

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

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

## CourtAlert for PACER - Binder

15	RESPONSE in Opposition re 9 Ex Parte MOTION for Temporary Restraining Order and Order to Show Cause re Preliminary InjunctionMOTION for Preliminary Injunction filed by Lisa Mangat. (Attachments: # 1 Declaration of L.M. Sheet in Opposition to Motion for Preliminary Injunction)(Sheet, Leena) (Entered: 07/10/2020) <a href="#">7/10/2020</a> .....	2
15-1	Declaration of L.M. Sheet in Opposition to Motion for Preliminary Injunction <a href="#">7/10/2020</a> .....	20

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10 IN THE UNITED STATES DISTRICT COURT  
 11 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

15 **SAVE THE PARK AND BUILD THE  
 SCHOOL,**

16 Plaintiff,

17 v.

18  
 19 **NATIONAL PARK SERVICE;  
 DAVID L. BERNHARDT, in his  
 20 official capacity as Secretary of the  
 United States Department the  
 21 Interior; DAVID VELA, in his official  
 capacity as Director of the National  
 22 Park Service; LISA MANGAT, in her  
 official capacity as Director of the  
 23 California Department of Parks and  
 Recreation; AND CARDIFF SCHOOL  
 24 DISTRICT,**

25 Defendants.

Case No. 3:20-cv-1080-LAB-AHG

**DEFENDANT LISA MANGAT'S  
 OPPOSITION TO PLAINTIFF'S  
 EX PARTE APPLICATION FOR A  
 TEMPORARY RESTRAINING  
 ORDER AND ORDER TO SHOW  
 CAUSE RE PRELIMINARY  
 INJUNCTION**

Date: July 20, 2020  
 Time: 11:30 a.m.  
 Dept: 14A  
 Judge: The Honorable Larry A.  
 Burns  
 Trial Date: None Set  
 Action Filed: 6/12/2020

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## TABLE OF CONTENTS

	<b>Page</b>
Introduction .....	1
Background and Procedural History .....	2
Legal Standard .....	4
Argument.....	5
I. Plaintiff Seeks an Injunction Against State Parks that Has No Effect On It .....	5
II. Plaintiff Lacks Standing for Injunctive Relief Against Director Mangat.....	6
III. The Eleventh Amendment Bars Injunctive Relief Against Director Mangat.....	7
IV. Plaintiff is Unlikely to Succeed on the Merits of its Claims Against Director Mangat.....	8
A. The Federal Administrative Procedure Act Does Not Apply to State Officials .....	8
B. Plaintiff Fails to State a LWCFA Claim Against Director Mangat.....	9
C. Plaintiff Fails to Show that it Will Suffer Immediate Irreparable Harm Without an Injunction .....	11
Conclusion.....	12

1  
2  
3  
4  
5  
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7  
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24  
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26  
27  
28

## TABLE OF AUTHORITIES

**Page**

**CASES**

*Agua Caliente Band of Cahuilla Indians v. Hardin*  
223 F.3d 1041 (9th Cir. 2000).....7

*Alliance for the Wild Rockies v. Cottrell*  
632 F.3d 1127 (9th Cir. 2011).....5

*Benson v. Ocwen Loan Servicing*  
LLC, 2012 WL 13012449 (C.D. Cal. Feb. 24, 2012) .....12

*Edelman v. Jordan*  
415 U.S. 651 .....7

*Friends of the Earth, Inc. v. Laidlaw Env't'l Servs. (TOC), Inc.*  
528 U.S. 167 (2000).....6

*Friends of Roeding Park v. City of Fresno*  
848 F. Supp. 2d 1152 (E.D. Cal. 2012) .....2

*Gilliam v. Miller*  
973 F.2d 760 (9th Cir. 1992).....8

*Great N. Ry. Co. v. Lumber & Sawmill Workers, Local Union No.*  
2409  
140 F. Supp. 393 (D. Mont. 1955) .....5

*Hunter v. Underwood*  
362 F.3d 468 (8th Cir. 2004).....8

*Lake Almanor Assocs. L.P. v. Huffman-Broadway Group, Inc.*  
178 Cal.App.4th 1194 (2009).....9

*Miller for & on Behalf of N.L.R.B. v. California Pac. Med. Ctr.*  
991 F.2d 536 (9th Cir. 1993).....12

*Pennhurst State Sch. & Hosp. v. Halderman*  
465 U.S. 89 (1984).....7

*Price v. City of Stockton*  
390 F.3d 1105 (9th Cir. 2004).....5

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**TABLE OF AUTHORITIES**

**(continued)**

**Page**

*River Runners for Wilderness v. Martin*  
593 F.3d 1064 (9th Cir. 2010)..... 10, 11

*Southwest Williamson Cty. Cmty. Ass’n v. Slater*  
173 F.3d 1033 (6th Cir. 1999).....8

*Steel Co v. Citizens for a Better Env’t*  
523 U.S. 83 (1998).....6

*U.S. v. Fifty-Three (53) Eclectus Parrots*  
685 F.2d 1131 (9th Cir. 1982)..... 10

