

No. 13-35770

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FREEDOM FROM RELIGION FOUNDATION, INC.,
Plaintiff – Appellant,

v.

CHIP WEBER, Flathead National Forest Supervisor, and
UNITED STATES FOREST SERVICE,
Defendants – Appellees,

and

WILLIAM GLIDDEN, RAYMOND LEOPOLD, EUGENE THOMAS,
NORMAN DeFORREST, and KNIGHTS OF COLUMBUS,
Intervenor-Defendants – Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
(Chief Judge Dana L. Christensen) No. 12-19

MOTION REQUESTING JUDICIAL NOTICE

Pursuant to Federal Rule of Evidence 201, Defendants-Appellees U.S. Forest Service and Chip Weber hereby respectfully request this Court to take judicial notice of the U.S. Forest Service record attached as Exhibit 1 to this motion and referenced on pp. 3-4 and 50 of the Forest Service’s answering brief. The attached record consists of a list of all monuments currently authorized by special use permits to occupy National Forest System lands, and a declaration from

Steven M. Dodds, the custodian of the Forest Service's Special Uses Database (SUDS), authenticating that list. The list is relevant and helpful in understanding the operation of the special use permit regulations in existence at the time the original permit authorizing the statue at issue in this appeal was issued.

This Court has frequently noted that “we may take judicial notice of records and reports of administrative bodies.” *Anderson v. Holder*, 673 F.3d 1089, 1094 (9th Cir. 2012) (internal citation omitted); *accord* Federal Rule of Evidence 201(b)(2) (stating that Court may take judicial notice of “a fact that is not subject to reasonable dispute because it . . . can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.”) The attached declaration and list is an authenticated government record, drawn from a government database, and falls squarely within the category of documents this Court has recognized as appropriate for judicial notice. Moreover, the list and declaration are not offered to establish a disputed fact, but merely to provide background information to aid the Court's understanding of some now-superseded regulations that applied to the original permit issuance in this case. *See United States v. 14.02 Acres of Land in Fresno Cnty.*, 547 F.3d 943, 955 (9th Cir. 2008) (holding judicial notice of administrative report was appropriate, particularly because court used it “only as background material, without relying on it to resolve any factual dispute”).

Richard Bolton, counsel for plaintiff-appellant Freedom From Religion Foundation, stated that he cannot take a position on this motion at this time. Eric Baxter, counsel for intervenor-defendant-appellee Knights of Columbus, consents to the relief requested by this motion.

Respectfully submitted,

/s Joan M. Pepin

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EXHIBIT 1

I, Steven M. Dodds, hereby certify that:

1. I am a member of the Lands and Realty staff in the Headquarters Office of the U.S. Forest Service (Forest Service). I have served in this capacity since October 2005.

2. Among other duties, I am responsible for the oversight and management of the Forest Service's corporate national Special Uses Database (SUDS). SUDS is an electronic repository of all corporate data relating to Special Uses permits, including the number and types of authorizations, for the use and occupancy of National Forest System lands.

3. The document accompanying this declaration, which was compiled from the SUDS data under my direction and supervision, contains a current listing of monuments authorized on National Forest System lands.

This declaration is made under 28 U.S.C. § 1746. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on April 28, 2014, in Cedar City, Utah.



