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TESTIMONY ON SB294

APRIL 7, 2003 RM 2149

NEVADA SENATE JUDICIARY COMMITTEE

MR. CHAIRMAN AND MEMBERS. THANK YOU FOR THIS OPPORTUNITY TO TESTIFY TODAY ON BEHALF OF SB294 A BILL TO ENFORCE THE SOVEREIGN RIGHTS OF NEVADA.

THIS BILL DESERVES SPECIAL ATTENTION IN LIGHT OF WHAT HAS TRANSPIRED DURING THE LAST 18 OR MORE YEARS IN CLASHES BETWEEN FEDERAL AND STATE AUTHORITY AND AN APPARENT TOTAL DISREGARD FOR PRIVATE PROPERTY RIGHTS AND STATE STATUTES BY AGENCIES OF THE FEDERAL GOVERNMENT.

EXAMPLES OF ABUSES FOLLOW:

BEGINNING IN THE YEAR 1986 THE USFS BOUGHT A D-5 CATERPILLAR TRACTOR FROM A LOCAL DEALER IN ELKO. ONE OF THE FIRST JOBS IT WAS ASSIGNED TO DO WAS TO DESTROY WOLVERTON SPRING IN RUBY VALLEY IN ORDER TO DEPRIVE

THE RANCHER OF HIS WATER EVEN THOUGH THE RANCHER HAD VESTED RIGHTS TO THE WATER AND DEPENDED GREATLY ON THE CONTINUED FLOW FOR IRRIGATION AND WATERING HIS LIVESTOCK. THE OPERATOR USED THE TRACTOR TO BREAK DOWN THE BANKS SURROUNDING THE SPRING AND THEN PUSHED THE DEBRIS ON TOP OF THE WATER BUBBLING OUT OF THE GROUND IN AN EFFORT TO STOP THE FLOW. THERE IS PLENTY OF EVIDENCE FILED AWAY IN ELKO TO SUPPORT THIS ALLEGATION AND TODAY YOU CAN STILL GO TO THE SPRING AND SEE THE TRACTOR RUTS IN THE GRAVEL. IN 1990 E. WAYNE HAGE A RANCHER OPERATING IN MONITOR VALLEY NORTH OF TONOPAH HAD HIS GRAZING PERMIT CANCELED BY THE USFS AND HE WAS DENIED THE RIGHT TO USE HIS OWN WATER AND FORAGE TO FEED HIS LIVESTOCK. EVENTUALLY WAYNE HAGE'S FEW REMAINING COWS WERE ROUNDED UP BY GUNMEN OF THE USFS ARMED WITH AUTOMATIC WEAPONS AND WEARING FLAK JACKETS. HIS CATTLE WERE TRANSPORTED TO FALLON FIRST WHERE THE

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LIVESTOCK SALES YARD REFUSED TO HANDLE THE HAGE CATTLE AND THEN TO RENO WHERE THEY WERE ILLEGALLY SOLD AT THE HORSE HOLDING PENS IN PALOMINO VALLEY. HAGE'S CATTLE WERE ILLEGALLY CONFISCATED BECAUSE THERE WAS NO COURT ORDER ISSUED BY A STATE COURT GRANTING THE FS PERMISSION TO CONFISCATE AND THEN ILLEGALLY SOLD BECAUSE IT APPEARS THE FS TAMPERED WITH THE LIEN

HELD BY A BANK IN UTAH AND WERE THEN ABLE TO CONVERT TITLE TO THE LIVESTOCK TO AN UNKNOWN PARTY. A PROPERLY EMPOWERED SHERIFF COULD HAVE STOPPED THIS WHOLE PROCEDURE. IT IS ALLEGED THE SHERIFF WAS INTIMIDATED BY THE FEDS AND MADE HIMSELF SCARCE DURING THE CONFISCATION ACTION.