*Unite Here Local 30 v. Dept. of Parks & Rec.*  
194 Cal.App.4th 1200 (2011).....9

*Vasquez v. Rackauckas*  
734 F.3d 1025 (9th Cir. 2013).....7

*Will v. Michigan Dep’t of State Police*  
491 U.S. 58 (1989).....7

*Winter v. Natural Res. Def. Council, Inc.*  
555 U.S. 7 (2008).....4, 5

*Wolfson v. Brammer*  
616 F.3d 1045 (9th Cir. 2010).....6

*Ex Parte Young*  
209 U.S. 123 (1908).....7

**STATUTES**

5 U.S.C.  
§ 553(d) ..... 11  
§ 701(b)(1).....8

54 U.S.C.  
§ 200305(f)(3).....2

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**TABLE OF AUTHORITIES**

**(continued)**

**Page**

Cal. Pub. Res. Code

§§ 5099-5099.12 .....2

§§ 5099.2-5099.10 .....3

**CONSTITUTIONAL PROVISIONS**

Eleventh Amendment..... 1, 7

**OTHER AUTHORITIES**

36 C.F.R.

§ 59.3(a) .....2

1 Defendant Lisa Mangat, in her official capacity as Director of the California  
2 Department of Parks and Recreation (State Parks), respectfully submits the  
3 following Opposition to Plaintiff’s Ex Parte Application for Temporary Restraining  
4 Order and Order to Show Cause Re Preliminary Injunction filed on June 26, 2020  
5 (ECF No. 9 to 9-38.)

6 **INTRODUCTION**

7 Plaintiff seeks a preliminary injunction (TRO/OSC) to halt further  
8 construction of a school within the former boundary of a park, all within property  
9 owned by the Cardiff School District (District). Plaintiff’s moving papers,  
10 consisting of a 26-page memorandum, a declaration, and 639 pages of exhibits, are  
11 ambiguous as to whether its TRO/OSC application is directed at Director Mangat.  
12 If it is, the request should be denied for several reasons.

13 Initially, Plaintiff has not demonstrated that an injunction is necessary as  
14 against Director Mangat, because she is not responsible for the construction it is  
15 trying to stop. Indeed, Plaintiff admits that an injunction would have no impact on  
16 State Parks. Plaintiff fails to show how an injunction against Director Mangat  
17 would redress its alleged injury. Without a showing of redressability, Plaintiff does  
18 not have standing to seek injunctive relief against Director Mangat.

19 Second, Plaintiff does not articulate what prospective relief it seeks against  
20 Director Mangat. Absent a request for prospective relief, the Eleventh Amendment  
21 precludes injunctive relief against Director Mangat, who is sued in her official  
22 capacity as a state official.

23 Third, Plaintiff has not shown a likelihood of success on the merits of its  
24 claimed violation of federal law, and fails to describe how the claimed violation of  
25 guidelines in a federal manual warrants injunctive relief.

26 Finally, Plaintiff fails to show how immediate relief is necessary to prevent  
27 irreparable harm to its members. The National Park Service (NPS) approved the  
28 small conversion boundary change of the park to accommodate the District’s long-

1 awaited renovation of Cardiff School over two months ago. The District resumed  
2 construction activities including within the former park boundary after NPS'  
3 conversion approval. The park Plaintiff seeks to preserve no longer exists.  
4 Therefore, Plaintiff is not entitled to injunctive relief.

### 5 **BACKGROUND AND PROCEDURAL HISTORY**

6 Plaintiff seeks injunctive relief based on a claimed violation of the Land and  
7 Water Conservation Fund Act of 1965 (LWCFA). (ECF No. 9-1, TRO/OSC at 18-  
8 19.) The LWCFA “appropriates federal funds to states for outdoor recreation  
9 planning, acquisition, and facilities development, provided the state has adopted a  
10 comprehensive statewide outdoor recreation plan and is able to provide at least 50  
11 percent of the cost of projects.” *Friends of Roeding Park v. City of Fresno*, 848 F.  
12 Supp. 2d 1152, 1162 (E.D. Cal. 2012). Section 6(f)(3) of the LWCFA provides:

13 No property acquired or developed with assistance under this section shall,  
14 without the approval of the Secretary, be converted to other than public  
15 outdoor recreation use. The Secretary shall approve a conversion only if the  
16 Secretary finds it to be in accordance with the then-existing comprehensive  
17 statewide outdoor recreation plan and only on such conditions as the  
Secretary considers necessary to ensure the substitution of other recreation  
properties of at least equal fair market value and of reasonably equivalent  
usefulness and location.

18 54 U.S.C. § 200305(f)(3); *see also* 36 C.F.R. § 59.3(a) (requirements for  
19 conversion approval).

20 In order to assist “those who are engaged in the administrative, financial  
21 management and stewardship responsibilities of the LWCF State Assistance  
22 Program,” the NPS publishes a guidance document, the most current of which is  
23 entitled “Land and Water Conservation Fund, State Assistance Program, Federal  
24 Financial Assistance Manual, Volume 69 (effective Oct. 1, 2008) (LWCF Manual).  
25 LWCF Manual, Preface 1.

