

Save the Park and Build the School v. National Park Service et al

14_3:20-cv-01080-L-AHG (California Southern District
3:20-cv-01080-L-AHG)

CourtAlert for PACER - Binder

14	RESPONSE to Motion re 9 Ex Parte MOTION for Temporary Restraining Order and Order to Show Cause re Preliminary InjunctionMOTION for Preliminary Injunction filed by National Park Service. (Attachments: # 1 Declaration, # 2 Proof of Service)(Dorgan, Glen) (Entered: 07/10/2020) 7/10/2020	2
14-1	Declaration 7/10/2020	4
14-2	Proof of Service 7/10/2020	6

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7 Attorneys for Defendants NATIONAL PARK SERVICE; DAVID L.
BERNHARDT, in his official capacity as Secretary of the United States Department
8 of the Interior; and DAVID VELA, in his official capacity as Director of the
National Park Service
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10 **UNITED STATES DISTRICT COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 SAVE THE PARK AND BUILD THE
13 SCHOOL,

14 Plaintiff,

15 v.

16 NATIONAL PARK SERVICE, *et al.*,

17 Defendants.
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Case No. 3:20-cv-01080-LAB-AHG

**FEDERAL DEFENDANTS’
LIMITED RESPONSE TO
PLAINTIFF’S MOTION FOR A
PRELIMINARY INJUNCTION**

Date: July 20, 2020
Time: 11:30 a.m.
Courtroom: 14A
Judge: Hon. Larry Alan Burns

21 Defendants NATIONAL PARK SERVICE, DAVID L. BERNHARDT and DAVID
22 VELA (collectively the “Federal Defendants” or “NPS”) respectfully submit the following
23 limited response to Plaintiff’s motion for a preliminary injunction.

24 **I.**

25 **LIMITED SCOPE AND PURPOSE OF THIS RESPONSE**

26 The Federal Defendants are not directly involved in any of the ongoing park
27 construction at issue in this case. Indeed, NPS’ only role is to administer the Land and
28 Water Conservation Fund Act, and, as it relates to this matter, consulting regarding,

1 evaluating, and approving the Cardiff School District’s application for a conversion and
2 the State’s recommendations. Accordingly, by its motion, Plaintiff only seeks to enjoin
3 the District and does not ask the Court to award any relief against the Federal Defendants.¹
4 Nevertheless, the Federal Defendants remain an interested party, because the preliminary
5 relief Plaintiff seeks against the District is predicated on a theory that NPS’ conversion
6 approval was arbitrary and capricious in violation of the Administrative Procedure Act
7 (“APA”), 5 U.S.C. §701, *et seq.*

8 Pursuant to the APA, the Court’s review is limited to the administrative record “or
9 those parts of it cited by a party.” 5 U.S.C. § 706. Accordingly, the Federal Defendants
10 submit this response for the limited purpose of noting that NPS’ approval is supported by
11 NPS’ “Review of Stateside LWCF Compliance Action Amendment,” dated April 23, 2020,
12 which is identified as Exhibit “30” in Plaintiff’s Motion. *See* Ex. “30” [ECF #9-33].
13 Exhibit “30,” prepared by NPS Program Officer David Siegenthaler, contains the final
14 recommendations for approval of the District’s conversion request. Though only
15 mentioned twice in passing by Plaintiff in its brief, *see* Points and Authorities [ECF #9-1],
16 21:8, 26:2, this document contains a thorough summary of NPS’ evaluation of each and
17 every prerequisite for conversion as required by 36 C.F.R. § 59.3, including the issues
18 Plaintiff now raises.

19 Date: July 10, 2020

Respectfully submitted,
ROBERT S. BREWER, JR.
United States Attorney

By /s/ Glen F. Dorgan
GLEN F. DORGAN
Assistant United States Attorney

24 _____
25 ¹ This distinction is not immediately clear from the motion itself. *Compare* Motion [ECF
26 #9], 2:17-22 (“Save the Park respectfully requests that the Court issue a temporary
27 restraining order enjoining the Defendants . . . from engaging in any construction activities
28”) *with* Points and Authorities [ECF #9-1], 10:5-6 (“Plaintiff seeks a temporary
restraining order against Cardiff School District precluding further construction”). In
response to a request for clarification, however, Plaintiff’s counsel has advised that
Plaintiff is “asking for injunctive relief solely against the District” and is “not asking that
NPS (or the other defendants) be enjoined” at this time. *See* Dorgan Decl., ¶¶1-2.

