STATE OF MICHIGAN

COURT OF CLAIMS

WATER WARRIOR ISLAND BALD MOUNTAIN RECREATION, INC.,

Plaintiff/Counterdefendant,

v

Case No. 26-000025-MK

DEPARTMENT OF NATURAL RESOURCES,

Hon. Michael F. Gadola

Defendant/Counterplaintiff.
_____ /

OPINION AND ORDER DENYING PLAINTIFF/COUNTERDEFENDANT'S MOTION FOR A PRELIMINARY INJUNCTION

Plaintiff/counterdefendant, Water Warrior Island Bald Mountain Recreation, Inc. (WWI) moves, under MCR 3.310, for a preliminary injunction in this lawsuit involving a concession contract between WWI and defendant/counterplaintiff, the Department of Natural Resources (the DNR). WWI requests that this Court issue a preliminary injunction enjoining the operation of the Bald Mountain Aqua Park for the 2026 season until the DNR has awarded a concession contract through a competitive-bidding process. For the reasons discussed in this Opinion and Order, the Court DENIES the motion for a preliminary injunction.[1]

I. BACKGROUND

[1] Because the briefing is adequate to address the issues and a preliminary injunction will not be granted, the Court dispenses with oral argument. See MCR 3.310(A); MCR 2.119(E)(3); Court of Claims LCR 2.119(E)(3).

Part 5 of the Natural Resources and Environmental Protection Act (NREPA), MCL 324.501 *et seq*., provides that the DNR must, among other things, "provide and develop facilities for outdoor recreation[.]" MCL 324.503(1). Additionally, the DNR "may . . . grant concessions on lands owned or controlled by the department to any person for any purpose that the department determines to be necessary to implement this part." MCL 324.503(15). A "concession" is defined as "an agreement between the department and a person under terms and conditions as specified by the department to provide services or recreational opportunities for public use." MCL 324.503(18)(a). However, in all relevant circumstances, "[t]he department shall grant each concession for a term of not more than 7 years based on extension, renegotiation, or competitive bidding." MCL 324.503(15).

Part 741 of the NREPA, which governs state parks, requires the DNR to "create, maintain, operate, promote, and make available for public use and enjoyment a system of state parks." MCL 324.74102(2). To implement its responsibilities under Part 741, the DNR may do one of several things, including "[e]nter[ing] into contracts or agreements that may be necessary to implement this part" and "[p]rovid[ing] the granting of concessions to a person within the boundaries of a state park." MCL 324.74103(1)(a) and (e). If the DNR provides the granting of concessions in a state park, then the DNR "shall provide that each concession is awarded at least every 7 years based on extension, renegotiation, or competitive bidding." MCL 324.74103(1)(e).

In April 2019, the DNR executed a Concession Contract with WWI for the exclusive operation of an aqua park, watercraft rental, and food and beverage sales at the Bald Mountain Recreation Area (the Contract). The Contract term began on April 18, 2019, and was originally scheduled to expire on November 30, 2021. The Contract could be renewed for an additional four-year term "upon satisfactory performance" by WWI. The Contract provided that, at the expiration

date, the DNR could, at its option, grant an extension of the Contract or renegotiate the Contract with WWI. The Contract also provided: "Every seven (7) years, this Contract must be put out for competitive bids. This Contract must be re-bid in **2025**." The parties executed two Addendums to the Contract, which extended the Contract's term to November 30, 2025. According to WWI, no aqua park existed at the location before the Contract, and WWI spent a significant amount of money developing the site.

WWI operated the aqua park and watercraft rental at the Lower Trout Lake Day Use Area between 2019 and 2024. The aqua park was operational during the summer season. In the fall of 2024, a state construction project began at the Lower Trout Lake Day Use Area toilet and concession building, which delayed the 2025 season opening of the aqua park. According to the DNR, a portion of the renovated area was intended to be used by WWI for the 2025 season. The DNR maintains that its Parks and Recreation Division staff conveyed to the contractor the need for construction to occur outside of the contractual operating schedule (Memorial Day weekend to Labor Day). An October 9, 2024 change order reflected a substantial completion date of May 23, 2025. However, the project suffered from delays.