26 The State of California implements LWCFA under the California Outdoor  
27 Recreation Resources Act of 1967. Cal. Pub. Res. Code §§ 5099-5099.12. Under  
28 California law, State Parks is the primary state agency responsible for



1 implementing LWCFA, and it administers the grants disbursed and expended under  
2 the LWCFA program. *See* Cal. Pub. Res. Code §§ 5099.2-5099.10.

3 In 1993, State Parks entered into a LWCFA Project Agreement with the  
4 District and the City of Encinitas to renovate George Berkich Park, an outdoor  
5 recreation area located entirely within property owned by the District at Cardiff  
6 School. (ECF No. 9-6, TRO/OSC, Exhibit 3.)

7 In 2016, California voters approved bond measure GG to finance school  
8 facilities projects. (ECF No. 9-7, TRO/OSC, Exhibit 4.) In 2017, the District began  
9 plans for the Cardiff School Modernization and Reconstruction Project (School  
10 Project) using Measure GG funds. (ECF No. 9-8, TRO/OSC, Exhibit 5.) On  
11 February 7, 2019, the District certified its Environmental Impact Report under the  
12 California Environmental Quality Act for the School Project. (ECF No. 9-9 & 9-13,  
13 TRO/OSC, Exhibits 6, 10.) Plaintiff challenged the District's certification in state  
14 court. San Diego Superior Court, Case No. 37-2019-00012880-CU-WM-NC. The  
15 state case ultimately settled and was dismissed. (ECF No. 9-31, TRO/OSC, Exhibit  
16 28.)

17 The School Project required that part of George Berkich Park be converted  
18 from recreation to non-recreation use. On November 25, 2019, pursuant to the  
19 District's request, State Parks recommended that NPS approve an adjustment of  
20 what is referred to as the "6(f)(3) boundary" to allow for District to construct  
21 improvements to the Cardiff School. (ECF No. 9-29, TRO/OSC, Exhibit 26.) State  
22 Parks also recommended to NPS the removal of the City of Encinitas as a party to  
23 the LWCFA Project Agreement, finding that the City of Encinitas no longer  
24 appeared involved in the operation and maintenance of George Berkich Park. (*Id.*)  
25 The City of Encinitas was notified of its removal and did not object. (ECF No. 9-  
26 27, TRO/OSC, Exhibit 24.)

27 On April 24, 2020, NPS approved the small conversion boundary change.  
28 (ECF No. 9-33, TRO/OSC, Exhibit 30.) On June 23, 2020, two months later, State

1 Parks received an e-mail from Plaintiff’s counsel notifying State Parks of Plaintiff’s  
2 intent to file a temporary restraining order seeking to halt construction of the School  
3 Project. (Declaration of L. Sheet [“Sheet Dec.”], Exhibit A.) Plaintiff’s counsel did  
4 not meet and confer with State Parks before filing its request for an injunction  
5 through an *ex parte* application. (*Id.*) Plaintiff states this is because it determined  
6 that the preliminary injunction would have no impact on State Parks. (Declaration  
7 of Rebecca L. Reed [“Reed Dec.”], ¶ 9.) Nevertheless, Plaintiff names Director  
8 Mangat as a party it seeks to enjoin under its proposed injunction. *See Proposed*  
9 *Order.*

10 On June 29, 2020, this Court denied Plaintiff’s TRO application and set an  
11 expedited briefing schedule for a preliminary injunction. (ECF No. 10.) In denying  
12 the application, the Court held that Plaintiff’s request to halt construction that had  
13 begun three months earlier did not warrant emergency relief. (*Id.* at 2:2-4.) The  
14 Court also found that construction was well underway:

15 Plaintiff concedes that Defendants removed the baseball backstop and  
16 walking track from George Berkich Park by March 24, 2020. Between  
17 that date and the date Plaintiff filed its motion, Defendants graded the  
18 Park, removed grass fields, excavated for construction of biofiltration  
19 basins, and began pouring cement foundation in the Park. Because work  
has been proceeding for several months, the Court cannot find that  
matters are so urgent that the Court can enjoin further work without first  
permitting Defendants to be heard.

20 (ECF No. 10, Order Denying Appl. For TRO at 2:4-10 (citations omitted).).

### 21 LEGAL STANDARD

22 “A preliminary injunction is an extraordinary remedy never awarded as a  
23 matter of right.” *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008).  
24 To prevail, “a plaintiff must show (1) a strong likelihood of success on the merits,  
25 (2) the possibility of irreparable injury to plaintiff if preliminary relief is not  
26 granted, (3) a balance of hardships favoring the plaintiff, and (4) that an injunction  
27 is in the public interest.” *Id.* at 7, 20. Alternatively, “[a] preliminary injunction is  
28 appropriate when a plaintiff demonstrates that serious questions going to the merits

1 were raised and the balance of hardships tips sharply in the plaintiff’s favor.”  
 2 *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134-35 (9th Cir. 2011)  
 3 (internal citation omitted). Plaintiff must make a showing of all four *Winter* factors  
 4 even under the alternative sliding scale test. *Id.* at 1132, 1135.

