

STATE OF NEW MEXICO  
COUNTY OF SAN MIGUEL  
FOURTH JUDICIAL DISTRICT COURT

HJT

No. D-412-CV-2023-00367  
Gallegos, Flora

STATE OF NEW MEXICO ex rel. RAÚL TORREZ,  
ATTORNEY GENERAL, STATE OF NEW  
MEXICO,

Plaintiff,

vs.

ERIK BRIONES, DOES 1–10,

Defendants.

**VERIFIED COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF**

The State of New Mexico, by and through Attorney General Raúl Torrez, brings this action to protect the public's constitutional right to access public streams and watercourses. Defendant Erik Briones and other property owners are depriving the public of access to the Pecos River through threats of physical violence, fencing and other physical obstructions, and false threats of legal action. Attorney General Torrez seeks injunctive and declaratory relief to remedy this violation of the state constitution and abate the resulting public nuisance.

**NATURE OF THE CASE**

1. This case is brought to declare unconstitutional the defendants' efforts to deprive New Mexicans of their rights of public access to the Pecos River in New Mexico. It also seeks to enjoin the defendants from placing barriers across the river, from threatening baseless legal action, and from making threats of violence against New Mexicans seeking to enjoy their right of access.

## **JURISDICTION AND VENUE**

1. This court has subject-matter jurisdiction over this action pursuant to Article VI, Section 13 of the New Mexico Constitution.

2. Venue is appropriate pursuant to NMSA 1978, § 38-3-1(A) (1988) because the causes of action originated in San Miguel County; under Section 38-3-1(B) because this is a civil action based, in part, on a criminal offense (nuisance) that was committed in San Miguel County; and under Section 38-3-1(D)(1) because Briones and other property owners have denied the public access to the Pecos River in San Miguel County through threats of violence, physical obstruction, and false legal threats and misstatements of the law.

## **PARTIES**

3. The State of New Mexico, by and through the State Attorney General, Raúl Torrez, brings this action in its *parens patriae* capacity to enforce New Mexico's laws and Constitution and to protect the safety and well-being of its citizens. Attorney General Torrez is authorized by NMSA 1978, § 8-5-2(B) (1975) to prosecute this action in which the state is an interested party.

4. Attorney General Torrez is separately empowered by the Legislature as a public officer to initiate a civil action in the name of the state to abate a public nuisance under NMSA 1978, § 30-8-8(B) (1963).

5. Defendant Erik Briones owns a parcel of land that abuts the public waters of the Pecos River. Tracts 2-A, 3-A, 4-A, 5, 6, 7, 8, 9, 10 and 11 of the Chritine Rivera Mining Company Land Division within Section 22, Township 18 North Range 12 East, N.M.P.M., located along the Pecos River, North of the area known as Terrero, San Miguel County, New Mexico, as shown on plat of survey by Winston & Associates, LLC, dated June 27, 2018, plat

no. 018-026, filed in the office of the San Miguel County Clerk, June 27, 2018 in Plat Book 75, page 73, document no. 2955. Briones is engaged in an ongoing unconstitutional deprivation of the public's right of access to the Pecos River and a public nuisance.

6. The John Doe Defendants are other property owners who own land that abuts the public waters of the Pecos River and have likewise engaged in conduct that deprives the public of access and its right to fish and recreate on the river.

### **FACTS COMMON TO ALL COUNTS**

7. In 2022, the New Mexico Supreme Court reaffirmed and declared that New Mexico's constitution protects the public's right to fish and recreate on and through our rivers and watercourses. That right includes access to streams passing through privately owned land. *Adobe Whitewater Club of N.M. v. N. M. State Game Comm'n*, 2022-NMSC-020, ¶¶ 28-34, 519 P.3d 46, 56, *cert. denied*, 143 S. Ct. 980 (2023). The Court specified that the public's constitutional right of access "includes the privilege to do such acts as are reasonably necessary to effect the enjoyment of such right" and provided examples of permissible uses, including the use of streambeds and banks. *Id.* ¶ 23 (citing with approval *Hartman v. Tresise*, 84 P. 685, 692 (Colo. 1905) (Bailey, J., dissenting) ("[T]he people have the right of way in the bed of the stream for all purposes not inconsistent with the constitutional grant."), *Galt v. State*, 731 P.2d 912, 915 (Mont. 1987) ("The public has a right of use up to the high water mark, but only such use as is [reasonably] necessary to utilization of the water itself."), and *Conatser v. Johnson*, 2008 UT 48, ¶26, 194 P.3d 897 (holding that the public's easement includes touching riverbeds because "touching the water's bed is reasonably necessary for the effective enjoyment of" the easement)).