IN 1995 A RUBY VALLEY RANCHER DID SOME WORK TO IMPROVE KELLY SPRINGS. A WATER SOURCE HIS FAMILY HAD RELIED ON SINCE THE LATE 19TH CENTURY. HE WAS ORDERED TO REMOVE HIS IMPROVEMENTS AND COVER THE SPRING WITH TWO FEET OF DIRT THEN RESEED OVER THE TOP OF IT. IN THIS CASE

CITIZENS CAME TO THE RESCUE OF THE SPRING AND FENCED IT OFF. THE CITIZENS LEFT *NO TRESPASSING* SIGNS ON THE FENCE TO DETER ANYONE FROM MENACING THE SPRING IN THE FUTURE.

IN 1998, ELKO COUNTY SENT A ROAD CREW TO REPAIR A WASHED OUT ROAD IN THE SOUTH CANYON OF THE JARBIDGE RIVER. THE ROAD CREW WAS STOPPED BY THE STATE DEPT. OF ENVIRONMENTAL PROTECTION AT THE REQUEST OF THE UNITED STATES. THE USFS THEN CONTRACTED WITH AN ENVIRONMENTAL FIRM IN MONTANA TO DESIGN A COVER FOR 900 FEET OF THE ROAD. 1000s OF YARDS OF ROCKS AND DIRT WERE HEAPED ON THE ROAD AND THEN CONTOURED TO MAKE IT APPEAR AS IF THERE WAS NEVER A ROAD THERE. A BILL FOR \$420K WAS PRESENTED TO ELKO COUNTY FOR WORK TO REPAIR DAMAGES TO FEDERAL LAND CAUSED BY THE ROAD CREW. A CITIZENS WORK PARTY WAS ORGANIZED TO GO AND FINISH REPAIRS IN ORDER TO OPEN THE ROAD BUT THE PARTY WAS STOPPED BY AN 11TH HOUR RESTRAINING ORDER ISSUED BY A

FEDERAL JUDGE IN RENO STOPPING THE WORK. THE FOLLOWING YEAR A CITIZENS WORK FORCE OPENED THE ROAD AND IT IS STILL OPEN BUT THE FS HAS CONTROL OVER FINAL REPAIR AND I BELIEVE THE FS WILL DRAG THEIR FEET AND STALL UNTIL EVERYONE FORGETS ABOUT THE PROJECT.

IN THE YEAR OF 2002 THERE WERE 4 INCIDENTS OF CATTLE CONFISCATION BY THE BLM WITH NO DUE PROCESS ALLOWED THE LIVESTOCK OWNER. AS A MATTER OF FACT IN LETTERS TO SHERIFF KENNETH ELGAN OF ESMERALDA COUNTY KEN JONES

OF EUREKA AND SHERIFF NEIL HARRIS OF ELKO IT IS THE OPINION OF THE BLM FIELD SOLICITOR THAT THE US IS EXEMPT FROM OBSERVING DUE PROCESS BASED ON THEIR OWN SELF SERVING CFRs. I WISH TO POINT OUT THAT ART. V OF THE BILL OF RIGHTS GUARANTEES DUE PROCESS TO EVERYONE AND NO US AGENCY CAN SET THAT FACT ASIDE IN ORDER TO CONDUCT THEIR BUSINESS.

EVIDENCE OF INTIMIDATION FIRST BY A US ATTORNEY AND THEN BY A FIELD SOLICITOR FOR THE BLM IS ATTACHED.

THE ABOVE ARE INCIDENTS OF WHICH I AM AWARE FROM MY PERSPECTIVE IN ELKO COUNTY. THE HOLMGRENS HAVE HAD THEIR SHARE OF PROBLEMS WITH THE BLM IN MINERAL COUNTY.

