CLIVEN D. BUNDY, *Pro se*
3315 Gold Butte Road
Bunkerville, NV 98007
PH (702) 346.5564

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Plaintiff,

v. **Case** No. 2:98-cv-531-LRH-VCF

CLIVEN D. BUNDY

Defendant.

DEFENDANT BUNDY'S OBJECTION TO
UNITED STATES' MOTION TO ENFORCE INJUNCTION

This document is timely filed.

COMES NOW Defendant Cliven D. Bundy, ***Pro se***, and objects to the **UNITED STATES' MOTION TO ENFORCE INJUNCTION** and respectfully requests that this Honorable Court deny Plaintiff's Motion for the following reasons stated herein below.

I.

ALL TIME HAS LAPSED FOR PLAINTIFF TO OBTAIN REQUESTED RELIEF

The United States starts out in its Motion and makes several requests of this Court that it take certain actions against Defendant which state in part as follows:

> The United States respectfully requests that this Court enforce the permanent injunction set forth in this Court's orders dated November 3, 1998, and September 17, 1999. Docket Nos. 19 and 46. (Plaintiff's Mtn. pg-1, Ln 26-28)

> The United States therefore respectfully requests that a declaration be issued that Defendant Bundy has placed or allowed his livestock to graze on these lands in violation of this Court's orders; that Defendant Bundy again be ordered to remove his livestock from the former Allotment within 45 days of this Court's order; **that the United States be authorized to seize and impound Defendant Bundy's livestock** if they have not been removed within 45 days of this Court's order; **that Defendant Bundy be instructed that he may not physically interfere with an impoundment operation authorized under this Court's order; and that the United States be authorized to seize and impound Defendant Bundy's livestock should he continue to violate the permanent injunction in the future.** (Plaintiff's Mtn. pg-2, Ln 9-18). (Emphasis Added).

Nowhere in the two Orders of the Court back in 1998 and 1999 respectively, was there any authority granted to Plaintiff to impound any of Defendant's cattle and now some 13 ½ years later Plaintiff comes before this Court requesting an Enforcement Order to impound Defendant's cattle. Being that there never was this authority granted, or asked for in a **timely manner** by Plaintiff back in the late 1990's, this now smacks of a back door approach to try to sneak something in that was never there and is barred now by the statute of limitations.

Defendant contends that under Nevada State Law (which controls this particular issue) limits the time for requesting an order for enforcement such as Plaintiff is asking this Court for now. The time limit is a very much shorter time line than 13 ½ years now passed; see NRS 11.90 which states in part; ***Periods of limitation.*** *Except as otherwise provided in NRS 40.4639, 125B.050 and 217.007, actions other than those for the recovery of real property, unless further limited by specific statute, may only be commenced as follows: 1. Within 6 years: (a) An action upon a judgment or decree of any court of the United States, or of any state or territory within the United States, or the renewal thereof.* See instruction from the Nevada Supreme Court in *O'lane v Spinney,* (110 Nev. 496, 874 P.2d 754, 1994) wherein the Court states in part as follows:

> NRS 11.190 gives judgment creditors six years within which to enforce their judgments. FN1 If a judgment has not been satisfied during the initial six-year

> period, the judgment creditor may renew the judgment for six additional years pursuant to NRS 17.214. FN2 Judgment renewal is simple: the judgment creditor simply files an affidavit with the clerk of the court where the judgment is entered within ninety days before the judgment expires. In the instant case, Spinney's judgment was entered on May 31, 1984. Therefore, a renewal affidavit must have been filed after March 2, 1990, and before June I, 1990. Spinney filed her renewal affidavit on August 29, 1990. *Id@* 496,754.

See also *Leven v. Frey*, (123 Nev. 399, 168 P.3d 712, 2007).

Plaintiff has clearly missed all opportunity to cure their problem which procedure is set forth in this instruction from the Nevada Supreme Court using NRS 17.214 as follows:

> Renewing a judgment generally requires a judgment creditor to file an affidavit of renewal within ninety days of the judgment's expiration and then record and serve the judgment renewal within three days of the affidavit's filing. FN3 Here, Frey timely filed his affidavit of judgment renewal on October 18, 2002. However, Frey did not serve the affidavit of renewal until October 30, 2002, and did not record the affidavit until November 4, 2002, well beyond the three-day requirement for recording and service. (NRS 17.214). *Leven v. Frey*, (123 Nev. 399, 168 P.3d 712, 2007)

II.