On February 25, 2025, the DNR informed WWI that the projected completion date for the construction project was June 17, 2025. According to the DNR, it informed WWI that WWI would have to stage the site before operations began. The DNR also contends that it informed WWI that the final construction stage would be landscaping, which would not affect the staging process. WWI, in contrast, contends that it had to complete several tasks before it could start operations, such as obtaining a certificate of occupancy, obtaining approval for a well that provided water for drinking and food preparation, and hiring and training seasonal employees.

The DNR argues that it made efforts to accommodate WWI to allow it to begin operations for the remainder of the 2025 season. On May 20, 2025, the DNR informed WWI that WWI could move forward with opening on June 17, 2025, but only if a certificate of occupancy were issued by June 1, 2025. WWI argues that the certificate of occupancy was not issued until June 25, 2025, and the well was not approved for use until approximately June 30, 2025. It is WWI's position, therefore, that it could not obtain a food-service license until July 1, 2025, at the earliest. WWI asserts that it could not have opened by July 1, regardless, because it lost its seasonal employees during the delay, and the concession building flooded on July 15, 2025 (which would have shut down operations).

The DNR contends that by June 3, 2025, the substantive work on the concessions side of the building was completed, and nothing prevented WWI from setting up for the 2025 season. WWI argues that the DNR breached the Contract by failing to make the aqua park available to WWI in time for opening on May 23, 2025. The DNR contends that it sent WWI a copy of the Temporary Certificate of Use and Occupancy on June 16, 2025. According to the DNR, WWI informed the DNR on June 17, 2025, that it would not operate for the 2025 season. Therefore, there was no aqua park facility at Bald Mountain for the 2025 season. The parties' contract expired on November 30, 2025.

The DNR had a separate concession contract with an entity named Empire Recreation Management, which operated a water park known as WhoaZone at the Holly Recreation Area in Holly, Michigan. The Holly Recreation Area was affected by construction work on a dam in 2026. Empire Recreation Management's concession contract expired in November 2025. According to the DNR, it determined even before the construction projects at Bald Mountain and the Holly Recreation Area that the next concession bid process for both areas (as well as an aqua park for

Wilson State Park in Harrison, Michigan) would be developed and advertised as a single invitation to bid for the 2027 season and beyond.

In order to align the start and expiration dates for the aqua park contracts at the Holly Recreation Area and Bald Mountain, the DNR executed a one-year operating agreement with Empire Recreation Management for a water park, only, at Bald Mountain for the 2026 season. The operating agreement expires on October 16, 2026. The DNR contends that WWI is free to bid on the combined concession contract for the aqua parks at Bald Mountain, Holly Recreation Area, and Wilson State Park for 2027 and beyond.

WWI filed this lawsuit in February 2026, asserting claims for breach of contract (Count I), conversion (Count II), unjust enrichment (Count III), and promissory estoppel (Count IV). Each claim relates specifically to the 2025 season. The parties agreed to dismiss the conversion and unjust enrichment claims. The DNR filed a counterclaim for breach of contract for failure to operate (Count I), breach of contract for failure to remove a water slide (Count II), and trespass (Count III). Approximately three months after filing this lawsuit, on May 14, 2026, WWI moved for a preliminary injunction enjoining the operation of the Bald Mountain Aqua Park until the DNR puts the concession contract out for competitive bidding and awards the contract through the bidding process. The DNR has responded, and WWI has replied.

