

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA, and)	
STATE OF NEW MEXICO, ex rel. STATE)	
ENGINEER,)	
)	
Plaintiffs,)	
)	
and)	No. 01cv00072-MV/WPL
)	
ZUNI INDIAN TRIBE, NAVAJO NATION,)	ZUNI RIVER BASIN
)	ADJUDICATION
Plaintiffs in Intervention)	
)	
v.)	Subfile No. ZRB-2-0014
)	
A & R PRODUCTIONS, et al.,)	
)	
Defendants)	
_____)	

**EDWARD J. BAWOLEK AND SUZAN J. BAWOLEK MOTION
REQUESTING JUDICIAL NOTICE**

Edward J. Bawolek and Suzan J. Bawolek (hereinafter the “Bawoleks”), defendants *pro se* in Subfile ZRB-2-0014 of the above-captioned matter, hereby request this Court to take Judicial Notice of the following adjudicative facts extracted from documents filed in this action or appearing in the public domain via the Internet. Copies of documents filed in this action are incorporated by reference herein with reference to their filing numbers; documents appearing in the public domain via the Internet are reproduced in Attachment A to this Motion.

1. Internet Web Page at address:

http://www.wildlife.state.nm.us/publications/press_releases/documents/2013/062823d_roughrelief.html In accordance with D.N.M.LR-Civ. 10.6, attention is directed in particular to the highlighted statement from New Mexico Department of Game and Fish Director Jim Lane: “Anytime a rancher provides water for his cattle, there will be wildlife that benefit from that water, also.”

2. Internet Web Page at address: <http://www.nmda.nmsu.edu/uncategorized/details-on-how-new-mexico-ranchers-can-apply-for-water-delivery-assistance-to-benefit-wildlife/> In accordance with D.N.M.LR-Civ. 10.6, attention is directed in particular to the highlights facts:

- a. The web page is hosted by the New Mexico Department of Agriculture.
- b. The information is entitled "Details on how New Mexico ranchers can apply for water delivery assistance to benefit wildlife."
- c. Reference to a specific application form required in order to qualify for the funding discussed on the web page.

3. Internet Web Page at address: <http://www.nmda.nmsu.edu/wp-content/uploads/2013/06/water-deliver-application-form.docx> This internet address links to a word-processor document, specifically, the form referenced supra in ¶ 2.c, said form reproduced in Attachment A. In accordance with D.N.M.LR-Civ. 10.6, attention is directed in particular to the highlighted statements:

"Criteria for participation in this initiative:

- 1. Primary purpose of water delivery is for use by wildlife within land user's operating unit.*
- 2. Secondary purpose may be for land user's livestock."*

4. In the AMENDED COMPLAINT [Doc. 222] filed in this Action, Plaintiff United States of America claims at ¶ 21 "For livestock- and wildlife-watering purposes ... an appropriative water right under New Mexico state law in an amount based on the amount of water beneficially used."

ARGUMENT

5. Judicial Notice of these facts is proper under Federal Rule of Evidence 201(b)(2) because they are not subject to reasonable dispute and "can be accurately and readily determined from sources whose accuracy cannot be reasonably questioned." Fed. R. Evid. 201(b)(2). Rule

201(d) provides that "The court may take judicial notice at any stage of the proceeding." Fed. R. Evid. 201(d). Indeed, under Rule 201(c), "The court: (2) *must* take judicial notice if a party requests it and the court is supplied with the necessary information." Fed. R. Evid. 201(c) (emphasis added). In addition, judicial notice is appropriate because these records are relevant to several arguments at issue in the Bawolek's defense. Each of the documents referenced supra is either in the record of this Court as filings in the above-captioned matter, or is available in the public domain as detailed in the document reference.

STATEMENT BY THE BAWOLEKS

6. Pursuant to Fed. R. Evid, 201(e), the Bawoleks state that opposing counsel has been informed of the filing of this Motion Requesting Judicial Notice and opposing counsel reserves the right to oppose this Motion.

Dated July 3, 2014.

Respectfully submitted,

By: /s/ Edward J. Bawolek and /s/ Suzan J. Bawolek
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on July 3, 2014, I filed the foregoing Motion Requesting Judicial Notice electronically through the CM/ECF system, which caused CM/ECF participants to be served by electronic means, as more fully reflected on the Notice of Electronic Filing.

/s/ Edward J. Bawolek
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