## 5 ARGUMENT

### 6 I. PLAINTIFF SEEKS AN INJUNCTION AGAINST STATE PARKS THAT HAS NO 7 EFFECT ON IT

8 At the outset, Plaintiff’s request for injunctive relief against State Parks  
 9 Director Mangat should be denied because Plaintiff has not identified that an  
 10 injunction is necessary against the State Parks Director. Any preliminary injunction  
 11 “must be narrowly tailored ‘to affect only those persons over which it has power,  
 12 and to remedy only the specific harms shown by the plaintiffs.’” *Price v. City of*  
 13 *Stockton*, 390 F.3d 1105, 1117 (9th Cir. 2004) (internal citations omitted); *see also*  
 14 *Great N. Ry. Co. v. Lumber & Sawmill Workers, Local Union No. 2409*, 140 F.  
 15 Supp. 393, 396 (D. Mont. 1955), *aff’d*, 232 F.2d 628 (9th Cir. 1956) (“before a  
 16 Court will grant an injunction, it should appear with reasonable certainty that the  
 17 injunction will be effective to prevent the damage which it seeks to prevent”).

18 Here, State Parks is not doing the construction at the park and has no control  
 19 over the School Project. In fact, Plaintiff admits that an injunction would be  
 20 ineffective as against State Parks. On June 23, 2020, Plaintiff’s counsel e-mailed  
 21 State Parks’ staff counsel notifying State Parks of Plaintiff’s intent to file an *ex*  
 22 *parte* TRO application on June 24, 2020 unless Plaintiff, the NPS, and/or District  
 23 can “reach an agreement to avoid the necessity of court intervention before that  
 24 time.” (Sheet Dec., ¶ 2 and Exhibit A.) Beyond notifying State Parks of its intent to  
 25 file an *ex parte* TRO application, Plaintiff failed to engage State Parks in any  
 26 meaningful discussion to informally resolve any issues. (Sheet Dec., ¶ 3.) Although  
 27 language in the application and proposed order is directed at Director Mangat,  
 28 Plaintiff concedes “the temporary restraining order will have no impact on State

1 Parks.” (Reed Dec., ¶ 9; Notice of TRO Application, at 2:17-22 [requesting  
 2 injunction against “Defendants”]); *but see* Points and Authorities in Support of  
 3 TRO, at 10:5-7 [“Plaintiff seeks a temporary restraining order against Cardiff  
 4 School District precluding further construction and injury to George Berkich Park  
 5 . . .”].) Plaintiff concluded that conferring with State Parks would have been futile,  
 6 because an injunction would be ineffective to halt construction. (Reed Dec., ¶ 9.)  
 7 Plaintiff therefore concedes that an injunction against Director Mangat will be  
 8 ineffective. Director Mangat is not a proper party to the injunction, and it should  
 9 not be granted against her.

## 10 **II. PLAINTIFF LACKS STANDING FOR INJUNCTIVE RELIEF AGAINST** 11 **DIRECTOR MANGAT**

12 Plaintiff does not have standing to seek injunctive relief against Director  
 13 Mangat. To make out a redressable injury for standing purposes, a plaintiff is  
 14 required to show that a decision in its favor is likely to redress the claimed injury.  
 15 *Wolfson v. Brammer*, 616 F.3d 1045, 1056 (9th Cir. 2010). “Relief that does not  
 16 remedy the injury suffered cannot bootstrap a plaintiff into federal court; that is the  
 17 very essence of the redressability requirement.” *Steel Co v. Citizens for a Better*  
 18 *Env’t*, 523 U.S. 83, 107 (1998). Since a plaintiff must establish standing  
 19 independently for each remedy sought, *Friends of the Earth, Inc. v. Laidlaw Env’t’l*  
 20 *Servs. (TOC), Inc.*, 528 U.S. 167, 185 (2000), Plaintiff is required to show  
 21 specifically that the preliminary injunction it seeks against State Parks is likely to  
 22 redress its injuries caused by the ongoing construction.

23 Plaintiff seeks an injunction halting construction of the school while  
 24 acknowledging that the injunction against State Parks would have no impact. (Reed  
 25 Dec., ¶ 9.) Plaintiff acknowledged the lack of redressability when seeking relief,  
 26 stating that “given State Park’s inability to assist in preserving the status quo, and  
 27 the fact that the temporary restraining order will have no impact on State Parks, any  
 28

1 meet and confer would be futile.” (*Id.*) Without a showing of redressability,  
2 Plaintiff does not have standing to seek an injunction against Director Mangat.

3 **III. THE ELEVENTH AMENDMENT BARS INJUNCTIVE RELIEF AGAINST**  
4 **DIRECTOR MANGAT**

5 To the extent Plaintiff is seeking injunctive relief against Director Mangat for  
6 violations of state law, the Eleventh Amendment bars such relief. The Eleventh  
7 Amendment precludes a federal court from granting injunctive relief against a state  
8 official on the basis of state law. *Pennhurst State Sch. & Hosp. v. Halderman*, 465  
9 U.S. 89, 106 (1984); *see also Vasquez v. Rackauckas*, 734 F.3d 1025, 1041 (9th Cir.  
10 2013) (“‘A federal court[]’ may not ‘grant’ injunctive ‘relief against state officials  
11 on the basis of state law,’ when those officials are sued in their official capacity.”)  
12 The claims against Director Mangat for violations of state law are barred.