II. ANALYSIS

"[A]n injunction represents an extraordinary and drastic use of judicial power that should be employed sparingly and only with full conviction of its urgent necessity." *Davis v Detroit Fin Review Team*, 296 Mich App 568, 613; 821 NW2d 896 (2012) (quotation marks and citation omitted). The purpose of a preliminary injunction is to preserve the status quo in a case pending a final hearing on the rights of the parties. *Hammel v Speaker of the House of Representatives*, 297 Mich App 641, 647-648; 825 NW2d 616 (2012). A preliminary injunction "is an extraordinary remedy that issues only when justice requires, there is no adequate remedy at law, and there exists a real and imminent danger of irreparable injury." *Pontiac Fire Fighters Union Local 376 v Pontiac*, 482 Mich 1, 8; 753 NW2d 595 (2008) (quotation marks and citation omitted). The movant must prove that four elements favor issuing the preliminary injunction. *Hammel*, 297 Mich App at 648. Those elements include:

> (1) the likelihood that the party seeking the injunction will prevail on the merits, (2) the danger that the party seeking the injunction will suffer irreparable harm if the injunction is not issued, (3) the risk that the party seeking the injunction would be harmed more by the absence of an injunction than the opposing party would be by the granting of the relief, and (4) the harm to the public interest if the injunction is issued. [*Id*. (quotation marks and citation omitted).]

A preliminary injunction should not be granted if an adequate remedy exists at law. *Slis v Michigan*, 332 Mich App 312, 337; 956 NW2d 569 (2020). Additionally, "[t]he mere apprehension of future injury or damage cannot be the basis for injunctive relief." *Id*. (quotation marks and citation omitted).

To the extent the Court is required to construe the relevant provisions of the NREPA, the Court applies the following principles of statutory interpretation:

> The goal of statutory interpretation is to give effect to the Legislature's intent as determined from the language of the statute. In order to accomplish this goal, this Court interprets every word, phrase, and clause in a statute to avoid rendering any

> portion of the statute nugatory or surplusage. [The Court will] give the words of a statute their plain, ordinary meaning unless the Legislature employs a term of art. [*Bukowski v Detroit*, 478 Mich 268, 273-274; 732 NW2d 75 (2007).]

A. LIKELIHOOD OF SUCCESS ON THE MERITS

The first element that WWI must prove is the likelihood that it will prevail on the merits. WWI argues that the DNR failed to comply with certain statutory mandates and the terms of the parties' Contract when it failed to put a concession contract for Bald Mountain for the 2026 season out for competitive bidding. WWI relies on two provisions of the NREPA—MCL 324.503 and MCL 324.74103—to support that the DNR must put the concession contract out for bidding every seven years. WWI argues that the seventh year coincided with the 2026 season because its Contract with the DNR was executed in 2019 and expired on November 30, 2025.

However, upon review of the complaint, the asserted claims are contract and tort claims focused on the events of the 2025 season. As WWI stated in its motion, "This case concerns a dispute between WWI and DNR related to the 2025 season." The premise of the complaint is that the DNR breached the Contract and engaged in other tortious conduct by failing to make the aqua park available to WWI as required or promised for the 2025 season.

WWI does not assert a claim in the complaint for failure to bid a concession contract for the 2026 season and beyond. This is a new request for relief without a legal claim tied to the complaint. While WWI argues that it was unaware of the details of the operating agreement between the DNR and Empire Recreation Management before filing the complaint, WWI asserted in the complaint that the DNR "has since agreed to a contract with WoahZone [sic] . . . to take over WWI's operation at Bald Mountain for the 2026 season." Thus, WWI was aware of the operation of a water park at Bald Mountain for the 2026 season and could have included a claim

for relief in the complaint relating to the failure to put the concession contract out for competitive bidding. WWI has not moved to amend the complaint since filing this motion.

Even if WWI pleaded a claim relating to the 2026 season, it has not demonstrated a likelihood of success on the merits. The two relevant statutes, MCL 324.503(15) and MCL 324.74103(1)(e), provide that the DNR *may* grant concessions on state-owned lands but do not *require* the DNR to do so. The use of the permissive word "may" in both statutes indicates that the DNR has discretion to enter into concession contracts. See *True Care Physical Therapy, PLLC v Auto Club Group Ins Co,* 347 Mich App 168, 181; 14 NW3d 456 (2023). Part 741 of NREPA also grants the DNR authority to "[e]nter into contracts or agreements that may be necessary to implement this part." MCL 324.74103(1)(a). The DNR did not award a concession contract for the 2026 season. The statutes did not require it to do so. Instead, it executed a short-term operating agreement for one year with Empire Recreation Management, which was necessary for the DNR to implement its duties under Part 741 of NREPA on a short-term basis while it initiated a competitive bidding process for the 2027 season and beyond. The DNR intends to bid a long-term concession contract for multiple locations for the 2027 season and beyond, and WWI is free to bid on that contract.