FURTHER SOUTH AT BUNKERVILLE IN CLARK COUNTY A RANCHER NAME OF CLIVEN BUNDY HAS BEEN GRAZING WITH OUT A FEDERAL GRAZING PERMIT FOR 12 YEARS. FEDERAL AGENCIES HAVE THREATENED TO CONFISCATE HIS CATTLE AND PUT HIM OUT OF BUSINESS BUT THE CLARK COUNTY SHERIFF HAS DISCOURAGED ANY FEDERAL ACTION AGAINST BUNDY BY MAKING IT CLEAR THAT THE FEDS WILL NOT BOTHER CLIVEN WITHOUT PERMISSION FROM THE SHERIFF. IF THIS SORT OF PROTECTION WORKS IN CLARK COUNTY IT NEEDS TO WORK IN THE OTHER 16 COUNTIES OF NEVADA.

IN MY OPINION IT IS UP TO THE ATTORNEY GENERAL OF NEVADA TO EDUCATE AND EMBOLDEN THE SHERIFFS IN THE OTHER COUNTIES. I HAVE FOUND DURING MY DEALINGS WITH UNITED STATES ATTORNEYS IN THE JARBIDGE ROAD SETTLEMENT

CONFERENCE THE US ATTORNEYS WERE FULL OF BLUFF AND
BLUSTER AND WERE MAINLY FOUND TO BE BAGS OF HOT AIR
HAVING VERY LITTLE OF THE AUTHORITY WHICH THEY
CLAIM. IN MY OPINION THE US ATTORNEY AND THE FIELD
SOLICITOR FOR THE BLM
USED DECEIT AND INTIMIDATION TO PREVENT SHERIFFS IN
ESMERALDA, EUREKA AND ELKO COUNTIES FROM DOING THEIR
ELECTED DUTIES OF PROTECTING THE PROPERTY OF NEVADA
RESIDENTS FROM CONFISCATION BY A FEDERAL AGENCY. WHAT
WORKS IN CLARK COUNTY CAN BE MADE TO WORK IN THE REST
OF THE STATE
MY REQUEST FOR THIS COMMITTEE IS *DO PASS* THIS BILL AND
SEND IT ON TO THE ASSEMBLY WHERE WE WILL HAVE ANOTHER
OPPORTUNITY TO SPEAK IN FAVOR OF IT.

O Q CHRIS JOHNSON, CHAIRMAN NEVADA COMMITTEE FOR FULL
STATEHOOD 775-738-3881



United States Department of the Interior

OFFICE OF THE SOLICITOR
SUITE 6201, FEDERAL BUILDING
125 SOUTH STATE STREET
SALT LAKE CITY, UTAH 84138

September 19, 2002

Ken Jones
Eureka County Sheriff
P.O. Box 736
Eureka, Nevada 89316

Dear Sheriff Jones:

I write in response to recent conversations between Bureau of Land Management (BLM) law enforcement officers and yourself. It is my understanding that you have indicated some concern about BLM's authority to impound livestock determined to be trespassing on the public lands.

Please be advised that BLM has the legal authority pursuant to federal statute and regulation to impound livestock without a court order. I have enclosed a copy of the applicable statutory provision, the federal regulations, and selected pages of a case for your review. As you can see, there is no requirement for a court order prior to impoundment.

These regulations set forth the required procedures BLM must follow prior to impounding livestock. They include written notice to the permittee or other owner of trespassing cattle of unauthorized use and an opportunity following the receipt of notice for the alleged violator to show there has been no violation, correct the situation by removing the livestock, or settle the matter. The BLM only resorts to an impoundment as a last resort and following still another notice of impoundment to the owner of the livestock or to the owner's agent. BLM officers are committed to flexibility and providing a forum to livestock owners to resolve these issues without impoundment.

Potential violations of federal law would arise if anyone interfered with BLM employees lawfully engaged in their assigned duties. Furthermore, in the event criminal charges were filed against BLM employees performing their statutory and regulatory duties, we would request to remove the case to federal court. As a matter of comity, the BLM advises the County Sheriff whenever they intend to impound cattle. I know it is important to BLM to maintain a good working relationship with your office and all county sheriffs throughout Nevada. In addition, BLM does not anticipate requesting your direct involvement in this matter unless a public safety issue arises.