Steven M. Dodds

Contact Name	Issue/Reissue Date	Expiration Date	Purpose Field
MACKEY MEMORIAL	1/1/1996	12/31/2016	Don Mackey Memorial - Memorial Statue up Blodgett Creek Trail for Firefighter Memorial.
HOUGH, GLEN & PEGGY	2/20/1997	12/31/2017	nothing in purpose field
KNIGHTS OF COLUMBUS	2/24/2012	12/31/2020	STATUE OF JESUS LOCATED APPROXIMATELY 250 FEET SOUTH OF CHAIR 2 AT THE WHITEFISH MOUNTAIN RESORT SKI AREA ON NFS LAND
MONTANA STATE UNIVERSITY	12/27/2006	12/31/2016	Maintaining the "M" monument
GRAND LODGE A.F. and A.M. of Montana	1/21/2011	12/1/2019	A monument area consisting of; two field-stone rock alters, and several benches.
STATE FEDERATION GARDEN CLUBS	7/15/1968		A BRONZE 3' X 4' BLUE STAR MEMORIAL SIGN MOUNTED ON A 8' X 5' ROCK BASE.
COLORADO STATE HISTORIC PRESERVATION OFFICER	6/7/1929		Bronze Marker on Red Mnt. Pass
Colorado Historical Society	9/24/2012	12/31/2021	The use and maintenance of a granite monument and bronze plaque in memory of Sir George Gore.
Colorado Historical Society	9/24/2012	12/31/2021	A rock monument and bronze plaque commemorating the historical events that occurred on Rabbit Ears Pass and the opening of the improved highway in 1919.
10th MOUNTAIN DIVISION FOUNDATION,INC	8/26/2011	12/31/2020	World War II Memorial
INTERNATIONAL ORDER OF ROCKY	10/7/2002	12/31/2010	To maintain a public memorial plaque at a trailhead honoring a deceased member. (Blanks Cabin T.H.)
CASTLE CONCRETE COMPANY	2/18/2005	12/31/2015	Presence of bighorn sheep memorial in honor of Gregory Francis visionary contributions toward the restoration of Queens Quarry.
COLORADO, STATE OF	3/4/1998	12/1/2008	nothing in purpose field
SUMMIT COUNTY GOVERNMENT	7/1/1958		Saphire Point Monument
NEW MEXICO STATE PARKS	6/4/1968		a monument roadside rest site and trail right-of-way
FLAGSTAFF, CITY OF	5/13/1969		A memorial plaque honoring Mrs. Mary Riordan Chambers for whom Lake Mary was named
RONALD EASLEY JR.	10/10/1950		A burial plot, juniper wood cross 21/2 feet wide and 3 feet high and a 21/2" x 4" bronze plaque.

Contact Name	Issue/Reissue Date	Expiration Date	Purpose Field
SEDONA WESTERNERS	8/12/1969		A 20"X30" metal plaque, mounted on a native stone and commemorating the site of the Vultee plane crash
LINCOLN COUNTY HISTORICAL SOC.	3/2/1978		Nothing in purpose field
SACRAMENTO MOUNTAIN HISTORICAL SOCIETY	8/28/1981		Nothing in purpose field
EDDY, COUNTY OF	7/16/1964		Flying Paper Boy Monument along State Route 137
UTAH STATE PARKS & RECREATION	6/21/1990	12/31/2010	Mountain Meadows Massacre Site
BART MORTENSEN	1/9/1968		Nothing in purpose field
EVERETT, LAUREL E.	1/27/1964		Nothing in purpose field
HANSEN, LESTER	4/21/1976	3/1/1995	Stone monument marking the birth place of Clarissa Hanson at Indian Lodge.
UTAH DIVISION OF OIL, GAS AND MINING	3/8/2004	12/31/2023	An old mine car and plaque on a concrete slab in the pull-out across from the Black Diamond Mine. The car is 8' long, 5' wide, and 4' high.
GRAND COUNTY HISTORICAL PRESERVATION COMMISSION	7/2/2010	12/31/2019	PINHOOK BATTLE GROUND MONUMENT and trail from parking lot to monument.
GRAND LODGE OF CA I.O.O.F.	7/14/1994	12/31/2004	nothing in purpose field
E CLAMPUS VITUS	4/12/2011	12/31/2019	T6N R21E Sec 35 (Sonora Pass). T6N R22E Sec 24 (USMC-MWTC). T6N R26E Sec 16 (Lower Town, Masonic). T5N R24E Sec 24 (Buckeye)
TOWN OF ALTA	2/3/2006	12/31/2016	Memorial Grove
UTAH DIVISION OF PARKS & REC.	10/15/1991	12/1/2011	Monument at Little Mountain Summit for the Mormon Pioneer National Historic Trail.
PLEASANT GROVE CHAMBER OF COMMERCE	12/4/2002	12/31/2011	Maintain a block monument "G" and access trail on G Mountain east of Pleasant Grove
Reese, Paul	9/30/2009	12/31/2014	Operate and maintain a block Y monument
SONS OF THE UTAH PIONEERS	4/28/2010	12/31/2020	a Memorial Monument on the summit of North Ogden Pass, adjacent to County Road 162 and the North Ogden Divide Trailhead.
EXECUTIVE DIRECTOR OF ALUMNI	10/30/1975		18" x 15" memorial plaque on an existing boulder on the west side of Mt. Ogden Pk.
WEBER STATE UNIVERSITY	9/11/1991	12/31/2011	Monument on Mt. Ogden
NEBO SCHOOL DISTRICT	1/28/2011	12/31/2029	To maintain Payson High School's insignia "P" on National Forest System land

