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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

MINISTERIO ROCA SOLIDA)	Case No.: 2:12-cv-01488-RCJ-VCF
)	
Plaintiff,)	FIRST AMENDED
)	COMPLAINT FOR
)	DECLARATORY AND
v.)	INJUNCTIVE RELIEF, RELIEF
)	UNDER THE FEDERAL TORT
)	CLAIMS ACT, AND OTHER
UNITED STATES, UNITED STATES FISH)	RELIEF
AND WILDLIFE SERVICE; and SHARON)	
MCKELVEY in her official and individual)	
capacities,)	
)	
Defendants.)	

20 Plaintiff MINISTERIO ROCA SOLIDA (hereinafter SOLID ROCK MINISTRY), by and
21 through its attorney, NPRI CENTER FOR JUSTICE AND CONSTITUTIONAL LITIGATION,
22 files this First Amended Complaint against the above-named Defendants and alleges the
23 following:
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JURISDICTION AND VENUE

1. This Court has jurisdiction under 5 U.S.C. §§ 701, 702 and 703 *et seq.*, 28 U.S.C. §§ 1331, 1343(a)(1)(2)(3)(4), 1346(a)(2), 1361, 2201, and 2202 over Plaintiff’s claims for violation of federal law, law of the place where a tort occurred (Nevada), and of the United States Constitution. With respect to Defendant MCKELVEY in her individual capacity, this case is brought pursuant to *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971) and 28 U.S.C. §§ 1331 and 2201.

2. Venue rests properly in this Court pursuant to 28 U.S.C. §1391 in that the actions being challenged are taking place in Nevada, Defendants reside in Nevada, and the Plaintiff’s properties negatively impacted by Defendants’ actions are situated in Nye County, Nevada.

PARTIES

3. Plaintiff 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, the property which is the subject matter of this Complaint.

4. Defendant United States is the United States Government.

5. Defendant United States Fish and Wildlife Service is a United States federal agency situated within the United States Department of the Interior.

6. Defendant Sharon McKelvey is the Ash Meadows Wildlife Refuge Manager and is named in both her official and individual capacities.

STATEMENT OF FACTS

7. 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 churchgoers, SOLID ROCK MINISTRY was able to purchase forty (40)

1 acres of land for \$500,000 in Nye County, Nevada from a private seller. Structures on the forty-
2 acre parcel and historical prior use as a (non-religious) recreational camp made it especially well-
3 suited for operation of a church camp ministry. While private land, this forty acre parcel is
4 located within the boundaries of the Ash Meadows National Wildlife Refuge.

5 8. Appurtenant to the forty-acre-parcel purchase are vested water rights to a desert
6 stream which has flowed through and across the property in question since before the year 1881.
7

8 9. Existing vested water rights were established in 1887 and substantiated by
9 Plaintiff through documentation submitted to Nevada's State Water Engineer, Division of Water
10 Resources on or about October 10, 2011, after which time, Defendants also verified Plaintiff's
11 vested water rights with the Nevada Division of Water Resources. (Proof of Appropriation #
12 010092).
13

14 10. Prior to the actions complained of herein, this stream was used by Plaintiff as a
15 baptismal stream, to water animals and contributed significantly to an atmosphere suitable for
16 religious meditation and fed a recreational pond utilized by attendees of SOLID ROCK
17 MINISTRY's church camp.
18

19 11. Despite the well-established historic use of the desert stream and camp by the
20 previous, non-religious-use owners of the forty acres in question (and without interference by
21 Defendants), no later than August 4, 2010, under the direction and control of Defendant
22 MCKELVEY, Ash Meadows Wildlife Refuge Manager, Defendants the UNITED STATES,
23 U.S. FISH AND WILDLIFE, and MCKELVEY, herself, engaged in a water diversion project
24 that prevented SOLID ROCK MINISTRY's water from entering its property and, instead,
25 diverted said water completely around the confines of the Plaintiff's forty-acre parcel.
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1 12. The aforementioned water diversion project was undertaken by MCKELVEY
2 without the requisite permit from the U.S. Army Corps of Engineers. Additionally, despite
3 taking no such action with respect to the previous owner and subsequent to Plaintiff's purchase
4 of the camp, MCKELVEY took steps to ensure a series of regulators would hinder Plaintiff's
5 ability to operate their church camp, including but not limited to the State Fire Marshall, the
6 State Health Department, and the Nye County Flood Planning Department.