The statutes require that if the DNR grants a concession contract, then that concession contract cannot exceed a term of more than seven years without extension, renegotiation, or competitive bidding. See MCL 324.503(15); MCL 324.74103(1)(e). There is nothing in the language of the relevant statutes that prohibits a limited-scope operating agreement. And while WWI argues that the parties' contract also required that the Contract be put out for competitive bids, the Contract specifically stated that "this" Contract must be put out for competitive bid after a seven-year period. The Contract expired on November 30, 2025, and the DNR did not seek to

renew it. Therefore, the DNR was under no statutory or contractual obligation to renew the contract or execute a new concession contract under the terms of the parties' Contract.

Finally, even if WWI is correct that the DNR had to put a concession contract out for bidding for the 2026 season because the seven-year period on WWI's Concession Contract had expired, WWI cites no provision of the NREPA that would permit WWI to file a private cause of action on this basis. Again, WWI's claims for breach of contract and promissory estoppel are premised on conduct that allegedly occurred in relation to the 2025 season. WWI did not have a contract for the 2026 season, and it does not allege the DNR made any promises relating to the 2026 season. Therefore, any claims regarding the 2026 season would not be supported by a breach-of-contract or promissory estoppel theory. The first element (likelihood of success on the merits) favors the DNR.

B. IRREPARABLE INJURY

The next factor is whether there exists a danger that WWI will suffer irreparable harm if the injunction is not issued.

> In order to establish irreparable injury, the moving party must demonstrate a noncompensable injury for which there is no legal measurement of damages or for which damages cannot be determined with a sufficient degree of certainty. The injury must be both certain and great, and it must be actual rather than theoretical. Economic injuries are not irreparable because they can be remedied by damages at law. [*Slis*, 332 Mich App at 361 (quotation marks and citation omitted).]

WWI's damages for breach of contract and promissory estoppel are economic in nature and can be remedied by damages. WWI's threatened injury relative to the 2026 season is speculative considering that no aqua park concession exists for the 2026 season, and WWI cannot suffer harm for the inability to participate in a bidding process that has not yet taken place. Even if WWI were likely to prevail on a claim for lost opportunity to bid for the 2026 season, this claim

would relate to alleged lost profits, which are quantifiable for purposes of economic damages. Finally, the scope of any damages award is limited. WWI's motion was filed shortly before the season began, and the DNR intends to bid another concession contract for the 2027 season and beyond. Thus, the damages in this matter would be limited to a two-year period. WWI has not established an irreparable injury supporting a preliminary injunction.

C. BALANCING OF THE HARMS

The final two factors examine the risk that WWI would be harmed more by the absence of an injunction than the DNR would be harmed by the granting of the relief, as well as the harm to the public interest if the injunction is issued. As noted earlier, economic damages are sufficient to remedy WWI's claims. In contrast, a ruling in WWI's favor would disrupt the aqua park's operations for the 2026 season. As the DNR notes, if the aqua park were forced to cease operations for the 2026 season, the DNR could face liability on its operating agreement with Empire Recreation Management, leading to competing lawsuits. Finally, a preliminary injunction would harm the public by requiring the water park to cease operations midway through the 2026 season. Any public interest in the competitive bidding of the concessions contract will be served when the DNR conducts a competitive bidding process for the 2027 season and beyond. Therefore, the final two factors weigh against a preliminary injunction. Accordingly, the four factors each weigh against granting a preliminary injunction.

III. CONCLUSION

For the reasons stated in this Opinion and Order,

IT IS ORDERED that WWI's motion for a preliminary injunction is DENIED.

IT IS SO ORDERED. This is not a final order that resolves the last pending claim and does not close the case.

Date: August 7, 2026

Hon. Michael F. Gadola
Chief Judge, Court of Claims