Contact Name	Issue/Reissue Date	Expiration Date	Purpose Field
AM. SOCIETY OF CIVIL ENGINEERS	10/26/2005	12/31/2015	COMMEMORATIVE PLAQUE HONORING THE OLD RIDGE ROUTE AT THE VISTA DEL LAGO VISITOR CENTER
Boy Scouts of America	2/1/1957		Fees waived due to monument
SIERRA CLUB	9/13/1965		Burkhart Saddle Area
US, DHS, BORDER PATROL	10/2/2000	12/31/2030	A rock monument commemorating the death of two United States Border Patrol agents in the line of duty.
Lynch, Joanni	6/17/2009	7/1/2014	A memorial bench at Lake Mary
WEED-LAKE SHASTINA KIWANIS CLB	2/5/2010	12/31/2019	A memorial plantation and sculpture garden
Las Plumas Del Oro Chapter #8	3/26/2003	12/31/2022	3 historic monuments
WOMAN'S CLUB, LAKE ARROWHEAD	6/21/1937		Nothing in purpose field
LAKE ARROWHEAD COMM. CHURCH	6/17/1955		Nothing in purpose field
WOMEN'S THURSDAY CLUB	4/30/1932		Nothing in purpose field
SONS OF THE UTAH PIONEERS	1/22/2002	12/31/2010	Nothing in purpose field
UNIVERSITY OF REDLANDS	3/25/1985	12/1/1995	Laurie Kervahn - (909) 793-0844 - Office of the President
E CLAMPUS VITUS	11/12/1965		FEES WAIVED
KERN VALLEY HISTORICAL SOCIETY	7/20/2009	12/31/2018	Installing two small metal plaques (10" wide x 9" tall x 1/2" thick)
CA DEPT OF PARKS & RECREATION	8/29/2011	12/31/2020	Maintaining the North Bloomfield School Building as a Historical Monument in connection with the Malakoff Diggings State Park
NEVADA CEMETERY DISTRICT	5/22/1970		Nothing in purpose field
NEVADA CO HISTORICAL SOCIETY	7/23/1958		Nothing in purpose field
NEVADA CEMETERY DISTRICT	5/22/1970		Nothing in purpose field
Confluence Project	1/24/2008	1/31/2018	Installation and maintenance of a bird blind and accessible ramp in the area of the Sandy River Delta
VETERANS OF FOREIGN WARS	4/10/2001	12/31/2020	Granite monument to Audie Murphy, one of the most decorated WW2 hero's
OKLAHOMA HISTORICAL SOCIETY	7/24/2000	12/31/2019	Historical monument to mark the intersection of the Ft. Smith to Ft. Towson Road (military trail) and the Winding Stair Mountain Road

Contact Name	Issue/Reissue Date	Expiration Date	Purpose Field
MICHIGAN DISTRICT OF KIWANIS INTERNATIONAL	4/18/2000	12/31/2019	Kiwanis Plantation Monument
OSCODA TOWNSHIP	1/25/2013	9/30/2022	Maintaining the stone and masonry statue known as Canoers Memorial
V.F.W. IKKALA BROTHERS	3/28/2002	12/31/2012	To maintain a veterans memorial
APPALACHIAN MOUNTAIN CLUB	4/28/1965		To erect and maintain a bronze memorial plaque in the memory of Hugo Stadmueller and John Griffin who died in an avalanche
Folsom, Henry T.	6/13/1973		Installation and maintenance of a bronze plaque
Gilead, Town of	8/1/1975		Installation and maintenance of a Veterans Monument with attached plaque in commemoration of all Gilead residents who served their country during World Wars I and II
Worcester Ski Club	9/2/1965		Placement and maintenance of memorial bronze plaque in Tuckerman ravine,
Dartmouth College - Monument	5/23/1991	10/1/2010	Nothing in purpose field
Dartmouth College - Monument	5/28/1962		Erection of a plaque memorializing two Dartmouth doctors who died as a result of a plane crash
Rumney, Town of	12/9/1964		Maintaining a plaque and fence
Donahue, Hilda	5/27/1964		Erection and maintenance of a memorial plaque on a granite ledge