8. At the same time, the Court correctly acknowledged that property owners hold important rights and determined that the law requires balance in this area:

We emphasize that the scope of the public’s easement includes only such use as is reasonably necessary to the utilization of the water itself and any use of the beds and banks must be of minimal impact. “The real property interests of private landowners are important as are the public’s property interest in water. Both are constitutionally protected. These competing interests, when in conflict, must be reconciled to the extent possible.” *Galt*, 731 P.2d at 916. That is, the right of the public and the right of the landowner “are not absolute, irrelative, and uncontrolled, but are so limited, each by the other, [so] that there may be a due and reasonable enjoyment of both.” *Conatser*, 2008 UT 48, ¶ 20, 194 P.3d 897 (internal quotation marks and citation omitted).

*Adobe Whitewater*, 2022-NMSC-020, ¶ 33.

9. The balance that the Court struck granted the public the right to use any portion of public rivers and streams. A person can begin at the headwaters of any river in the state and walk or float to the end of the river without committing trespass once. This balance also retained property owners’ right to exclude the public from privately owned land—but not the public waterways. Thus, a person can touch the stream beds and banks as reasonably necessary to fish and recreate but cannot go beyond the stream or bank to exit the stream or river over private land. Similarly, the public cannot trespass over private land to gain access to a waterway in the first place. *Id.* ¶ 23.

10. The Court’s ruling leaves no room for landowners to deny the public access to streams and waterways like the Pecos River. Defendant Briones and other landowners continue violating the state constitution by excluding the public from the river.

11. Briones is using three unlawful means to deny the public access to the Pecos River: threats of violence, physical obstruction, and false threats of legal action.

a. **Threats of Physical Violence:** As recently as mid-September 2023, Briones confronted a recreational river guide claiming that guides entered the section of the Pecos that abuts Briones’s property. During the confrontation, Briones said words to the effect of

“it would be a shame if someone got shot.” Briones showed this witness photographs of people fishing within the streambed and identified one specific individual he claimed was “pissing him off.” Briones said that the next time that individual returned to the section of the Pecos abutting Briones’s property, Briones would shoot him.

b. **Physical Obstruction:** Briones is directly blocking access to the Pecos river with fences laced with barbed wire and concertina wire. This includes fences approximately six feet tall blocking access to the Pecos through his property at or near both his upstream and downstream property lines.



These fences are antithetical to public recreation. Their placement perpendicular to the Pecos River physically prevents wading. The fences also could cause paddlers to become trapped. The barbed wire and concertina add hazards that could cause property damage or physical injury.



c. **False Legal Threats.** Briones has signs on the stream fences and other fences on his property. At the fence line in the middle of the stream, signs falsely claim that the river is privately owned. The signs also falsely claim that it is trespassing for any member of the public to fish or recreate through the stream:



Briones similarly has in place signs falsely asserting that the public is prohibited from “trespassing” for “hunting or fishing” and asserts that this includes the streambed:



**COUNT I:  
DEPRIVING THE PUBLIC OF ACCESS TO THE PECOS RIVER  
IN VIOLATION OF THE NEW MEXICO CONSTITUTION**

12. The State realleges and reincorporates all previous paragraphs as though fully set forth herein.

13. In New Mexico, access to water is a fundamental and constitutional right.

14. Article XVI, Section 2 of the New Mexico Constitution provides:

The unappropriated water of every natural stream, perennial or torrential, within the state of New Mexico, is hereby declared to belong to the public and to be subject to appropriation for beneficial use, in accordance with the laws of the state. *Id.*



15. At the time of statehood, New Mexico defined public waters broadly, including waterways that are not navigable:

All natural waters flowing in streams and watercourses, whether such be perennial, or torrential, within the limits of the state of New Mexico, belong to the public and are subject to appropriation for beneficial use. A watercourse is hereby defined to be any river, creek arroyo, canyon, draw or wash, or any other channel having definite banks and bed with visible evidence of the occasional flow of water.

NMSA 1978, § 72-1-1 (1907 as amended through 1953).

