

**STATE OF NEW MEXICO
EIGHTH JUDICIAL DISTRICT COURT
COUNTY OF COLFAX**

DAVID N. STANLEY,

Plaintiff/Counterclaim Defendant,

v.

No. D-809-CV-2011-00252

**BOARD OF COUNTY COMMISSIONERS
OF MORA COUNTY, *et al.*,**

Defendants/Counterclaimants.

MOTION FOR ORDER TO APPEAR AND SHOW CAUSE

Defendant-Counterclaimant State of New Mexico moves the Court for an Order to Appear and Show Cause against Plaintiff David Stanley, requiring him to appear before the Court and show cause, if any, why he should not be held in civil contempt of court and sanctioned for the willful and ongoing violation of the Court's prior orders. Despite the Court's clear and unambiguous ruling that eleven roads that cross portions of Mr. Stanley's property are public roads—and the Court's permanent injunction and subsequent enforcement order to remove all obstructions from the subject roads—Mr. Stanley continues to unlawfully obstruct public access. Given Mr. Stanley's ongoing violation of the Court's orders and the resulting harm to the public, the State respectfully requests that this Court expedite briefing and hear this Motion at the Court's earliest opportunity. Given Mr. Stanley's willingness to violate the Court's orders, his opposition to this Motion is presumed.

BACKGROUND

In August 2018, after years of litigation that culminated in a two-week bench trial, the Court ruled that eleven roads crossing portions of Plaintiff David Stanley's property are public

roads. Accordingly, the Court ordered that “Plaintiff David Stanley is permanently enjoined from obstructing or causing the obstruction of any portion of Red Hill Road, State Road 199, Cañada Bonita Road, Red Lake Road, Rim Road, White Peak Road, West Fork Red Hill Road, Grant Line Road, Connector 3 Road, High Road and Guara’s Road as those roads cross Stanley’s property.” *Findings of Fact, Conclusions of Law and Decision* (“Findings and Conclusions”), p. 60, ¶ 77.

Months after the Court’s ruling, the State learned that despite the Court’s unmistakable command to refrain from obstructing the identified public roads, Mr. Stanley continued to maintain locked gates and other obstructions on at least five of the roads declared to be public in this lawsuit. In response, the State sought an enforcement order, which the Court granted in January 2019. As with the permanent injunction, the Court unambiguously ordered Mr. Stanley “to remove all remaining locked gates, barriers and other obstructions” from the roads that were the subject of the permanent injunction against Mr. Stanley. *Order*, p. 1 (attached as **Exhibit A**).

With this Motion, the State again comes before the Court with irrefutable evidence that Mr. Stanley continues to obstruct public access to at least one of the roads identified in the Court’s Findings and Conclusions. Mr. Stanley’s ongoing, willful violation of the Court’s authority warrants holding him in civil contempt and imposing appropriate sanctions. The State therefore asks the Court to order Mr. Stanley to appear and show cause why he should not be held in civil contempt of court for the ongoing, willful violation of the Court’s orders and why he should not be ordered to pay the costs associated with this Motion.

ARGUMENT

I. Mr. Stanley Continues to Violate the Court’s Prior Ruling and Enforcement Order

The Court’s Findings and Conclusions and its subsequent enforcement order unambiguously require Mr. Stanley to remove all obstructions, i.e. any obstacle that hinders or

impedes access, from the eleven identified public roads, including Rim Road. *See* Obstruction, *Black’s Law Dictionary* (11th ed. 2019) (“Something that impedes or hinders, as in a street, river, design, flight path, etc.; an obstacle.”). However, as shown by the attached declaration, map, and photographs taken on June 10, 2020, Mr. Stanley continued to maintain a “No Trespassing” sign on a gate blocking access to the northwest entrance to Rim Road. *See* **Exhibit B** (including photos and map as Attachments 1-3). The sign threatened criminal prosecution for trespassing, including a range of activities as follows:

POSTED
NO TRESPASSING
HUNTING, FISHING, TRAPPING, OR
MOTORIZED VEHICLES
ARE STRICTLY FORBIDDEN
VIOLATORS WILL BE PROSECUTED.
Bar 3 S, LLC
[address information].¹