13 The Eleventh Amendment also bars suits alleging violations of federal law  
14 against state officials sued in their official capacity because “an official-capacity  
15 action is in reality always against the State.” *Will v. Michigan Dep’t of State Police*,  
16 491 U.S. 58, 89 (1989).

17 There is a narrow exception to the Eleventh Amendment jurisdictional bar,  
18 under *Ex Parte Young*, 209 U.S. 123, 159-60 (1908), but that is inapplicable here.  
19 Under that doctrine, a party may seek prospective declaratory or injunctive relief  
20 against individual state officers in their official capacities for alleged ongoing  
21 violations of federal law. *Agua Caliente Band of Cahuilla Indians v. Hardin*, 223  
22 F.3d 1041, 1045 (9th Cir. 2000); *Edelman v. Jordan*, 415 U.S. 651, 664-68. Here,  
23 the request is to halt further construction. However, Plaintiff acknowledges that  
24 State Parks would be unable “to assist in preserving the status quo” and that the  
25 TRO would have “no impact on State Parks.” (Reed Dec., ¶ 9.) In other words, the  
26 injunction does not seek prospective relief, or any relief for that matter, against  
27 Director Mangat and is therefore barred by the Eleventh Amendment.  
28

1 **IV. PLAINTIFF IS UNLIKELY TO SUCCEED ON THE MERITS OF ITS CLAIMS**  
 2 **AGAINST DIRECTOR MANGAT**

3 Plaintiff fails to articulate what alleged violation of law provides it with the  
 4 legal authority to seek injunctive relief against Director Mangat. Plaintiff points to  
 5 alleged violations of the LWCFA, the National Environmental Policy Act, and the  
 6 National Historic Preservation Act as bases for injunctive relief under the  
 7 Administrative Procedure Act (“APA”), but fails to describe how State Parks  
 8 violated any of the provisions of these federal laws so as to warrant pre-judgment  
 9 relief. (TRO/PI at 22-28.) The only wrongdoing that Plaintiff complains that State  
 10 Parks committed is that State Parks unilaterally removed the City of Encinitas from  
 11 the project agreement and that State Parks allegedly violated the LWCFA  
 12 Manual—neither of which provide a basis for an injunction under the LWCFA.  
 13 (TRO/PI at 16:6-28, 17:1-13, 18:20-28, 19:1-28.) Plaintiff does not argue or allege  
 14 any facts to suggest that Director Mangat violated the other two federal statutes.  
 15 Consequently, Plaintiff is unlikely to succeed on the merits of its claims against  
 16 Director Mangat.

17 **A. The Federal Administrative Procedure Act Does Not Apply to**  
 18 **State Officials**

19 Plaintiff only cites to the federal APA as its source of legal authority to seek  
 20 an injunction against all defendants in this matter, including Director Mangat.  
 21 (TRO App. 22:9-28, 23:1-16.) But the federal APA does not apply to state officials.  
 22 5 U.S.C. § 701(b)(1) (defining “agency” as “each authority of the Government of  
 23 the United States”); *see Gilliam v. Miller*, 973 F.2d 760, 764 (9th Cir. 1992)  
 24 (declining APA review because defendant was acting in a state, not federal  
 25 capacity); *Southwest Williamson Cty. Cmty. Ass’n v. Slater*, 173 F.3d 1033, 1035  
 26 (6th Cir. 1999) (“By its own terms, the APA does not apply to state agencies.”); *see*  
 27 *also Hunter v. Underwood*, 362 F.3d 468, 477 (8th Cir. 2004) (“The APA does not  
 28 grant federal courts jurisdiction to review actions of state or municipal agencies.”).



1           Because Director Mangat is a state official, her actions cannot be reviewed  
2 under the federal APA.

3           **B. Plaintiff Fails to State a LWCFA Claim Against Director Mangat**

4           Even if this Court entertains an APA claim against Director Mangat, Plaintiff  
5 nevertheless fails to state a claim under the LWCFA. Plaintiff contends that State  
6 Parks “undertook a series of actions [related to the removal of the City of Encinitas  
7 from the project agreement without City consent], each of which violated the  
8 LWCFA.” (TRO App. 18:20-28, 19:1-28.) But Plaintiff conspicuously fails to  
9 explain how any of these alleged actions were unlawful under the LWCFA or any  
10 other law.

