

## Media Backgrounder: *Ministerio Roca Solida v. United States*



### **U.S. Fish and Wildlife Service Steals Water from Church Camp, Then Attempts to Flood Them Out**



#### **Introduction: “Patch of Heaven” Church Camp**

When Pastor Victor Fuentes escaped Fidel Castro’s dictatorship for the United States, he expected to find the Land of the Free, where, unlike communist Cuba, the government respects and protects private property. Unfortunately, the United States Fish & Wildlife Service (“FWS”) ruined the American Dream for him and his congregation.

Ministerio Roca Solida Iglesia Cristiana is a small, mostly Spanish-speaking, congregation in Las Vegas.<sup>1</sup> Led by Pastor Fuentes and his wife Annette, the church has been fighting for seven years to stop FWS from repeatedly flooding its camp located in rural Nevada and to return its water.

The church’s camp is on a serene, 40-acre parcel in Nye County, Nevada, surrounded entirely by the Ash Meadows National Wildlife Refuge. After purchasing the property in 2006, Pastor Fuentes and a group of volunteers built new buildings and improved existing structures on the property with their own hands, expending more than \$700,000 for materials, septic systems, and other improvements. The camp was renamed “Patch of Heaven.” Tragically, FWS turned Patch of Heaven into a living hell.

Since at least the 1880s, the property was served by two spring-fed streams. In addition to watering the camp's wetlands and filling its swimming pond, the streams supplied and served as baptismal waters of special significance to the church. It provided, "an oasis soothing to the soul and an ideal setting upon which to reflect upon God and His word," says Pastor Fuentes.

Ministerio Roca Solida also used Patch of Heaven for retreats and youth camps. In particular, Pastor Fuentes brought troubled youths from Las Vegas to the camp to help turn their lives around, as well as adults suffering from drug and alcohol addiction.

Enter, the U.S. Fish and Wildlife Service. Without obtaining required the permits from the U.S. Army Corps of Engineers, or following the mandates of the National Environmental Policy Act, FWS undertook a project which diverted the streams around the camp from their long historical route through the Patch of Heaven. FWS justified its actions under the pretense of "stream restoration" and creating faster moving water for a minnow called the speckled dace.

Less than three weeks after a diversion channel was constructed, on December 22, 2010, the newly re-routed waterway jumped its banks and sent a torrent of mud and water across Patch of Heaven, severely damaging buildings and covering the property with a layer of slimy muck. Estimated property damages from the flood were in excess of \$90,000. Despite FWS's initial argument that the flood was an unpredictable 100-year occurrence, the Camp flooded three more times in a short period, bringing the property damage total to over \$225,000.

In addition to damaging the property through the flooding, the diversion project significantly reduced the property value, not only through loss of the historical desert spring-fed streams through the property, but also because of the constant threat of flooding that resulted from the negligent work on the diversion project. Because of FWS's faulty construction of the diversion channel, which was never engineered to accommodate rain or runoff waters, a mini-Grand Canyon now cuts through what was once lush wetlands.

Not only does FWS refuse to pay for the damage it has caused or restore the stream so that the church can enjoy its water rights, but it blatantly refuses to fix the diversion channel. After four floods, the church is under constant siege, making any effort to rebuild or restore the damage futile.

What makes this tragedy even worse is that FWS's refusal to fix its mistakes is not due to bureaucratic incompetence or red tape. As all-too-many property owners in the West understand, when the federal government doesn't want you as its neighbor, it will force you out by any means necessary.

Mountain States Legal Foundation is now representing Ministerio Roca Solida to hold the federal government accountable for its unconstitutional theft of the church's property.

### **The Incredible Journey of Pastor Victor Fuentes**

Pastor Victor Fuentes' remarkable story is one of despair, hope, and redemption. It is a true testament to the power of faith and further evidence that the opportunities available

in the United States of America offer the chance to change lives. Together with his wife Annette, he has fought to protect his church from his own government.

On February 21, 1991, in an attempt to escape the Fidel Castro dictatorship and secure medical help for his ailing Cuban mother, Victor Fuentes swam nearly seven miles from Santiago, Cuba, to Guantanamo Bay Naval Base to secure political asylum in the United States. Political asylum was granted to Mr. Fuentes, and he was placed in Las Vegas, Nevada. Not long thereafter, in exchange for promises to secure his ailing mother's safe transport from Cuba, Mr. Fuentes became involved with an illicit drug distribution scheme operated by former Cuban nationals in the Las Vegas area. Rather than landing his ailing mother in the United States, Pastor Fuentes involvement in the drug distribution scheme landed him in federal prison for a period of three years. It was, however, during this time, that Mr. Fuentes was exposed to religious materials for the first time (having been denied such freedoms in Castro's Cuba), and turned his life around in a most dramatic way, even while still in federal prison.

Upon his release, Mr. Fuentes became an ordained minister and used his remarkable story change lives—initially as a youth minister in Las Vegas, and eventually, with the assistance of his wife, Annette, he formed Ministerio Roca Solida in Las Vegas. Ministerio Roca Solida grew to a congregation of more than 70 churchgoers. In 2006, a parishioner left the church \$500,000 from her estate, which it used to purchase Patch of Heaven.

Despite the wicked treatment his government has forced him and his church to endure, Pastor Fuentes refuses to give up. When the church was out of funding to pay its legal bills, Pastor Fuentes took a job at a local dairy to raise money.

In the words of Pastor Fuentes, "I am an immigrant from Cuba who risked death to escape Castro's regime ... only to be in a country overrun by a federal government that reminds me of the horrors from which I fled."