The No Trespassing sign obstructs public access to Rim Road, in clear violation of the Court’s orders. A reasonable person encountering such a No Trespassing sign—particularly one posted on a gate blocking access to a remote mountain road under threat of criminal prosecution—would heed the warning and would refrain from proceeding beyond the gate or entering the posted property. That conclusion is supported by NMSA 1978, Section 30-14-6(A), which provides that a No Trespassing sign shall be posted “parallel to and along the exterior boundaries of the property to be posted.” Mr. Stanley’s sign, by contrast, is posted perpendicular to and directly in the path of Rim Road in a deliberate and misleading attempt to indicate that the road itself is part of Mr. Stanley’s private property. The No Trespassing sign therefore is both an unlawful obstruction in violation of the Court’s orders and a violation of the Criminal Code. *See* § 30-14-6(C) (“Any

¹ According to the Secretary of State’s online records, Mr. Stanley is the organizer and registered agent for Bar 3 S, LLC.

person who posts public lands contrary to state or federal law or regulation is guilty of a petty misdemeanor.”).

Mr. Stanley continues to disregard the Court’s injunction and enforcement order, causing harm to the public interest by obstructing public access to Rim Road and, by extension, the White Peak area. And significantly, the gate on which the No Trespassing sign is posted is one of the very obstructions that led to the Court’s 2019 enforcement order. *See Emergency Motion to Enforce and for Sanctions*, at 4 (filed on December 11, 2018) (listing various “obstructions of declared public roads as they cross Stanley lands,” including “[l]ocked gate blocking entrance to Rim Road from Red Hill Road, Johnson Aff. ¶ 7, Attachments 4-6 (photos of gate and gate lock), Attachment 7 (map prepared by Officer Johnson showing location of locked gate)”). Mr. Stanley’s willfulness is self-evident and supports holding him in civil contempt for willfully continuing to violate the Court’s orders.

II. Civil Contempt is Necessary and Appropriate to Compel Mr. Stanley’s Compliance with the Court’s Prior Orders

Mr. Stanley has repeatedly demonstrated his unwillingness to comply with the Court’s orders. For months after the Court’s initial ruling, Mr. Stanley maintained locked gates and other obstructions on almost half of the roads the Court declared public. Now, well over a year after the Court’s 2019 enforcement order, Mr. Stanley continues to ignore the Court’s authority by maintaining obstructions that interfere with public access to these roads. His persistent refusal to comply with the Court’s orders deprives the public of rightful access to these roads and depletes limited taxpayer resources by necessitating ongoing State action to enforce the Court’s orders.

Mr. Stanley’s ongoing, willful violation of the Court’s orders warrants holding him in civil contempt and imposing both coercive and compensatory sanctions. There is no question that Mr. Stanley has knowledge of the Court’s orders and has had ample time and opportunity to comply.

See Tran v. Bennet, 2018-NMSC-009, ¶ 35, 411 P.3d 345 (“The elements necessary for a finding of civil contempt are: (1) knowledge of the court’s order, and (2) an ability to comply.” (internal citation and quotation marks omitted)). Because Mr. Stanley has repeatedly ignored the Court’s authority, a prospective, coercive sanction to compel present and future compliance is necessary and appropriate. *See id.* ¶ 37 (explaining that such conditional sanctions provide the contemnor with “the power to discharge the civil contempt at any time by doing what [the contemnor] has previously refused to do” (internal citation and quotation marks omitted)). Additionally, the Court should use its inherent authority to sanction Mr. Stanley by ordering him to pay all costs associated with this motion to secure his compliance with the Court’s lawful orders. *See Lopez v. Am. Airlines, Inc.*, 1996-NMCA-088, ¶ 11, 923 P.2d 1187, 122 N.M. 302 (recognizing the court’s “inherent judicial power to award attorney’s fees as a sanction for bad faith or vexatious litigation or for defiance of a court order” (internal citation and quotation marks omitted)).

CONCLUSION

The State respectfully requests the Court to grant this Motion and order Mr. Stanley to appear and show cause for the following:

- (1) Why he should not be held in civil contempt of court for the continuing, willful violation of the Court’s orders to remove all obstructions from the roads declared to be public in this lawsuit;
- (2) Why he should not remain in civil contempt of court until he provides evidence that he has fully complied with the Court’s orders to remove all obstructions from the roads declared to be public in this lawsuit; and
- (3) Why he should not be ordered to pay all costs associated with this motion.

The State further requests any other relief deemed just and proper by the Court.

Respectfully Submitted,

HECTOR H. BALDERAS
NEW MEXICO ATTORNEY GENERAL

By: /s/ Neil Bell

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State of New Mexico and New Mexico
Game Commission*

CERTIFICATE OF SERVICE

I certify that on July 30, 2020, I filed the foregoing Motion using the Court's Electronic Filing System, which caused all counsel of record to be served electronically.