11           Even if there were a breach of the project agreement (which there was not),  
12 Plaintiff, who is not a party to that agreement, would not have standing to enforce  
13 it. *Lake Almanor Assocs. L.P. v. Huffman-Broadway Group, Inc.*, 178 Cal.App.4th  
14 1194, 1199 (2009) (contracts cannot be enforced “by persons who are only  
15 incidentally or remotely benefited by it.”); *Unite Here Local 30 v. Dept. of Parks &*  
16 *Rec.*, 194 Cal.App.4th 1200, 1215-1217 (2011) (state resident and taxpayer lacked  
17 standing to enforce concession agreement between State Parks and concessionaire).  
18 The project agreement was between the District, State Parks and the City of  
19 Encinitas, and Plaintiff has no capacity to enforce it.

20           Plaintiff also argues, “[w]ith knowledge of the unauthorized conversion, the  
21 LWCFA obligated [State Parks] to ‘advise the project sponsor of the necessary  
22 prerequisites for approval of a conversion *and to discontinue the unauthorized*  
23 *conversion activities.*’ LWCF Manual at Ch. 8-4.” (TRO App., 16:25-28 [emphasis  
24 in original].) But Plaintiff fails to point to any statutory provision of the LWCFA  
25 that required State Parks to take these actions.

26           Plaintiff cites only to the LWCF Manual to support its description of State  
27 Parks’ obligations. To demonstrate that the LCWF Manual has the independent  
28

1 force and effect of law, Plaintiff must meet a two-element test. *U.S. v. Fifty-Three*  
2 *(53) Eclectus Parrots*, 685 F.2d 1131, 1136 (9th Cir. 1982). First, the manual must  
3 “prescribe substantive rules—not interpretive rules, general statements of policy or  
4 rules of agency organization, procedure or practice” that are “legislative in nature,  
5 affecting individual rights and obligations.” *Id.* Second, it “must have been  
6 promulgated pursuant to a specific statutory grant of authority and in conformance  
7 with the procedural requirements imposed by Congress.” *Id.*

8 The LCWF Manual fails the first prong of the *Eclectus Parrots* test because it  
9 does not purport to prescribe substantive rules. The Preface to the LCWF Manual  
10 explains that it serves “as a basic reference for those who are engaged in the  
11 administrative, financial management and stewardship responsibilities of the  
12 LWCF State Assistance Program.” LWCF Manual, Preface 1; see *River Runners*  
13 *for Wilderness v. Martin*, 593 F.3d 1064, 1072 (9th Cir. 2010) (“A ‘reference  
14 source,’ of course; is not the same as binding substantive law.”) In fact, the LWCF  
15 Manual’s preface acknowledges that it is not intended to supplant NPS regulations.  
16 LWCF Manual, Preface 1; *River Runners for Wilderness*, 593 F.3d at 1071 (internal  
17 policies are “not intended to have the same force as binding Park Service  
18 regulations[, which] is made clear by the Introduction’s explanation that existing,  
19 formally-promulgated Park Service regulations will trump inconsistent  
20 provisions”). Even if internal guidance, such as the LWCF Manual, “on occasion  
21 uses mandatory language, such as ‘will’ and ‘must,’” if it “lacks precision in its  
22 directives, and there is no indication of how the enumerated policies are to be  
23 prioritized,” it fails to prescribe substantive rules under the first prong of *Eclectus*  
24 *Parrots*. *Id.* (quoting *The Wilderness Soc’y v. Norton*, 434 F.3d 584, 595 (D.C. Cir.  
25 2006)).

26 The LWCF Manual also fails the second prong of *Eclectus Parrots* because it  
27 does not conform to procedural requirements. Under the APA, “publication or  
28 service of a substantive rule shall be made not less than 30 days before its effective



1 date.” 5. U.S.C. § 553(d). The LWCF Manual was not published in the Federal  
2 Register. Nor was it ever published in the Code of Federal Regulations, suggesting  
3 that NPS “did not intend to announce substantive rules enforceable by third parties  
4 in federal court.” *River Runners*, 593 F.3d at 1072.

5 Even if the LWCF Manual was legally binding, which it is not, Plaintiff  
6 misapprehends the Manual. Plaintiff argues that the LWCF Manual requires State  
7 Parks to advise the project sponsor of the conversion prerequisites and to cease the  
8 unauthorized conversion activity. (TRO App., at 16:25-28.) However, the LWCF  
9 Manual does not require State Parks to take those actions. Rather, it states, “[i]f the  
10 NPS is alerted or otherwise becomes aware of an ongoing conversion activity that  
11 has not been approved, NPS shall request the State Liaison Officer (SLO) to advise  
12 the project sponsor.” LWCF Manual, Ch. 8-4. The Manual directs *NPS* to act, not  
13 State Parks.

14 Therefore, because Plaintiff fails to allege against Director Mangat any  
15 violations of the LWCF Manual other than alleged violations of the non-binding LWCF  
16 Manual, it fails to state a LWCF Manual claim and thus, is unlikely to succeed on the  
17 merits of its claims against Director Mangat.

