

STATE OF NEW MEXICO
FIRST JUDICIAL DISTRICT
COUNTY OF SANTA FE

NORMAN GAUME,

Plaintiff,

v.

No. D-101-CV-2014-02266

THE NEW MEXICO INTERSTATE
STREAM COMMISSION,
JIM DUNLAP, in his official capacity as
Chairman of the Commission,
THE GILA SUBCOMMITTEE OF THE
NEW MEXICO INTERSTATE STREAM
COMMISSION, BUFORD HARRIS,
in his official capacity as
Chairman of the Gila Subcommittee of the
Commission, AMY HAAS, in her official
capacity as Acting Director of the Commission,
SCOTT VERHINES, in his official
capacity as New Mexico State Engineer and
Secretary of the Commission,

Defendants,

and

LUNA COUNTY, HIDALGO COUNTY, CATRON COUNTY, THE GILA-SAN
FRANCISCO WATER COMMISSION, THE CITY OF DEMING and THE
VILLAGE OF COLUMBUS,

Intervenors.

**PLAINTIFF NORMAN GAUME'S ANSWER TO DEFENDANT INTERSTATE STREAM
COMMISSION'S COUNTERCLAIM**

COMES NOW Plaintiff Norman Gaume by and through counsel, EGOLF + FERLIC +
DAY (Brian Egolf and Jamison Barkley, appearing), and the New Mexico Civil Liberties
Foundation, through cooperating attorneys Philip B. Davis, Nicholas T. Davis and Daniel

Yohalem, for his Answer to Defendant Interstate Stream Commission's ("ISC") Counterclaim does state and allege as follows:

1. Plaintiff admits the allegations in paragraphs 1-5.
2. Plaintiff denies the allegations as stated in paragraph 6; Plaintiff alleged in his Complaint at paragraph two that "the Chairman of the Commission appointed a 'Gila Subcommittee' to study matters related to the [Arizona Water Settlement Act ("the AWSA")], formulate policies and begin the evaluation of various proposals for the use of federal funds provided to the State of New Mexico by the AWSA."
3. Plaintiff admits the allegations in paragraphs 7-10.
4. Plaintiff denies the allegations in paragraphs 11-13. Plaintiff affirmatively states that the record has significant evidence from which he reasonably concluded that the Gila Subcommittee made many decisions for the ISC without informing the public, including awarding between five and ten million dollars in consulting contracts. The fact that Judge Ortiz issued the requested temporary restraining order and took the significant step of ordering Defendants *sua sponte* to produce numerous records to him within five business days demonstrates the weight of the facts Plaintiff presented and that Plaintiff's claims were substantial, did not lack probable cause and were based on a proper motive.
5. Plaintiff admits the allegations in paragraphs 14-15. It is evident that Plaintiff knew of the legal requirements requiring the ISC to make its decisions in public; he brought suit against Defendants for violations of New Mexico's Open Meetings Act ("the OMA"). NMSA 1978, § 10-15-1 to -4 (1974).

6. Plaintiff denies the allegations in paragraph 16; obtaining a restraining order to prevent the ISC from further violating the OMA is not “unauthorized.” Further, the very fact that Judge Ortiz issued the TRO on the basis of Plaintiff’s claims negates any claim that the Court lacked the legal authority to do so.
7. Plaintiff admits the allegations in paragraph 17.
8. Plaintiff denies the allegation in paragraph 18 that he knew or should have known that bringing the ISC’s OMA violations to light and requesting a TRO would cause the ISC to miss the December 31, 2014 AWSA deadline. The deadline was set ten years prior, in 2004, and was simply to inform the Secretary of the Interior whether New Mexico would proceed with “the New Mexico Unit” of the Central Arizona Project, i.e. divert water from the Gila River. The ISC informed the Secretary it would proceed by way of a two-sentence letter, transmitted just four days after the Court dissolved the TRO.
9. Plaintiff denies the allegations in paragraph 19 that he acted with “wrongful purpose” or “wrongful intent” and that he attempted to force the ISC to miss the December 31, 2014 AWSA deadline. Plaintiff acted for the purpose and with the intent to enforce his and the public’s right to have important public business discussed and decisions made at open meetings as required by the OMA.
10. Plaintiff further denies the allegations in paragraphs 20-21 that he did not allege sufficient facts or meet his burden for obtaining the restraining order; Judge Ortiz clearly concluded that Plaintiff had satisfied all the factual and legal requirements for issuance of a TRO and that his petition had sufficient merit to justify issuance of the TRO.

11. Plaintiff denies the allegations in paragraph 22; his counsel emailed his petition to defense counsel but she failed to respond until after the Court issued the restraining order on October 23, 2014. Plaintiff adds that serving a petition on the opposing party before issuance of the TRO is not required under Rule 1-066(B) NMRA.
12. Plaintiff denies all of the allegations in paragraph 23. As Judge Ortiz concluded, Plaintiff's petition was supported by substantial facts and was legally sufficient. TROs are frequently granted without a hearing by the plain terms of Rule 1-066(B).
13. Plaintiff admits the allegations in paragraph 24.
14. Plaintiff admits the allegations in paragraph 25. Plaintiff denies that he did not "allow" the ISC or the other Defendants to be heard in opposition. As explained above in paragraph eleven, he provided them notice via email.
15. Plaintiff denies the allegations in paragraph 26 and states that the Attorney General was served on January 15, 2015. Moreover, the Attorney General was previously informed of Plaintiff's petition and was represented at the October 30, 2014 hearing by counsel.
16. Plaintiff admits the allegations in paragraphs 27-31.
17. Plaintiff denies the allegations in paragraphs 32-33.
18. Plaintiff denies that the TRO was "wrongful." Plaintiff does not have sufficient information to form a belief as to the truth of the other allegations in paragraph 34 and therefore denies same.

AFFIRMATIVE DEFENSES

1. The ISC has failed to state a claim for which relief can be granted.
2. The ISC's counterclaims constitute a strategic lawsuit against public participation ("SLAPP"), contrary to NMSA 1978, Section 38-2-9.1 to 9.2 (2001).
3. The ISC's counterclaims violate the *Noerr-Pennington* Doctrine.
4. The ISC's counterclaims violate Mr. Gaume's First Amendment right to petition the government for a redress of grievances.
5. The ISC's counterclaims violate Mr. Gaume's First Amendment right to free speech.
6. The ISC has no action for damages because Plaintiff did not post a bond.

WHEREFORE Plaintiff respectfully requests that the Court dismiss all of Defendants' counterclaims against him with prejudice, award him his costs and reasonable and necessary attorney's fees incurred in defending against the ISC's counterclaims as allowed by law, and for any other relief the Court deems just and proper.

Respectfully submitted,

Egolf + Ferlic + Day, LLC



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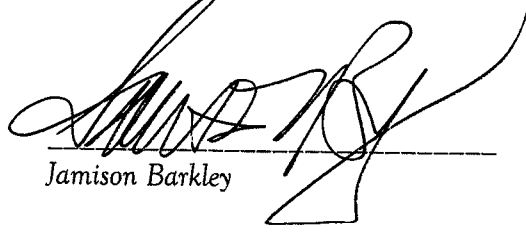
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COOPERATING ATTORNEYS FOR THE NEW
MEXICO CIVIL LIBERTIES FOUNDATION

Attorneys for Plaintiff-Counterdefendant Norman Gaume

CERTIFICATE OF SERVICE

I certify that, on this ____ day of January, 2015, I caused a copy of the foregoing Plaintiff Norman Gaume's Answer to Defendant's Counterclaims to be served on all parties entitled to notice by using the Court's online filing system.



Jamison Barkley