/s/ Neil Bell

**STATE OF NEW MEXICO
EIGHTH JUDICIAL DISTRICT COURT
COUNTY OF COLFAX**

FILED
8th JUDICIAL DISTRICT COURT
Colfax County
1/30/2019 4:32 PM
BERNABE P. STRUCK
CLERK OF THE COURT
Jackie McKivergan

DAVID N. STANLEY,

Plaintiff/Counterclaim Defendant,

v.

No. D-809-CV-2011-00252

**BOARD OF COUNTY COMMISSIONERS
OF MORA COUNTY, *et al.*,**

Defendants/Counterclaimants.

ORDER

This matter came before the Court on Defendants/Counterclaimants State of New Mexico and New Mexico Game Commission's (the "State") Emergency Motion to Enforce and for Sanctions, and Plaintiff/Counterclaim Defendant David N. Stanley's ("Mr. Stanley") Motion for Stay.

The Court, having reviewed the parties' briefing and having heard argument of counsel at a hearing held on January 24, 2019, and being fully informed, finds and orders:

The State's Emergency Motion to Enforce and for Sanctions is GRANTED IN PART. The Court ORDERS Mr. Stanley to remove all remaining locked gates, barriers and other obstructions from the eleven public roads which are the subject of the Court's August 29, 2018 Findings, Conclusions and Decision. Mr. Stanley shall remove all such obstructions immediately, except that he has 60 days from the date of entry of this Order to remove metal T-posts from the public

Exhibit A

roadways that he states are frozen into the ground. The Court does not impose any sanctions on Mr. Stanley at this time.

Mr. Stanley's Motion for Stay is DENIED because Mr. Stanley fails to meet the standard for a stay pending appeal set forth in *Tenneco Oil Co. v. New Mexico Water Quality Control Commission*, 1986-NMCA-033, ¶ 10, 105 N.M. 708.



Sarah C. Backus
District Judge, Division II

Submitted by:

/s/ Ari Biernoff
Ari Biernoff
Assistant Attorney General
Attorney for Defendants-Counterclaimants
State of New Mexico and New Mexico
Game Commission

/s/ Jesus L. Lopez
Jesus L. Lopez
Special Assistant Attorney General
Attorney for Defendant-Counterclaimant
State of New Mexico

Approved as to form by:

/s/ [Approved by email 1/30/2019]
Donald A. Walcott
Attorney for Plaintiff-Counterclaim Defendant
David N. Stanley

/s/ [Approved by email 1/29/2019]
Michael A. Aragon
Attorney for Defendant-Counterclaimant
Board of County Commissioners of
Mora County

STATE OF NEW MEXICO
EIGHTH JUDICIAL DISTRICT COURT
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DECLARATION OF HOWARD GROSS

STATE OF NEW MEXICO)
) SS.
COUNTY OF SANTA FE)

I, Howard Gross, depose and state under penalty of perjury of the laws of the State of New Mexico the following:

1. I am employed as the Assistant Commissioner of Surface Resources for the New Mexico State Land Office. I have held this position since January 2019.

2. As part of my duties, I work with representatives of the New Mexico Department of Game & Fish in a cooperative effort to provide access to state trust lands for sports men and women who have purchased hunting, fishing, or trapping licenses from the state. In that capacity, I regularly visit state trust lands, including state trust lands in the White Peak area.


3. The White Peak area is located in Game Management Unit 48 and is a high-interest area for sports men and women.

4. I have been leading the New Mexico State Land Office's efforts to develop a dispersed camping pilot program for GMU 48, which has caused me to travel the roads in the White Peak area a number of times since May 2019. I have become familiar with the roads in the White Peak area, and I have been working with other employees of the State Land Office to build a detailed map of the White Peak area using Geographic Information System (GIS) techniques.

5. I visited the White Peak area on June 10, 2020. While traveling south on Red Hill Road, I observed a closed gate with a No Trespassing sign obstructing the northwest entrance to Rim Road. I took photographs of the gate and No Trespassing sign using my iPhone. *See* Attachment 1 (photograph of closed gate); Attachment 2 (photograph of No Trespassing sign). The approximate location of the gate and No Trespassing sign is accurately shown by the black arrow drawn on the map attached to this affidavit. *See* Attachment 3 (NM Trial Ex. 66, with black arrow added for illustrative purposes).