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BERNHARDT, in his official capacity as Secretary of the United States Department
8 of the Interior; and DAVID VELA, in his official capacity as Director of the
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10 **UNITED STATES DISTRICT COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 SAVE THE PARK AND BUILD THE
13 SCHOOL,

14 Plaintiff,

15 v.

16 NATIONAL PARK SERVICE, *et al.*,

17 Defendants.

Case No. 3:20-cv-01080-LAB-AHG

**DECLARATION OF GLEN F.
DORGAN IN SUPPORT OF
FEDERAL DEFENDANTS'
LIMITED RESPONSE TO
PLAINTIFF'S MOTION FOR A
PRELIMINARY INJUNCTION**

Date: July 20, 2020
Time: 11:30 a.m.
Courtroom: 14A
Judge: Hon. Larry Alan Burns

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23 I, Glen F. Dorgan, declare as follows:

24 1. I am an Assistant United States Attorney assigned to represent the Federal
25 Defendants in this matter. I have personal knowledge regarding the following facts and
26 could and would competently testify thereto, except as to those matters stated on
27 information and belief and as to those matters I believe them to be true.

28 ///

1 2. On July 7, 2020, I emailed Rebecca Reed, counsel for Plaintiff, and asked the
2 following:

3 When you have a moment, can you clarify for me whether and to what extent
4 your motion seeks to enjoin the NPS? My impression is that you're primary
5 concern is to stop the District from continuing its construction, and your points
6 and authorities suggests you're only seeking relief as against the District. See
7 P&A, 10:5-6 ("Plaintiff seeks a temporary restraining order against Cardiff
8 School District precluding further construction"). But, your notice asks for
9 relief against everyone. See Motion, 2:17-22 ("Save the Park respectfully
10 requests that the Court issue a temporary restraining order enjoining the
11 Defendants").

12 3. Ms. Reed responded promptly the same day as follows:

13 My apologies for any confusion. We are asking for injunctive relief solely
14 against the District. We're not asking that NPS (or the other defendants) be
15 enjoined from anything.

16 I declare under penalty of perjury that, to the best of my knowledge, the foregoing
17 is true and correct.

18 Executed this 10th day of July, 2020, in San Diego, California.

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/s/ Glen F. Dorgan

Glen F. Dorgan

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

SAVE THE PARK AND BUILD THE
SCHOOL,

Plaintiff,

v.

NATIONAL PARK SERVICE, *et al.*,

Defendants.

Case No. 3:20-cv-01080-LAB-AHG

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED THAT:

I, the undersigned, am a citizen of the United States and am at least eighteen years of age. My business address is 880 Front Street, Room 6293, San Diego, California 92101-8893.

I am not a party to the above-entitled action. On July 10, 2020, I have caused service of:

**FEDERAL DEFENDANTS’ LIMITED RESPONSE TO PLAINTIFF’S
MOTION FOR A PRELIMINARY INJUNCTION; DECLARATION OF
GLEN F. DORGAN ISO FEDERAL DEFENDANT’S RESPONSE TO
PLAINTIFF’S MOTION FOR A PRELIMINARY INJUNCTION**

1 to the following parties by electronically filing the foregoing with the Clerk of the
2 Bankruptcy Court using its ECF System, which electronically notifies them:

3

4 Rebecca L. Reed
5 PROCOPIO CORY HARGREAVES & SAVITCH LLP
6 525 B Street, Suite 2200
7 San Diego CA 92101
8 rebecca.reed@procopio.com
9 Counsel for Plaintiff

8

9 Leena M. Sheet
10 Deputy Attorney General
11 300 South Spring Street, Suite 1702
12 Los Angeles, CA 90013
13 leena.sheet@doj.ca.gov
14 Counsel for Parks and Recreation Director Lisa Mangat

13

14 Additionally, I have caused service of the above-described documents by email to
15 the following party:

15

16 Matthew L. Green
17 BEST BEST & KRIEGER LLP
18 655 West Broadway, 15th Floor
19 San Diego, CA 92101
20 matthew.green@bbklaw.com
21 Counsel for Cardiff School District

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21 I declare under penalty of perjury that the foregoing is true and correct.

22

23 DATED: July 10, 2020

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Respectfully submitted,

25

26 Robert S. Brewer, Jr.
27 United States Attorney

27

28 By /s/ Glen F. Dorgan
GLEN F. DORGAN
Assistant United States Attorney