

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

BLC

No. D-412-CV-2023-00367

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

Plaintiff,

vs.

ERIK M. BRIONES, DOES 1–10,

Defendants.

**THE STATE OF NEW MEXICO’S MOTION FOR ORDER TO SHOW CAUSE AS TO
WHY ERIK M. BRIONES SHOULD NOT BE
HELD IN CONTEMPT FOR VIOLATING CONSENT DECREE**

Defendant Erik Briones is knowingly and intentionally violating the March 13, 2024, consent decree the Court entered in this case. The consent decree was necessary because Briones was flouting the public’s right to access the Pecos River that the New Mexico Supreme Court repeatedly has recognized is protected by the New Mexico Constitution. *Adobe Whitewater Club of N.M. v. N.M. State Game Comm’n*, 2022-NMSC-020. Before the State filed this case, Briones threatened violence against people who exercised that protected right, used fencing with concertina wire to deny people their right of access, and posted signs falsely suggesting he is permitted to deny people that right despite the Supreme Court’s clear ruling to the contrary.

By promising to comply with the law and agreeing to the consent decree, Briones avoided a hearing that would have publicly established his violations of the law and his threats of violence. The consent decree also secured for Briones the New Mexico Department of Justice’s

agreement to delay his deadline to comply until May 24, 2024. Briones let that date pass without satisfying any of the terms of the consent decree. Now, more than three months after the deadline, he remains in open defiance of the consent decree and the law. The State therefore asks the Court to vindicate its authority by requiring Briones to immediately show cause as to why he should not be held in contempt, hold Briones in contempt following that hearing, and impose a series of escalating sanctions as needed to secure his compliance with the promises he voluntarily made in the consent decree.

BACKGROUND

On October 31, 2023, the State, by and through Attorney General Torrez, filed a complaint against Briones and other unknown private property owners for their failure to comply with the Supreme Court's decision in *Adobe Whitewater*. In that case, the Supreme Court recognized that the people of New Mexico have enjoyed the right to access public waters, including the right to incidental use of beds and banks abutting such waters as reasonably necessary to fish and recreate on the water, since before statehood. The right is embedded in the state constitution.

After the Supreme Court ruled, Briones and other property owners along the Pecos River refused to comply. The verified complaint in this case confirms that Briones was openly violating the law in three ways: threats of violence, physical obstruction, and false threats of legal action. Verified Compl. ¶ 11. The physical threats included Briones confronting a recreational river guide and saying words to the effect of "it would be a shame if someone got shot." *Id.* ¶ 11(a). Relatedly, Briones showed the guide a photograph of another individual he said he would shoot if he saw the individual on the section of the Pecos abutting Briones's land again. *Id.* Briones's physical obstruction of the Pecos includes fences with concertina wire plainly designed to privatize a stretch of the Pecos to which the public has a settled right of access. *Id.* ¶ 11(b). And

Briones's threats of legal action included signs all over his property falsely claiming that it is trespassing for anyone to exercise their right of access to the Pecos for purposes of fishing and recreating in the stream. *Id.* ¶ 11(c).

The State filed a motion for a preliminary injunction the same day it filed the complaint to secure a prompt order requiring Briones and other recalcitrant property owners to follow the law. *See* Motion for Preliminary Injunction.

Negotiations then followed. That included counsel for the State traveling to Pecos to meet with Briones at Briones's insistence, *pro bono* assistance from a respected mediator at Briones's request, scheduling a meeting at the New Mexico Department of Justice for Briones and other landowners to discuss their concerns, and providing Briones examples of the type of movable fencing that would not violate *Adobe Whitewater*. During this time, the New Mexico Department of Justice agreed to seek guidance from the New Mexico Department of Game and Fish about any applicable or appropriate restrictions on fishing on the Pecos in the areas abutting private land and learned that no special restrictions applied to those areas.

Briones then agreed to the Consent Decree that the Court entered on March 13, 2024. In relevant part, the Decree states that

[o]n or before May 24, 2024, Mr. Briones shall remove all fencing and other physical barriers on his land or over which he has control that interfere with the right of the public to access the Pecos River to fish and recreate

And that

[o]n or before May 24, 2024, Mr. Briones shall remove all signs that suggest it is trespassing or otherwise unlawful for members of the public to fish or recreate on the Pecos River, including touching the stream bed and banks as reasonably necessary to enjoy the right of access *Adobe Whitewater* reaffirmed.

