from taking control of the Park, including any steps to alter the real property, the buildings or the improvements on the property as they have existed under the title and control of the State Parks Division.

Jurisdiction and Venue

1. This Court, as a court of general jurisdiction, has subject matter jurisdiction over the New Mexico constitutional and statutory issues raised by this case.
2. The declaratory relief sought in this action is authorized by NMSA 1978, Sections 44-6-1 through 44-6-15 and by Rule 1-057 NMRA.
3. Venue is proper under NMSA 1978, Section 38-3-1(G) (1988) ("[s]uits against any state officers as such shall be brought in the court of the county in which their offices are located") because all of the named defendants are state officers with offices in the state capital.

Parties

4. Plaintiff, the New Mexico Legislative Council, pursuant to NMSA 1978, Section 2-3-1, is comprised of sixteen members—eight from each house—and includes the bi-partisan leadership and a proportionate number of members from the majority and minority parties. The Legislative Council acts on behalf of the Legislature when the Legislature is not in session.
5. The Council is a real party in interest, acting on behalf of the legislative branch, whose members represent the people of the State of New Mexico.
6. At its meeting on June 26, 2018, the Council authorized the filing of this action on behalf of the Legislature.
7. Defendant Ken McQueen is the Secretary of the Energy, Minerals and Natural Resources Department (EMNRD). The Secretary is responsible to the Governor for the operation of the department. It is his duty to manage all operations of the department and to administer and enforce the law with which he or the department is charged. NMSA 1978, § 9-1-5 (1977).
8. Defendant Christy Tafoya is the Director of the State Parks Division of the EMNRD. NMSA 1978, § 9-5A-6.1 (1997). The State Parks Division is charged with developing, maintaining, managing and supervising all state parks. NMSA 1978, § 9-5A-4(F) (2016).
9. Defendant Alexa Sandoval is the Director of the Department of Game and Fish. She is charged with operation of the department. See NMSA 1978, § 17-1-5. It is her duty to enforce the laws and regulations relating to game and fish. *Id.*

10. Defendant Aubrey Dunn, Commissioner of Public Lands, is an elected official who is made part of the executive department of government by Article V, Section 1 of the New Mexico Constitution. The Commissioner of Public Lands has the direction, control, care and disposition of public lands, under such regulations as provided by law. N.M. Const., art. XIII, Section 2.
11. All defendants are named in their official capacities.

Facts Common to All Claims

The Creation of the Mesilla Valley Bosque State Park

12. The Mesilla Valley Bosque State Park (MVBS Park) is located in the riparian flood plain adjacent to the Rio Grande near Mesilla, New Mexico, and in the Las Cruces metropolitan area of Dona Ana County.
13. The MVBS Park consists of a visitor center with exhibits, a garden and courtyard, office space, and trails for public use.
14. The MVBS Park has diverse vegetation that attracts wildlife, birds and birdwatchers, as well as others who want close and easy access to the outdoors. It also provides a space and opportunity for exhibits, events, and educational activities.
15. When it opened in 2008, the MVBS Park was the first new New Mexico state park to open in thirty (30) years.
16. The processes leading to the MVBS Park's creation evince an overwhelming community and legislative commitment to the creation of the Park. Many consider MVBS Park to be southern New Mexico's version of the Rio Grande Nature Conservancy in Albuquerque.

17. Years of planning by the State Parks Division, with extensive public involvement, preceded the Legislature's vote in 2003 to appropriate seed money to acquire land, then plan and construct the MVBS Park. Specific capital outlay projects funded in 2003 provided for construction of access roads and walking paths, as well as installation of signage. 2003 N.M. Laws, ch. 83, § 2 (T)(2), 2003 N.M. Laws, ch. 385, § 13 and 2003 N.M. Laws, ch. 429, § 11 (1-5).
18. In 2004, the Legislature appropriated \$1.81 million from the general fund "[f]or land acquisition, planning and construction and operational costs at Mesilla Valley Bosque State Park." 2004 N.M. Laws, ch. 114, § 5 (56). Additional capital outlay funds were appropriated that year "for planning and land acquisition for phase 1 of the development" of the MVBS Park, and "for easement acquisition and site development." 2004 N.M. Laws, ch. 126, §§ 16, 28 (1-2).
19. In 2004, proceeds from the sale of severance tax bonds were additionally reauthorized and appropriated to the State Parks Division for MVBS Park land acquisition and development. 2004 N.M. Laws, ch. 126, §§ 68-69.
20. In 2006, the Legislature made additional capital outlay appropriations specifically "to acquire land and construct a visitor center at MVBS Park in Dona Ana County." 2006 N.M. Laws, ch. 111, §§ 20(4) & 54(9).
21. In 2007, the Legislature again provided capital outlay funds for the MVBS Park, this time for "visitor center exhibits" in the visitor center at the Park. 2007 N.M. Laws, ch. 42, § 57(2).
22. In 2008, the visitor center was fully open and dedicated for public use at the Park.