18 **C. Plaintiff Fails to Show that it Will Suffer Immediate Irreparable**  
19 **Harm Without an Injunction**

20 Plaintiff asks the Court to halt construction based on the allegations that NPS’  
21 conversion approval and State Parks’ recommendation for the conversion were  
22 erroneous. NPS approved the small conversion boundary change on April 24, 2020,  
23 over two months ago. (ECF No. 9-33, TRO/OSC, Exhibit 30.) Construction within  
24 the section 6(f)(3) boundary resumed soon after the small conversion boundary  
25 change approval. (ECF No. 9-36, TRO/OSC, Exhibit 33 (photograph of  
26 construction site.) There is no longer a park to preserve with a TRO. (*See id.*) The  
27  
28

1 site has been graded and foundations have been laid for new construction.<sup>1</sup>  
 2 Moreover, Plaintiff’s “unexplained delay in seeking TRO emergency relief  
 3 undermines a claim that an injunction is necessary to prevent immediate and  
 4 irreparable injury.” *Benson v. Ocwen Loan Servicing, LLC*, 2012 WL 13012449, at  
 5 \*2 (C.D. Cal. Feb. 24, 2012); *see also Miller for & on Behalf of N.L.R.B. v.*  
 6 *California Pac. Med. Ctr.*, 991 F.2d 536, 544 (9th Cir. 1993), *on reh’g*, 19 F.3d 449  
 7 (9th Cir. 1994) (“Plaintiff’s long delay before seeking a preliminary injunction  
 8 implies a lack of urgency and irreparable harm.”). Thus, Plaintiff fails to show that  
 9 an injunction is immediately necessary to prevent irreparable harm to its members.

10 **CONCLUSION**

11 For the foregoing reasons, the Court should deny Plaintiff’s request for  
 12 preliminary injunctive relief.

13 Dated: July 10, 2020

Respectfully Submitted,  
 XAVIER BECERRA  
 Attorney General of California  
 ANDREW M. VOGEL  
 Supervising Deputy Attorney General

/s/ Leena M. Sheet  
 LEENA M. SHEET  
 JUSTIN J. LEE  
 Deputy Attorneys General  
 Attorneys for Defendant  
 Department of Parks & Recreation  
 Director Lisa Mangat

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24  
 25  
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 27  
 28 <sup>1</sup> State Parks refers to the District’s opposition for the status of construction,  
 and the projected completion date of the School Project.

**CERTIFICATE OF SERVICE**

Case Name: **Save The Park and Build The School v. National Park Service, et al.** No. **3:20-cv-1080-LAB-AHG**

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I hereby certify that on July 10, 2020, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

**DEFENDANT LISA MANGAT’S OPPOSITION TO PLAINTIFF’S *EX PARTE* APPLICATION FOR A TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE RE PRELIMINARY INJUNCTION;**  
**and**

**DECLARATION OF LEENA M. SHEET IN OPPOSITION TO PLAINTIFF’S *EX PARTE* APPLICATION FOR A TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE RE PRELIMINARY INJUNCTION**

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on July 10, 2020, at Los Angeles, California.

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Badia Hill  
Declarant

---

/s/ Badia Hill  
Signature

1 XAVIER BECERRA  
 Attorney General of California  
 2 ANDREW M. VOGEL  
 Supervising Deputy Attorney General  
 3 LEENA M. SHEET  
 Deputy Attorney General  
 4 State Bar No. 235415  
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 8 E-mail: Leena.Sheet@doj.ca.gov  
*Attorneys for Defendant*  
 9 *Department of Parks & Recreation Director*  
*Lisa Mangat*

10 IN THE UNITED STATES DISTRICT COURT  
 11 FOR THE SOUTHERN DISTRICT OF CALIFORNIA  
 12

13  
 14  
 15 **SAVE THE PARK AND BUILD THE**  
**SCHOOL,**

16 Plaintiff,

17 v.

18  
 19 **NATIONAL PARK SERVICE;**  
**DAVID L. BERNHARDT, in his**  
 20 **official capacity as Secretary of the**  
**United States Department the**  
 21 **Interior; DAVID VELA, in his official**  
**capacity as Director of the National**  
 22 **Park Service; LISA MANGAT, in her**  
**official capacity as Director of the**  
 23 **California Department of Parks and**  
**Recreation; AND CARDIFF SCHOOL**  
 24 **DISTRICT,**

25 Defendants.  
 26  
 27  
 28

Case No. 3:20-cv-1080-LAB-AHG

**DECLARATION OF LEENA M. SHEET IN OPPOSITION TO PLAINTIFF'S EX PARTE APPLICATION FOR A TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE RE PRELIMINARY INJUNCTION**

Date: July 20, 2020  
 Time: 11:30 a.m.  
 Dept: 14A  
 Judge: The Honorable Larry A. Burns  
 Trial Date: None Set  
 Action Filed: 6/12/2020

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**DECLARATION OF LEENA M. SHEET**

I, Leena M. Sheet, hereby declare:

1. I am a Deputy Attorney General at the Office of the Attorney General for the State of California. I am licensed to practice law in the State of California and I am admitted to appear before this Court. I represent Defendant Mangat named in this action. I have personal knowledge of the following facts.