The parties agreed in the Consent Decree that this Court retains jurisdiction over this matter to interpret and enforce the decree and indicates that a violation of the Consent Decree is

“punishable by contempt and may subject the entity or person in violation to all penalties or sanctions allowed by law.” *Id.* ¶ 6. Either party had the opportunity to ask this Court for modification of the Decree. *Id.* ¶ 7. Briones never did so.

After disregarding the deadline to comply, Briones has now made it clear that he intends to remain in violation of the Consent Decree unless the Court enforces it. But he knew when he entered the Consent Decree that he had a choice whether to litigate or resolve this dispute with the State. Undersigned counsel repeatedly encouraged him to speak to a lawyer of his choosing. He told undersigned counsel that one of the moneyed landowners behind the fight to privatize New Mexico’s streams that ended in *Adobe Whitewater* solicited him to accept a lawyer’s representation for free and fight rather than enter the Consent Decree. Briones stated that he declined the representation because he wanted to resolve the dispute amicably and start following the law.

It appears that Briones never intended to comply with the Consent Decree in the first place. That order required him to remove the fencing from his property by May 24. Decree ¶ 1-2. It imposed an injunction prohibiting him from: “(1) fencing or otherwise erecting physical barriers on his land or over which he has control that interfere with the right of the public to fish or recreate on the Pecos River; (2) posting signs that suggest it is trespassing or otherwise unlawful for members of the public to access the Pecos River, including touching the stream bed or banks as reasonably necessary to enjoy the public’s right of access to public water to fish and recreate; (3) making or acting on threats of physical violence against members of the public exercising the right of access to public water to fish and recreate.” *Id.* ¶ 3.

As of today, Mr. Briones has not taken any action to comply with the Consent Decree, including the removal of fences, signage, and other physical barriers across the Pecos River.

Most recently, on June 25, 2024, Mr. Briones filed an action in federal court with a demand for that Court to prevent the Attorney General and the New Mexico Game Commission from enforcing the Supreme Court’s decision in *Adobe Whitewater*. See *Sanchez v. Torrez*, 1:24-cv-646-KK-LF, filed 06/25/2024. He acknowledged in that filing that he signed a consent decree this Court entered. *Id.* ¶ 47. And he has provided no justification for his refusal to comply.

ARGUMENT

The law establishing that Briones is in contempt of this Court is straightforward. In New Mexico, “district courts possess inherent and statutory authority to impose punitive or remedial sanctions for contempt of court.” *Tue Thi Tran v. Bennett*, 2018-NMSC-009, ¶ 33, 411 P.3d 345, 355. Civil contempt proceedings are “instituted to preserve and enforce the rights of private parties to suits and to compel obedience to the orders, writs, mandates and decrees of the court.” *In re Klecan*, 1979-NMSC-094, ¶ 5, 93 N.M. 637, 603 P.2d 1094.

The elements required for a finding of civil contempt are: “(1) knowledge of the court’s order, and (2) an ability to comply.” *Tue Thi Tran*, 2018-NMSC-009, ¶ 35 (*quoting In re Hooker*, 1980-NMSC-109, ¶ 4, 94 N.M. 798). Violating a consent decree is grounds for contempt. See *State ex rel. Apodaca v. Our Chapel of Memories of N. M., Inc.*, (NSL), 1964-NMSC-068, ¶ 1, 74 N.M. 201, 203, 392 P.2d 347, 348 (affirming the attorney general’s contempt proceedings for “alleged violations of the consent decree”).