*A current view of the church's swimming pond after U.S. Fish and Wildlife's diversion project cut off its water supply*

## **The Legal Argument: Theft by Flooding**

The U.S. Fish & Wildlife Service is not simply being a bad neighbor. It is illegally and unconstitutionally stealing the church's water and its protected property rights.

The Fifth Amendment to the United States Constitution provides, in pertinent part, "nor shall private property be taken for public use, without just compensation." U.S. Const. Amend V. Known as the "Takings Clause," this entitles property owners to compensation when the government takes private property for roads, schools, and other public purposes. The Fifth Amendment also prevents the government from flooding private property without compensating property owners for the invasion.

Generally, when the government wants property for public use it institutes "condemnation" proceedings. The U.S. Supreme Court, however, has recognized that not all takings involve this type of official action. When a government action or regulation interferes with private property, it is known as an "inverse condemnation." According to the Supreme Court's 2005 decision in *Lingle v. Chevron U.S.A. Inc.*, a physical taking generally occurs by "a direct government appropriation or physical invasion of private property."<sup>2</sup>

The Supreme Court has a long history of recognizing "the principle that the destruction of privately owned land by flooding is 'a taking' to the extent of the destruction caused."<sup>3</sup> The Supreme Court has recognized that "regularly recurring flooding [gives] rise to a takings claim no less valid than the claim of an owner whose land was continuously kept under water."<sup>4</sup> For there to be a taking, the flooding must only be "a direct, predictable result of government action."<sup>5</sup>

Simply put, if the government creates and then refuses to fix a condition which causes the repeated and predictable flooding of private property, it has committed a "taking" in violation of the Fifth Amendment and owes the church "just compensation."

## **History of the Case**

In 2012, with the assistance of a local organization called the Nevada Policy Research Institute, the church first filed its lawsuit against the federal government for damages. Due various procedural quirks, it had to file two lawsuits to assert all of its claims, one in the U.S. District Court for the District of Nevada, and one in the U.S. Court of Federal Claims ("CFC"). The church fought a jurisdictional question regarding the two separate lawsuits for almost 5 years until the U.S. Supreme Court denied review and the church was forced to file its current lawsuit in the CFC. In the meantime, the camp suffered three subsequent floods after the initial disaster.

In late 2017, the Nevada Policy Research Institute lost funding for its litigation center, and Ministerio Roca Solida was left with substantial legal fees and expenses. Recognizing the importance of the issues involved, Mountain States Legal Foundation took over representation of Ministerio Roca Solida. The church has had the strong support of the local community in Pahrump, Nevada.<sup>6</sup>

## About the Legal Team

Ministerio Roca Solida is represented by Mountain States Legal Foundation Attorney **Christian B. Corrigan**. A native of Wichita, Kansas, Christian clerked for Justice Caleb Stegall on the Kansas Supreme Court. Prior to joining MSLF, Christian worked at the Institute for Justice in Arlington, VA and the Federalist Society for Law & Public Policy Studies in Washington, D.C. He is a graduate of the University of Pennsylvania and the University of Kansas School of Law.

**Mountain States Legal Foundation** is a nonprofit, public-interest law firm that defends constitutional liberties and the rule of law. MSLF is dedicated to the preservation of the right to own and use property, limited and ethical government, and the free enterprise system.<sup>7</sup> MSLF attorneys have been active in litigation opposing governmental actions that result in takings of private property without just compensation.<sup>8</sup> MSLF has been victorious in five of its six appearances before the Supreme Court of the United States.<sup>9</sup>

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<sup>1</sup> <http://www.rocasolidalv.com/>

<sup>2</sup> *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 537 (2005) (citations omitted).

<sup>3</sup> *United States v. Kansas City Life Ins. Co.*, 339 U.S. 799, 809 (1950); *United States v. Lynah*, 188 U.S. 445, 470 (1903) (“Where the government by the construction of a dam or other public works so floods lands belonging to an individual as to substantially destroy their value, there is a taking within the scope of the 5th Amendment.”).

<sup>4</sup> *Arkansas Game & Fish v. United States*, 568 U.S. 23, 32 (2012).

<sup>5</sup> *Moden v. United States*, 404 F.3d 1335, 1343 (Fed. Cir. 2005).

<sup>6</sup> *Nye County Officials Step in on Patch of Heaven Struggle*, Pahrump Valley Times, April 12, 2018, <https://pvtimes.com/news/nye-county-officials-step-in-on-patch-of-heaven-struggle/amp/>

<sup>7</sup> <https://www.mountainstateslegal.org/cases/all-cases/ministerio-roca-solida-v.-united-states#.W0eHDNJKgdU>

<sup>8</sup> See, e.g., *Brandt v. United States*, 710 F.3d 1369 (Fed. Cir. 2013); *Laguna Gatuna, Inc. v. United States*, 50 Fed. Cl. 336 (Fed. Cl. 2001); *Mountain States Legal Foundation v. Hodel*, 799 F.2d 1423 (10th Cir. 1986); *Dolan v. City of Tigard*, 512 U.S. 374 (1994) (amicus curiae); *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992) (amicus curiae); *Casitas Mun. Water Dist. v. United States*, 543 F.3d 1276 (Fed. Cir. 2008) (amicus curiae).

<sup>9</sup> See, e.g., *Marvin M. Brandt Revocable Trust v. United States*, 572 U.S. 93 (2014); *Adarand Constructors, Inc., v. Pena*, 515 U.S. 200 (1995).