6. The names and locations of the roads identified in this Declaration correspond with the same roads as they are named and located by the New Mexico Attorney General's Office and appended to the Amended Findings, Conclusions and Decision. *See* NM Trial Ex. 66.

I affirm under penalty of perjury under the laws of the State of New Mexico that the foregoing statements are true and correct.

 07/27/2020
Howard Gross Date



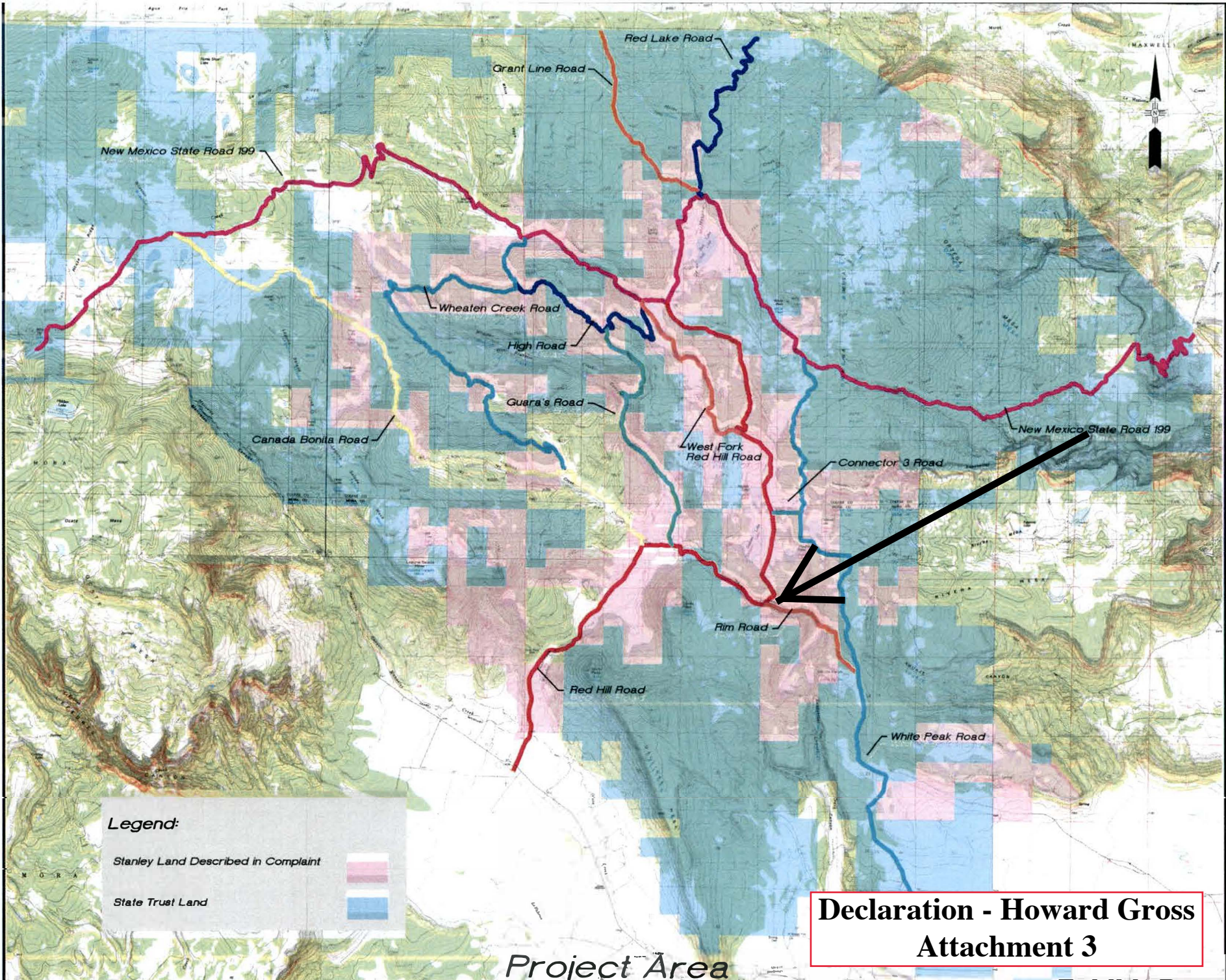
POSTED
NO TRESPASSING

**Declaration - Howard Gross
Attachment 1**

EXHIBIT B



Declaration - Howard Gross
Attachment 2



Legend:

Stanley Land Described in Complaint



State Trust Land



**Declaration - Howard Gross
Attachment 3**

Project Area

Exhibit B