

ORIGINAL

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U.S. COURT OF  
FEDERAL CLAIMS

Attorney for Plaintiff

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

MINISTERIO ROCA SOLIDA, INC.,	)	Case No. <b>16-826 L</b>
	)	
Plaintiff,	)	<b>COMPLAINT FOR</b>
	)	<b>FEDERAL TAKING OF</b>
v.	)	<b>PRIVATE PROPERTY</b>
	)	
THE UNITED STATES (United States Fish and	)	
Wildlife Service),	)	
	)	
Defendant.	)	
	)	

Plaintiff MINISTERIO ROCA SOLIDA, INC., (hereinafter “SOLID ROCK MINISTRY”), by and through its attorney, NPRI Center for Justice and Constitutional Litigation, files this Complaint against the above-named Defendant, UNITED STATES (United States Fish and Wildlife Service), and alleges the following:

**JURISDICTION AND VENUE**

1. This Court has jurisdiction under 28 U.S.C. §§ 1491(a) for claims based upon violations of the United States Constitution.

2. Venue rests properly in this Court because the claims arose in the United States, most specifically, Nevada. Defendant is the United States and the Plaintiff's property negatively impacted by Defendant's actions are situated in Nye County, Nevada.

### **PARTIES**

3. Plaintiff, Ministerio Roca Solida, Inc., ("SOLID ROCK MINISTRY") is a non-profit Christian religious organization, incorporated in the State of Nevada, which *inter alia*, operates a "church camp" in Nye County, Nevada; their property is the subject matter of this Complaint.

4. Defendant, UNITED STATES ((United States Fish and Wildlife Service) is a federal agency situated within the United States Department of the Interior)).

### **STATEMENT OF FACTS**

5. On or about August 24, 2006, Pastor Victor Fuentes formed and incorporated the SOLID ROCK MINISTRY in Nevada. In November, 2006, thanks in large part to generous contributions from church congregants, SOLID ROCK MINISTRY was able to purchase forty (40) acres of private land for \$500,000 in Nye County, Nevada, from a private seller. Structures on the forty (40) acre parcel, *albeit* with certain improvements required, made it especially well-suited for operation of a church camp ministry. Upon purchasing the property, SOLID ROCK MINISTRY made significant improvements to the land, buildings, and infrastructure of the property in question. While consisting entirely of private land, this forty-acre parcel is fully surrounded by the Ash Meadows National Wildlife Refuge.

6. Appurtenant to SOLID ROCK MINISTRY's forty-acre parcel are vested water rights to a desert spring-fed stream that has traversed Plaintiff's private property since at least the year 1881. This stream was used by Plaintiff as a baptismal stream and it provided water for the Plaintiff's animals, as well. The stream also contributed significantly to an atmosphere suitable for religious meditation and fed a recreational pond utilized by attendees of the SOLID ROCK MINISTRY church camp.

7. On or about August 4, 2010, under the direction of Sharon McKelvey, then-Ash Meadows Refuge Manager, Defendant, UNITED STATES (United States Fish and Wildlife Service (hereinafter "USF&W")) completed work on a diversion dam and water diversion project that prevented the water to which SOLID ROCK MINISTRY has vested rights from entering the church property but, instead, routed said water completely outside the borders of the church's forty-acre parcel and to the higher elevation side of said property. USF&W's diversion channel was specifically designed and constructed only to accommodate spring flow and without capacity to accommodate precipitation or precipitation runoff in the watershed in which SOLID ROCK MINISTRY's aforementioned property lies.

8. The aforementioned water diversion project deprived SOLID ROCK MINISTRY of its vested water rights, interfered with its exercise of baptisms and religious prayer and meditation, resulted in the loss of the church camp's recreation pond, and otherwise greatly reduced the utility of the forty-acre parcel.

9. Because the UNITED STATES' water diversion project and its water flow replacement channel was "engineered" in such a way as not to accommodate

precipitation or precipitation runoff, on December 23, 2010, the first day of any measurable post-diversion-rainfall, the newly-diverted water exceeded culvert capacities, overflowed the UNITED STATES' artificially-created channels, and flooded large portions of the forty-acre parcel as it made its way back to its historical path. This flooding resulted in damages of at least \$86,639.00 to the land, structures, and animals on church camp grounds.

10. On or about October 17, 2015, again due to the UNITED STATES' poorly engineered and inadequately-constructed water diversion project, Plaintiff's property was again flooded by rainfall runoff, again causing damage to the land, structures, and animals that were kept at the church camp, thereby increasing the total flood-related damages to approximately \$225,000.00. The Plaintiff has not yet been compensated for any damages resulting from UNITED STATES' actions. In addition, huge portions of the Plaintiff's land were eroded and washed downstream, leaving a mini-Grand-Canyon-like landscape in the flood's wake.

11. On or about, January 8, 2016, the property was again flooded subsequent to light rainfall, again due to the UNITED STATES' poorly engineered and inadequately-constructed water diversion project.

12. On or about, July 2, 2016, the property was again flooded subsequent to moderate rainfall, again due to the UNITED STATES' poorly engineered and inadequately-constructed water diversion project. With each subsequent rainfall, the new rainfall creates new pathways for rushing water to re-enter Plaintiff's land. The result is that less and less rainfall now results in more and more flooding and flood damage.