2. On June 23, 2020, Plaintiff’s counsel e-mailed State Parks’ staff counsel notifying State Parks of Plaintiff’s intent to file an *ex parte* TRO application on June 24, 2020 unless Plaintiff, the NPS, and/or District can “reach an agreement to avoid the necessity of court intervention before that time.” A copy of the email was provided to our office. A true and correct copy of the e-mail from Plaintiff’s counsel is attached as Exhibit A.

3. Beyond notifying State Parks of its intent to file an *ex parte* TRO application, Plaintiff did not engage State Parks in any meaningful discussion to informally resolve any issues before filing the application.

I declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct. Executed this 10th day of July, 2020.

/s/ Leena M. Sheet  
\_\_\_\_\_  
Leena M. Sheet

# EXHIBIT A

# Save the Park Build the School v. NPS et al.

Reed, Rebecca L. <Rebecca.Reed@procopio.com>

Tue 6/23/2020 2:46 PM

To: Schulz, Penny@Parks <Penny.Schulz@parks.ca.gov>;

Cc: Fontaine, Justin M. <Justin.Fontaine@procopio.com>; Young, Barb <barb.young@procopio.com>;

 4 attachments (490 KB)

DOCS-#4086579-v1-2020-06-12\_#2\_issued\_Summons.pdf; DOCS-#4086570-v1-2020-06-12\_#1-1\_Civil\_Cover\_Sheet.pdf; DOCS-#4086569-v1-2020-06-12\_#1\_Complaint\_for\_Declaratory\_&\_Injunctive\_Re...pdf; DOCS-#4088614-v1-2020-06-16\_#4\_Notice\_of\_Appearance\_for\_RLR.PDF;

Ms. Schulz -

I hope that you are well. Unfortunately, we were required to file suit against the NPS, OGALS and the District. Please see the summons, complaint and initiating documents attached. Also, below is a notification of a department reassignment. The NPS and DOI have been served and we have initiated service on OGALS, but I wanted to make sure that you received a courtesy copy.

We reached out to the District's Counsel and the NPS and notified them that we intend to move for a temporary restraining order to cease all construction within the 1993 6(f)(3) boundary until the Court can hear Plaintiff's preliminary injunction motion. We also wanted to notify you, pursuant to Local Rule 83.3(g), of the same and that the TRO application is made on grounds that the NPS's approval is based in error of law and abuse of discretion which necessitates setting aside the approval. We intend to file the motion with Hon. Judge Larry Burns tomorrow after 3 p.m. assuming Plaintiff, the NPS and/or District cannot reach an agreement to avoid the necessity of court intervention before that time.

Best,  
Rebecca

**From:** [efile\\_information@casd.uscourts.gov](mailto:efile_information@casd.uscourts.gov) [[mailto:efile\\_information@casd.uscourts.gov](mailto:efile_information@casd.uscourts.gov)]

**Sent:** Monday, June 15, 2020 12:32 PM

**To:** [efile\\_information@casd.uscourts.gov](mailto:efile_information@casd.uscourts.gov)

**Subject:** Activity in Case 3:20-cv-01080-LAB-AHG Save the Park and Build the School v. National Park Service et al Order of Judge Transfer

**This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.**

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U.S. District Court

Southern District of California

Exhibit A - 3

**Notice of Electronic Filing**

The following transaction was entered on 6/15/2020 at 12:31 PM PDT and filed on 6/15/2020

**Case Name:** Save the Park and Build the School v. National Park Service et al

**Case Number:**

**Filer:**

**Document Number:** 3(No document attached)

**Docket Text:**

**MINUTE ORDER OF RECUSAL. Judge M. James Lorenz is no longer assigned. Case reassigned to Chief Judge Larry Alan Burns for all further proceedings. The new case number is 20cv1080-LAB-AHG.(no document attached) (jms)**

**3:20-cv-01080-LAB-AHG Notice has been electronically mailed to:**

U S Attorney CV [Efile.dkt.civ@usdoj.gov](mailto:Efile.dkt.civ@usdoj.gov)

Justin Fontaine [justin.fontaine@procopio.com](mailto:justin.fontaine@procopio.com), [barb.young@procopio.com](mailto:barb.young@procopio.com), [calendar@procopio.com](mailto:calendar@procopio.com)

**3:20-cv-01080-LAB-AHG Notice has been delivered by other means to:**

**REBECCA L. REED**

SENIOR COUNSEL

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525 B STREET, SUITE 2200, SAN DIEGO, CA 92101

[procopio.com](http://procopio.com)



mailgw01.procopio.com made the following annotations

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Tue Jun 23 2020 14:46:39

This is an email from Procopio, Cory, Hargreaves & Savitch LLP, Attorneys at Law. This email and any attachments hereto may contain information that is confidential and/or protected by the attorney-client privilege and attorney work product doctrine. This email is not intended for transmission to, or receipt by, any unauthorized persons. Inadvertent disclosure of the contents of this email or its attachments to unintended recipients is not intended to and does not constitute a waiver of attorney-client privilege or attorney work product protections. If you have received this email in error, immediately notify the sender of the erroneous receipt and destroy this email, any attachments, and all copies of same, either electronic or printed. Any disclosure, copying, distribution, or use of the contents or information received in error is strictly prohibited.