A. Mr. Briones indisputably has knowledge of the Consent Decree.

Mr. Briones received the summons and Complaint in this matter, and he voluntarily signed the Consent Decree to resolve it. See Consent Decree ¶ 4. He was aware of the terms and obligations that the Consent Decree imposed on him, including the injunction to remove all noncompliant fencing and signs, and the prohibition on erecting future fences, posting signage, or threatening members of the public. Consent Decree Order ¶¶ 1–3. In fact, he confirmed on

May 28, 2024—four days after his deadline to comply—that he “acknowledge[d] the CD and the date of compliance.” Ex. A. He simply claimed that the water was too high at that time to safely remove the fence and concertina wire he had constructed to block access to the Pecos. *Id.* The State did not immediately take action against Mr. Briones for noncompliance at that time with the hope that he would comply when his stated objection based on water levels no longer applied. Even though Briones had more time to comply than the Consent Decree contemplated, he has still failed to do so.

B. Mr. Briones has the ability to comply with the Consent Decree, but he has refused.

Mr. Briones’s stated excuse for noncompliance by the agreed-upon deadline of May 24 was his claim that water levels on the Pecos were too high to safely comply. That was debatable at the time, and it is plainly untrue today.¹ There is no colorable argument that Mr. Briones is unable to comply with the Court’s Consent Decree. He just refuses to do it.

C. The State is entitled to sanctions for Mr. Briones’s willful violations of the Consent Decree.

Sanctions for contempt can take two forms: compensatory and coercive.

Compensatory sanctions may include damages or attorney’s fees and are imposed for the purpose of compensating a party for pecuniary losses sustained due to the contempt. . . . Coercive sanctions may include fines, imprisonment, or other sanctions designed to compel the contemnor to comply in the future with an order of the court. Coercive sanctions are conditional, imposed to address the contemnor’s continuing violation of a court order. . . . Thus, the coercive sanctions end when the contemnor complies with the underlying court order.

Tue Thi Tran, 2018-NMSC-009, ¶¶ 36-37 (cleaned up).

¹ According the U.S. Geological survey, the current gage height of the Pecos River is below three feet. See U.S. Geological Survey Water Data for the Pecos River , available at: <https://waterdata.usgs.gov/monitoring-location/08378500/#parameterCode=00060&period=P30D&showMedian=false>.

Here, the State respectfully requests that the Court impose coercive sanctions. Compensatory sanctions would be appropriate, as the State has incurred costs from Mr. Briones's failure to comply with the Consent Decree. It has been forced to monitor the Pecos River to determine whether it is open for lawful recreation, and it has had to incur costs and attorney's fees to bring this matter back to the Court to secure Briones's compliance.

By instead focusing on coercive sanctions, however, the Court will further the State's interest in confirming that people have to follow the law. So far, Mr. Briones has shown a determination to keep for himself a resource that belongs to the public—the Pecos River—even when doing so violates the Consent Decree he signed. Even though the State spent months of time and taxpayer resources to accommodate Briones' concerns and reach a cooperative, practical resolution in this dispute, Briones has indicated that neither his own promises nor a court order are persuasive to him. His contumacious conduct shows that coercive sanctions are necessary for the Court to vindicate the public's right of access, the New Mexico Supreme Court's authority to give meaning to rights that predate statehood and are enshrined in the state constitution, and this Court's authority to enforce its own orders and decrees. Coercive sanctions will impose consequences for Mr. Briones's recalcitrance.

The State therefore asks that the Court find Briones in contempt and order him to pay \$1,000 a day in fines for the first seven (7) days he remains in violation of the Consent Decree. For the next seven (7) days of non-compliance, the State asks that the Court increase the fine to \$5,000 a day. If Briones remains non-compliant when the fourteen (14) day period of fines closes, the State asks that the Court order Briones arrested and held in the San Miguel County Detention Center until he brings his property into compliance.

CONCLUSION

For the foregoing reasons, the State requests that this Court set a hearing requiring Erik Briones to show cause why he should not be held in contempt and, after that hearing enter an order:

- i) Holding Erik Briones in contempt of court; and
- ii) Imposing as a coercive sanction the escalating fines following by incarceration set out above to secure his compliance with the Consent Decree.

Respectfully submitted,

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EXHIBIT

A



From: **Erik Briones** >

May 28, 2024 at 2:12 PM

Fence

Mark,

I acknowledge the CD agreement and the date of compliance but it is simply not safe to access the river right now to remove the wire. I would suggest that the CD be amended to reflect an extension of time in which to remove the wire from the fence be extended until it is safe to work in the river.

Erik Briones

ebriones1961@gmail.com