If you have any questions about these legal issues, I would recommend you speak to your

District Attorney and/or the Nevada Attorney General's Office. The BLM also would gladly enter a dialogue with you about these issues. If I can answer any questions about this matter, please contact me at (801) 524-5677.

Sincerely,



John Steiger
Field Solicitor

Enclosures as stated

cc: Daniel Bogden, United States Attorney
Frankie Sue Del Papa, Nevada Attorney General
Jean Rivers-Council, Acting State Director, BLM Nevada
Donnette Gordon, Special Agent in Charge, BLM Nevada



United States Department of the Interior

OFFICE OF THE SOLICITOR

SUITE 6201, FEDERAL BUILDING
125 SOUTH STATE STREET
SALT LAKE CITY, UTAH 84138

May 23, 2002

Neil Harris
Elko County Sheriff
775 West Silver Street
Elko, Nevada 89801

Dear Sheriff Harris:

I write in response to recent conversations between Bureau of Land Management (BLM) law enforcement officers and yourself. It is my understanding that you have indicated some concern about BLM's authority to impound livestock determined to be trespassing on the public lands.

Please be advised that BLM has the legal authority pursuant to federal statute and regulation to impound livestock without a court order. I have enclosed a copy of the applicable statutory provision, the federal regulations, and selected pages of a case for your review. As you can see, there is no requirement for a court order prior to impoundment.

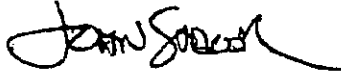
These regulations set forth the required procedures BLM must satisfy prior to impounding livestock. They include written notice to the permittee or other owner of trespassing cattle and an opportunity following the receipt of notice for the alleged violator to show there has been no violation, correct the situation by removing the livestock, or settle the matter. BLM only resorts to an impoundment as a last resort and following still another notice to the owner of the livestock or to the owner's agent. BLM officers are committed to flexibility and providing a forum to livestock owners to resolve these issues without impoundment.

Potential violations of federal law would arise if anyone interfered with BLM employees lawfully engaged in their assigned duties. Furthermore, in the event criminal charges were filed against BLM employees performing their statutory and regulatory duties, we would request to remove the case to federal court. As a matter of comity, the BLM advises the County Sheriff whenever they intend to impound cattle. I know it is important to BLM to maintain a good working relationship with your office and all county sheriffs throughout Nevada. In addition, BLM does not anticipate requesting your direct involvement in this matter unless a public safety issue arises.

If you have any questions about these legal issues, I would recommend you speak to your District Attorney and/or the Nevada Attorney General's Office. The BLM also would gladly

enter a dialogue with you about these issues. If I can answer any questions about this matter, please contact me at (801) 524-5677.

Sincerely,



John Steiger
Field Solicitor

Enclosures as stated

cc: Daniel Bogden, U.S. Attorney
Frankie Sue Del Papa, Attorney General
Bob Abbey, BLM
Donnette Gordon, BLM



U.S. Department of Justice

*United States Attorney
District of Nevada*

333 Las Vegas Boulevard South,
Suite 3000
Las Vegas, Nevada 89101

Telephone (702)388-6336
Fax (702)388-6296

July 13, 2001

Kenneth Elgan
Esmeralda County Sheriff
P.O. Box 508
Goldfield, Nevada 89013

Dear Sheriff Elgan:

I write in response to recent conversations between Bureau of Land Management (BLM) law enforcement officers and yourself. It is my understanding that you have indicated that you will not permit the confiscation of cattle without a court order and will view such action as a violation of Nevada law. In addition, you do not believe BLM has law enforcement authority within your county. This position is an incorrect statement of the law.

Please be advised BLM has the legal authority pursuant to federal regulation to impound cattle without a court order. I have enclosed a copy of the applicable regulation for your review. As you can see, there is no requirement for a court order prior to impoundment. In addition, BLM is not requesting your direct involvement in this matter. They only seek assurance you will not interfere in the event they are compelled to proceed.