8 13. The aforementioned water diversion project was undertaken by MCKELVEY (1)
9 pursuant to a Water Impact Statement she submitted to the Nevada Division of Water Resources
10 devoid of any indication that private landowners with vested water rights were situated within
11 the affected land and would be directly impacted and denied access to their vested water rights
12 by the diversion project; and (2) in contravention of Defendant USF&W's own Finalized
13 Comprehensive Conservation Plan and Environmental Impact Statement to "restore the area to
14 its natural historic condition."

16 14. The aforementioned water diversion project, completed on or about December 16,
17 2010, did, in fact, deprive SOLID ROCK MINISTRY of its vested water rights, deprived
18 Plaintiff of water used in its exercise of baptisms and religious prayer and meditation, resulted in
19 the loss of the church camp's recreation pond, and otherwise greatly reduced the utility and value
20 of Plaintiff's forty-acre parcel.

22 15. Additionally, although Plaintiff alleges herein that Defendants had no right to
23 deprive Plaintiff of its vested water rights, once undertaken, Defendants owed a duty of care to
24 the Plaintiff to complete the project in a way that did not damage the Plaintiff. Instead,
25 Defendants breached this duty as construction was performed in a defective manner -- routing
26 the water to the "high side" of Plaintiff's property and into an "artificial channel" incapable of
27

1 accommodating historic flow capacities -- and otherwise in such a manner that on December 23,
2 2010, the first day of any measurable, post-diversion rainfall, the newly diverted water
3 overflowed the USF&W's artificially created channels and flooded portions of the forty-acre
4 parcel as the confiscated water made its way back to its historical path. This flooding resulted in
5 damages of at least \$86,639.00 to Plaintiff's land, structures, and animals on church
6 campgrounds.
7

8 16. On or about December 27, 2010, and subsequent to the initial flooding,
9 MCKELVEY began taking remedial actions to prevent future flooding of Plaintiff's property by
10 altering the design of the initial water diversion channel.
11

12 17. Pursuant to the requirements of the Federal Tort Claims Act ("FTCA"), on or
13 about January 30, 2012, Plaintiff filed a "SF 95 claim form" via certified mail with the Solicitor
14 of the U.S. Fish and Wildlife Service/Department of the Interior, for the damages resulting from
15 the defective means by which the water diversion project was executed by Defendant
16 MCKELVEY. However, as of the date of this filing, that claim has not only gone unsatisfied,
17 but even unacknowledged by the United States Department of the Interior.
18

19 18. Included with the aforementioned SF 95 claim were repair estimates from four
20 separate contractors who viewed the damage resulting from Defendants' flooding of the
21 Plaintiff's property due to the diversion of the water and it having left its newly constructed
22 channel.
23

24 **FIRST CLAIM FOR RELIEF**

25 **(VIOLATION OF PROPERTY RIGHTS AND LIBERTY INTERESTS)**

26 19. Plaintiff re-alleges and incorporates by reference the allegations set forth in
27 paragraphs 1 through 18 of this Complaint.
28

1 WHEREFORE, Plaintiff respectfully requests that this Court:

2 A. Declare that Defendants violated Plaintiff's constitutional rights to property and
3 due process and enjoin Defendants to restore Plaintiff's water to its historical route through
4 Plaintiff's forty acre parcel and enjoin Defendants from further deprivation of Plaintiff's land
5 and water.

6 B. Declare that Defendants violated Plaintiff's constitutional rights to free exercise
7 of religion with their property and enjoin Defendants to restore Plaintiff's water to its historical
8 route through Plaintiff's forty acre parcel and enjoin Defendants from further deprivation of
9 Plaintiff's rights to free exercise of religion.

10 C. Declare that Defendants committed the tort of negligence against the Plaintiff and
11 award money damages in the amount of \$86,639.00 plus interest.

12 D. Subject to jurisdictional constraints, declare that Defendants' water diversion
13 project resulted in a taking of Plaintiff's property and award money damages plus interest for
14 said taking, be it a temporary taking or otherwise.

15 E. Grant such other and further relief as the Court deems just and proper.

16 Respectfully submitted this 7th day of December, 2012.

17 */s/ Joseph F. Becker* _____

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PROOF OF SERVICE

I, Joseph F. Becker, certify that the following individual(s) were served with copies of the foregoing **FIRST AMENDED COMPLAINT**, by the below identified method of service:

CM/ECF

DANIEL G. BOGDEN

PATRICK A. ROSE
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Attorney for Federal Defendants

Dated December 7, 2012

/s/ Joseph F. Becker _____

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