The Undoing of the Mesilla Valley Bosque State Park

23. The State Parks Division managed the MVBS Park from 2008 until it was eliminated as a state park, transferred to the Department of Game and Fish, and renamed “Mesilla Valley Bosque.”
24. In 2017, citing “budget constraints,” Defendants began to plan for the transfer of the MVBS Park state property to the Department of Game and Fish.
25. Community members raised concerns about closing a state park and about the authority of the Energy, Minerals and Natural Resources Department to do so based on financial concerns, given that the purpose of state parks is to preserve and protect the most significant examples of the New Mexico scenic landscape for public use, not to make money or even to be fully self-supporting.
26. The Defendants’ plans in 2017 included conversion of the Park Visitor Center into southern New Mexico employee office space for the Department of Game and Fish.
27. Under the Department of Game and Fish, there would be no state park staff present to carry out the tours and outdoor education which are part of the mission of the state parks.
28. When questioned about what would happen to the exhibits funded by legislative appropriations, an agency spokesperson stated that the park’s educational displays would have to be moved to make room for the Department’s offices.
29. The individuals and organizations that worked with the Legislature to establish the Park were not consulted, nor were the local communities that benefited both in

terms of public recreational facilities for their residents and in having a facility which draws tourists to the area.

30. The Legislature became concerned about the agencies' plans to close the MVBS Park and transfer the land and assets owned by the state for preservation, tourism, and public recreational use to the Department of Game and Fish.
31. At its October 23, 2017 meeting, the Legislative Council unanimously approved a motion urging the EMNRD to bring any proposal to transfer the MVBS Park before the Legislature for consideration, as required by state law.
32. On October 25, 2017, the Legislative Council Service sent a letter to Defendant EMNRD Secretary McQueen stating the Council's strong objection to the EMNRD transfer of the MVBS Park to the Department of Game and Fish without legislative approval. The letter further emphasized that bringing the issue before the Legislature was necessary to ensure that the merits of the proposal were fully considered by the branch of government charged with making public policy and funding decisions, and also noted that doing so would avoid litigation over the process that EMNRD was then pursuing.
33. Defendant McQueen did not respond to the Legislative Council Service's letter.
34. Defendant McQueen was then invited to attend the next meeting of the Capitol Buildings Planning Commission.
35. At that meeting, held on January 8, 2018, Defendant McQueen again cited "budget constraints" as the reason he sought to close the Park and transfer its state-owned land and assets to another executive agency.

36. At the January 8, 2018 meeting, Rep. Brian Egolf, Speaker of the House of Representatives, questioned the legality of eliminating a state park, and transferring and repurposing its land and assets without a vote of the Legislature.
37. The Secretary never brought to the Second Session, 2018, of the 53rd Legislature his proposed elimination of the MVBS Park and the transfer of all the Park's state-owned assets.
38. On June 18, 2018, Defendant Aubrey Dunn, Commissioner of Public Lands, acting at the direction of the Secretary, executed a Quitclaim Deed transferring to the Department of Game and Fish, without restrictions as to its use, the tract of land which included the Park Visitor Center and other buildings constructed with money appropriated by the Legislature for the MVBS Park to the Department of Game and Fish.
39. After the Quitclaim Deed was executed, the plans for the changes to come were presented to the public at a meeting at the former MVBS Park on June 28, 2018.
40. Many individuals, organizations, local and state officials spoke out against the loss of the Park and the plans to convert the Visitor Center to office space for Department of Game and Fish employees and law enforcement officers.

The Legislature's Power to Create and Develop Parks

41. State parks are established pursuant to state statute. NMSA 1978, Chapter 16, Article 2 sets policy governing the acquisition and management of state parks and the administration of funds appropriated by the Legislature for these purposes.
42. NMSA 1978, Section 16-2-11 specifies the criteria for acquisition and development of property into a state park.