13. Moreover, Defendant United States is: (1) frequently closing access roads to Plaintiff SOLID ROCK MINISTRY's property (purportedly because of flooding (flooding which, in fact, is a result of Defendant's own prior illegal actions)); (2) failing to maintain the access roads into Plaintiff SOLID ROCK MINISTRY's property (despite an agreement with Nye County Nevada so requiring); and (3) failing to remove vegetation and trees from access roads to Plaintiff's property; all of which make it difficult or impossible for SOLID ROCK MINISTRY's patrons to access Plaintiff's church camp.

14. The loss of SOLID ROCK MINISTRY's vested water rights since August 2010 and the repetitive flooding of Plaintiff's property resulting from the UNITED STATES' actions constitute a "taking" of Plaintiff's property, valued in excess of \$3 million. On June 23, 2016, the Nevada State Water Engineer issued a change of use permit to SOLID ROCK MINISTRY for 2.24 acre feet of water annually – water that had been illegally diverted by Defendant UNITED STATES nearly six years earlier.

15. The aforementioned water diversion project was undertaken by Sharon McKelvey, USF&W, and Defendant UNITED STATES: (1) without the requisite Clean Water Act permit from the U.S. Army Corps of Engineers; (2) contrary to Nevada law; (3) pursuant to a Water Impact Statement McKelvey submitted to the Nevada Division of Water Resources devoid of any indication that private landowners with vested water rights were situated within the affected area and would be directly impacted and denied access to their vested water rights by the water diversion project; (4) in contravention of UNITED STATES' own Finalized Comprehensive Plan and Environmental Impact

Statement to, “restore the area to its natural historic condition;” and (5) in direct violation of FEMA requirements as enforced (per federal regulation) by Nye County, Nevada — requirements explained in detail by Nye County Flood Plain Managers to Sharon McKelvey and other government officials prior to the UNITED STATES’ scofflaw water diversion project.

16. Because the water diversion project undertaken by the UNITED STATES has made it such that with each subsequent rainfall and those new paths then created for water to encroach on SOLID ROCK’s private property, less and less rainfall results in a greater and greater likelihood of more severe flooding and more severe flood danger, SOLID ROCK now finds it highly problematic to make its camp available to groups who have historically used the facilities. Campers are typically dropped off in buses, which then depart the premises and return at the conclusion of camp, thus leaving would-be campers stranded and in danger of harm on the grounds in the event of precipitation and flooding.

### **CLAIMS FOR RELIEF**

#### **FIRST CLAIM FOR RELIEF** **(Defendant’s Actions Resulted in an Unconstitutional Taking of Plaintiff’s Vested Water Rights)**

17. Plaintiff re-alleges and incorporates by reference the allegations set forth in paragraphs 1 through 16 of this Complaint.

18. Amendment V of the United States Constitution reads in relevant part, “nor shall any person . . . be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation.”

19. Plaintiff’s property (vested water rights) was taken when Defendant UNITED STATES denied Plaintiff access to Plaintiff’s vested water rights, beginning in August 2010 and through the present day.

**SECOND CLAIM FOR RELIEF**  
**(Defendant’s Actions Resulted in an Unconstitutional  
“Taking” of Plaintiff’s Real and Personal Property)**

20. Plaintiff re-alleges and incorporates by reference the allegations set forth in paragraphs 1 through 19 of this Complaint.

21. Amendment V of the United States Constitution reads in relevant part, “nor shall any person . . . be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation.”

22. Due to Defendant UNITED STATES’ actions, namely an illegal and improperly-constructed water diversion project, Plaintiff has now lost the use of its land due to repetitive flooding and extensive erosion caused by Defendant UNITED STATES’ water diversion project.

**THIRD CLAIM FOR RELIEF**  
**(Defendant’s Actions were Arbitrary, Capricious, Violative of State and Federal  
Law and Violated Plaintiff’s Constitutionally-Protected Due Process Rights)**

23. Plaintiff re-alleges and incorporates by reference the allegations set forth in paragraphs 1 through 22 of this Complaint.

24. Amendment V of the U.S. Constitution reads in relevant part, “nor shall any person . . . be deprived of life, liberty or property, without due process of law. . . .”

25. Due to the Defendant UNITED STATES’ arbitrary and capricious actions — actions which were violative of both state and federal law/regulations — the Plaintiff has now lost the use of its land due to repetitive flooding and extreme and extensive erosion caused by Defendant UNITED STATES’ water diversion project.

WHEREFORE, Plaintiff respectfully requests that this Court:

1. DECLARE that the UNITED STATES has taken Plaintiff’s vested water rights and both other property, both real and personal, in violation of the U.S. Constitution;
2. ORDER the UNITED STATES to compensate Plaintiff SOLID ROCK MINISTRY for the amount of the taking, currently in excess of \$3 million;
3. In lieu of finding and ordering compensation for a total taking, ORDER the UNITED STATES to compensate Plaintiff SOLID ROCK MINISTRY for loss of its vested water rights from the date of taking until present and further DECLARE that UNITED STATES violated Plaintiff SOLID ROCK MINISTRY’s due process rights and ORDER the UNITED STATES to fully restore the watershed in which Plaintiff’s subject property lies to its pre-diversion-project state;
4. ORDER the UNITED STATES to compensate Plaintiff SOLID ROCK MINISTRY for reasonable litigation costs and attorney’s fees; and



5. GRANT such other relief as the Court deems just and proper.

Respectfully submitted this 12<sup>th</sup> day of July, 2016.

/s/ JOSEPH F. BECKER \_\_\_\_\_

Joseph F. Becker

(Nevada Bar No. 12178)

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