16. The New Mexico Supreme Court has clarified that public use of the banks and streambed is a lawful auxiliary to recreation on public waterways. *See Adobe Whitewater Club*, 2022-NMSC-020, ¶ 23.

17. Briones and other defendants have obstructed, and continue to obstruct, access to the public waterways of the Pecos River.

18. Briones and other defendants are excluding the public from enjoyment of the Pecos River as a public waterway.

19. Briones's conduct and the conduct of other defendants has put the public in danger of violence, physical harm, and property damage.

20. Briones and other defendants' ongoing violations of the New Mexico Constitution will cause irreparable harm to the State and its citizens for which no adequate legal remedy exists.

21. Damages will not replace access to public trust waters to which New Mexicans are constitutionally entitled.

**COUNT II:  
PUBLIC NUISANCE UNDER NMSA 1978 § 30-8-8(B)**

22. The State realleges and reincorporates all previous paragraphs as though fully set forth herein.

23. Briones and other defendants' ongoing obstruction of the public waterways on the Pecos River substantially interferes with public health, safety, welfare, and the exercise and enjoyment of public rights and property. *See* NMSA 1978, § 30-8-1 (1963).

24. Briones and other defendants have continued depriving the public of access to the section of the Pecos River that travels through his property after the New Mexico Supreme Court decided *Adobe Whitewater Club* in 2022. That decision put all landowners on notice of the law in this state, including the constitutional right of access.

25. Briones and other defendants have engaged in conduct—including threats of violence, constructing and/or leaving in place physical barriers that block access, and making false legal threats—with knowledge that it would interfere with and deprive the public of access to public waterways and with the intention that it do so.

26. Briones and other defendants engaged in this conduct without lawful authority.

27. Briones and other defendants' ongoing conduct shows that they intend to continue violating the New Mexico Constitution by depriving the public access to the section of the Pecos River that travels through his property.

28. Briones and other defendants will not cease these violations without a court order.

29. Briones and other defendants' ongoing conduct constitutes a public nuisance that has caused irreparable harm for which no adequate legal remedy exists.

**COUNT III**  
**DECLARATORY JUDGEMENT UNDER NMSA 1978, § 44-6-2**

30. The State realleges and reincorporates all previous paragraphs as though fully set forth herein.

31. The New Mexico Declaratory Judgment Act gives this Court power “to declare rights, status, and other legal relations whether or not further relief is or could be claimed.” NMSA 1978, § 44-6-2 (1975).

32. In this case, there is a controversy as a result of Briones and other defendants’ ongoing deprivation of the public’s right of access to the Pecos River.

33. The Court should declare that:

- a) the Pecos River is a public waterway;
- b) Briones and other defendants’ use of threats of violence, physical barriers, and false threats of legal action violates the New Mexico Constitution, Article XVI, Section 2;
- c) Defendants do not have the right to defend their river-adjacent property against lawful stream access with deadly force or threats of deadly force;

**PRAYER FOR RELIEF**

WHEREFORE, the State requests that the Court enter an order:

- 1) issuing declaratory relief against Briones and other defendants for the violations of the New Mexico Constitution's guarantee of public access to waterways;
- 2) Enjoining Briones and other defendants, as well as their agents, assigns, or successors in interest from:
  - a. making or acting on threats of physical violence against members of the public exercising the right *Adobe Whitewater* reaffirmed to access the Pecos River;

- b. requiring Briones and other defendants to remove all physical barriers that deny the public access to the Pecos River as *Adobe Whitewater* requires within 14 days subject to contempt of Court;
  - c. requiring Briones and other defendants to remove all signs that suggest it is trespassing for the public to access any section of the Pecos River;
  - d. engaging in any other conduct to discourage public access to waterways;
- 3) Awarding the State costs and expenses of this suit as provided by law, *see* NMSA 1978, § 30-8-8(C); and
- 4) Providing additional relief as this Court deems just and proper.

Respectfully submitted,

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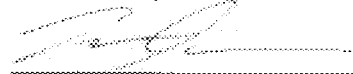
## VERIFICATION

I, Mark Sena, being sworn upon oath, depose and state as follows:

I am an investigator with the New Mexico Attorney General's Office and have reviewed the information contained in the Verified Complaint for Injunctive and Declaratory Relief. Based on my investigation of the matters at issue, the information contained therein is true and correct.

I declare under penalty of perjury under the laws of the State of New Mexico that the foregoing statement is true and correct.

October 31, 2023



Mark Sena