Statutory Duties Regarding State Parks

43. The State Parks Division of the EMNRD is charged by statute with developing, maintaining, managing and supervising all state parks. NMSA 1978, § 9-5A-4(F) (2016).
44. Lands or interests in lands acquired for "state park ... by gift, donation, devise or purchase" must continue to be held and operated as state parks. Such lands "shall be held for the use of the state to develop, maintain and operate [the lands acquired] as state parks" NMSA 1978, § 16-2-11(A).
45. NMSA 1978, Section 16-2-11(K) specifies that "[o]nly lands or interests in lands acquired or retained in accordance with the provisions of this section and operated pursuant to the authority of the state parks division of the energy, minerals and natural resources department" are "state parks."

**Count I:
Violation of Separation of Powers
Article III, Section 1 of the New Mexico Constitution**

46. Plaintiff incorporates by reference the preceding paragraphs as if fully stated herein.
47. As the facts outlined above make clear (see ¶¶ 23 through 40) the thrust of Defendants' detailed "plan" is to transform the MVBS Park from a legislatively mandated state park to a center of Department of Game and Fish activity in the lower Mesilla Valley area.
48. In attempting to do so, Defendants are embarking on a plan at odds with the policy choices made by the Legislature in creating, funding, and mandating the structure and activity of the Park.
49. Failure to void the deed and preclude the Defendants from proceeding with their plan would leave the Secretary with unbridled discretion to unilaterally eliminate a state park, to dispose of unlimited amounts of state property, and to create a new social policy for the state in derogation of legislative authority and in violation of separation of powers mandated by Article III, Section 1 of the New Mexico Constitution.

**Count II:
Violations of Statutes and Unauthorized Actions**

50. Plaintiff incorporates by reference the preceding paragraphs as if fully stated herein.
51. The statutory structure governing New Mexico State Parks laid out in ¶¶ 41 through 45, *supra*, establishes in detail the specific legislative policies for the creation,

funding and management of state parks, including the MVBS Park at issue in this litigation.

52. At the core of those statutes is the retention of the Legislature's prerogative on the critical decisions of creation and termination of state parks. It is therefore an essential principle—engrafted in the statutes—that, just as with creation of state parks, § 16-2-11(J), any termination of a park or the transfer of state park lands requires the specific authorization of the Legislature. See NMSA 1978, § 16-2-11(A).
53. That core statutory principle of legislative approval with respect to the creation or termination of EMNRD control of state parks is consistent with the general proposition that transfer of state owned land valued at \$100,000 or more requires that “the legislature shall specify its approval prior to the sale, trade or lease becoming effective.” See NMSA 1978, § 13-6-3.
54. Thus, the attempted transfer of ownership of the MVBS Park via the quitclaim deed of June 21, 2018, and the planned takeover of control of the entire Park by the Department of Game and Fish without the prior approval of the Legislature is contrary to law.
55. Nor does the elimination of the Park by the Defendants' actions fall within the authority given to the Secretary of EMNRD by NMSA 1978, Section 16-2-15, because that authority may only be exercised to dispose of park property with respect to “lands held in excess of the reasonable needs of the [state parks division] for public parks and recreational purposes.” Eliminating a state park by transferring all the land acquired by the state for that Park as well as giving up

control over all the additional acreage which is part of the Park is a far cry from transferring excess acreage not needed to achieve the purposes of the state parks. Moreover, statements of the Secretary made before official governmental bodies and the public all make clear that the Secretary's purpose was not to dispose of excess acreage that did not serve the reasonable needs of the State Parks Division for public parks and recreational purposes, but rather to usurp the Legislature's role of setting state policy and deciding how best to deploy resources.

The Relief Sought

For the foregoing reasons, and based on violations of the New Mexico Constitution and statutes, the New Mexico Legislative Council respectfully requests that the Court:

- A. Enter a declaratory judgment voiding the quitclaim deed previously issued on behalf of the EMNRD, and returning ownership to the State Parks Division, for the purpose of restoring and maintaining the MVBS Park, consistent with legislative intent and legislative funding;
- B. Issue an injunction preventing the Department of Game and Fish from controlling or managing the Park, including but not limited to prohibiting any steps to alter the real property, the buildings and any Park assets on the property; and
- C. Provide such further and other relief as the Court may deem just and proper.

Respectfully submitted,

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