These regulations set forth the required procedures BLM must satisfy prior to impoundment. They include written notice to the permittee and an opportunity following the receipt of notice for the alleged violator to show there has been no violation, correct the situation by removing the cattle, or settle the matter. BLM only resorts to an impoundment as a last resort and following still another notice to the owner of the livestock. BLM officers are committed to flexibility and providing a forum to livestock owners to resolve these issues without impoundment.

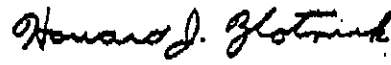
Potential violations of federal law would arise if anyone interfered with BLM employees lawfully engaged in their assigned duties. Furthermore, in the event criminal charges were filed against BLM employees performing their statutory duties we would seek to remove the case to federal court. As a matter of comity, the BLM advises the County Sheriff whenever

Kenneth Elgan
July 13, 2001
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they intend to impound cattle. I know it is important to them to maintain a good working relationship with your office and all county sheriffs throughout Nevada.

If you have questions about these legal issues, I would recommend you speak to your District Attorney and/or the Nevada Attorney General's Office. The BLM also would gladly enter a dialogue with you about this issue. If I can answer any questions about this matter, please contact me at (702) 388-6336.

Sincerely,



HOWARD J. ZLOTNICK
United States Attorney

HJZ/dw

Enclosure as stated

cc: Frankie Sue Del Papa, Attorney General
Bob Abbey, BLM
Donnette Gordon, BLM

Monday, June 24, 2002 ELKO DAILY FREE PRESS, Elko, Nevada A3

GUEST EDITORIAL

Reigning in the feds

From the Washington Times, June 19:

When the 13 colonies decided to form a new nation, they established a government based on the principle of federalism — that each of the member states still retained all the rights it had not granted to the new federal government in the Constitution. Almost immediately, there were moves to limit the states' powers and enhance the federal government's. In 1793, the Supreme Court's *Chislm vs. Georgia* decision said that an individual from one state could sue another state in federal court. That decision destroyed the states' sovereign immunity from being sued. "Sovereign immunity" prevents a government — state, federal or foreign — from being sued unless, by law, it consents to be sued in a particular court on a particular claim.

The states' reaction to the *Chislm* decision was so strong that the 11th Amendment to the Constitution was passed and ratified quickly. The 11th Amendment says that federal courts have no power to decide the rights and obligations of states in cases brought by individuals. The drafters of the 11th Amendment never foresaw the federal bureaucratic morass that often reaches out to grab states by the ankle. When Congress created the many federal regulatory agencies, it gave them the power to regulate and also created a network of in-house administrative courts to enforce their own rules. In *Federal Maritime Commission vs. South Carolina State Ports Authority*, owners of cruise ships used for gambling cruises brought a complaint against the state of South Carolina for

refusing to let their ships dock. South Carolina argued that because no federal court could hear the shipowners' case, no administrative judge — such as the ones who work for the Federal Maritime Commission (FMC) — could either. In late May, the Supreme Court decided that South Carolina was immune from the commission's jurisdiction under the 11th Amendment.

Writing for the Supreme Court's 5-4 majority, Justice Clarence Thomas applied the sovereign immunity doctrine to administrative proceedings that can decide a state's rights or obligations. Justice Thomas' decision justified every liberal's fear of strict-constructionist judges. Finding that the FMC was performing a judicial function, the high court's decision declares, in the strongest terms, that states have the same immunity from lawsuits in administrative courts that they do in courts established under the Constitution. Imperialist agencies such as the Environmental Protection Agency — which leverages its adjudicative powers to compel states to follow its rules — will now have to use their powers within the limits of the Constitution, not their own agendas. The decision protects the states from the expansionist power of federal agencies, and for this we should all be thankful. As the May 28 decision says, "By guarding against encroachments by the federal government on fundamental aspects of state sovereignty . . . we strive to maintain the balance of power embodied in our Constitution and thus reduce the risk of tyranny and abuse from either front." Exactly.