

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

MICHELLE BARNES, PATRICK CONRY,)
BLAINE ACKLEY, JIM LUBISCHER,)
DAVID BARNES, and OREGON) Ninth Cir. Case No. 14-71180
AVIATION WATCH,)
)
Petitioners ,) Petitioners' Request for
) Judicial Notice
v.)
)
FEDERAL AVIATION ADMINISTRATION,)
)
Respondent)
)
and)
)
PORT OF PORTLAND,)
)
Intervenor-Respondent)

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Petitioners hereby respectfully request that this Court take judicial notice pursuant to Federal Rule of Evidence 201 and Circuit Rule 27-1(7) of (1) “Calculating Piston-Engine Aircraft Airport Inventories for Lead for the 2008 National Emission Inventory,” prepared by the EPA (attached as Exhibit A, Malone Decl., also available at <http://www.epa.gov/otaq/regs/nonroad/aviation/420b10044.pdf>), and (2) “Airport Lead Monitoring,” also prepared by the Environmental Protection Agency (attached as Exhibit B, Malone Decl., also available at <http://www.epa.gov/otaq/regs/nonroad/aviation/420f13032.pdf>). These documents are produced by a federal agency, which are subject to judicial notice pursuant to FRE 201.

The accuracy of the documents is capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonable questioned. *Id.* According to the Advisory Committee notes, “[a] high degree of indisputability is the essential prerequisite.” It is indisputable that these documents are a product of the Environmental Protection Agency. The Advisory Committee notes also state that: “[u]nder subdivision (c) the judge has a discretionary authority to take judicial notice, regardless of whether [s/]he is so requested by a party. The taking of judicial notice is mandatory, under subdivision (d), only when a party requests it and the necessary information is supplied.” (emphasis added).

Furthermore, courts have routinely taken judicial notice of agency documents and contents from agency websites. See Mack v. S. Bay Beer Distrib., Inc., 798 F.2d 1279, 1282 (9th Cir. 1986); Mullis v. U.S. Bank. Ct., 828 F.2d 1385, 1388 (9th Cir. 1987); Interstate Natural Gas Co. v. S. Cal. Gas Co., 209 F.2d 380, 385 (9th Cir. 1953) (judicial notice of records of administrative bodies); Ursack, Inc. v. Sierra Interagency Black Bear Group, 2009 WL 2422784, *6 (N.D. Cal. 2009) (judicial notice of agency materials posted on agency website); Clappier v. Flynn, 605 F.2d 519, 535 (10th Cir. 1979) (judicial notice of official government publications); Denius v. Dunlap, 330 F.3d 919, 926 (7th Cir. 2003) (taking judicial notice of material on government website and citing supporting case law); Or. Nat'l Desert Ass'n v. BLM, 625 F.3d 1092, 1112 n. 14 (9th Cir. 2010) (taking judicial notice of BLM Handbook as a public document); City of Las Vegas v. FAA, 570 F.3d 1109, 1113 n.1 (9th Cir. 2009); Center for Environmental Law & Policy v. USBR, 655 F.3d 1000 n. 5 (9th Cir. 2011) (taking judicial notice of Environmental Impact Statement prepared by USBR without requirement that it falls within exception to record review rule). Therefore, Petitioners respectfully request that this Court take judicial notice of the two above-mentioned documents attached as Exhibits A and B to the Declaration of Sean Malone submitted concurrently with this request.

Respectfully submitted this 11th day of August, 2014.

/s Sean T. Malone

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Certificate of Service

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on August 11, 2014. I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

s/ Sean T. Malone

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