PLAINTIFF HAS FAILED TO ACT IN A TIMELY MANNER PURSUANT TO 28 USC § 2462

28 USC § 2462 states as follows:

> Except as otherwise provided by Act of Congress, an action, suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise, shall not be entertained unless commenced within five years from the date when the claim first accrued if, within the same period, the offender or the property is found within the United States in order that proper service may be made thereon.

Plaintiff is barred by the above statute as it has not performed any type of "proper service" or done so within the set timelines set in the statute. Moreover, Plaintiff is now trying to bring forth a new claim for relief, "seizure of Bundy's cattle, (property)" well beyond the time limitations set forth in the NRS 11.90, NRS 17.214 and 28 USC § 2462.

In addition, the judgment by the Court dated 9/17/1999, Doc #46, granting Plaintiff's Motion to enforce injunction did not include anywhere the authority for Plaintiff to seize Defendant's cattle as a form of relief and cannot therefore now be injected as an afterthought for enhancement of the original relief sought. The permanent injunction is the type of injunction that must be a final relief and all that was sought for must have been done at that time, not some 13 ½ years later or several years beyond the timelines established in NRS 11.90, NRS 17.214 and 28 USC § 2462.

Therefore, Plaintiff's Motion and relief requested therein should be denied.

III.

THE COURT HAS DETERMINED BUNDY I CLOSED WITH WARNING

Defendant asserts that Plaintiff has missed its opportunity to seek such relief it is asking of the Court as the time has run out. Therefore, Plaintiff's Motion and all forms of relief requested therein should be denied.

Moreover, the Court upon Plaintiff filing a Notice of Related Cases, Doc #48, issued what seems to be a "Warning" that the case was closed. See Doc #48 incorporated herein below as follows:

Doc # 48 starts on the next page of this document.

Notices

2:98-cv-00531-LRH -VCF United States of America v. Bundy **CASE CLOSED on 09/17/1999**
CLOSED

United States District Court

District of Nevada

Notice of Electronic Filing

The following transaction was entered on 6/11/2012 at 10:40 AM PDT and filed on 6/6/2012
Case Name: United States of America v. Bundy
Case Number: 2:98-cv-00531-LRH -VCF
Filer: United States of America
WARNING: CASE CLOSED on 09/17/1999
Document Number: 48

Docket Text:
NOTICE OF RELATED CASES 12-cv-804-LDG-GWF by Plaintiff United States of America. (AC)

2:98-cv-00531-LRH -VCF Notice has been electronically mailed to:

Blaine T Welsh Blaine.Welsh@usdoj.gov, Mary.Booker@usdoj.gov, doriayn.olivarra@usdoj.gov, eunice.jones@usdoj.gov, sue.knight@usdoj.gov

2:98-cv-00531-LRH -VCF Notice has been delivered by other means to:

Cliven Bundy
3315 Gold Butte Road
Bunkerville, NV 89007

The following document(s) are associated with this transaction:

Document description: Main Document
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1101333072 [Date=6/11/2012] [FileNumber=5757309-0] [0a07a335d54b611e57807cb9d1146202934bcd0f2f1072524a6e0750bc0671578ce ffd110383d7b81008cbb0798ccf07bcf66aa694b5bd7c6cab2a466d560c98]]

Set Up Judges in Civil Case

2:98-cv-00531 United States of America v. Bundy **CASE CLOSED on 09/17/1999**
CLOSED

United States District Court

District of Nevada

Notice of Electronic Filing

The following transaction was entered on 6/11/2012 at 10:37 AM PDT and filed on 6/6/2012
Case Name: United States of America v. Bundy
Case Number: 2:98-cv-00531-LRH -VCF
Filer:
WARNING: CASE CLOSED on 09/17/1999
Document Number: No document attached

Docket Text:
Case assigned to Judge Larry R. Hicks and Magistrate Judge Cam Ferenbach. (AC)

2:98-cv-00531-LRH -VCF Notice has been electronically mailed to:

Blaine T Welsh Blaine.Welsh@usdoj.gov, Mary.Booker@usdoj.gov, doriayn.olivarra@usdoj.gov, eunice.jones@usdoj.gov, sue.knight@usdoj.gov

2:98-cv-00531-LRH -VCF Notice has been delivered by other means to:

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ATTORNEYS FOR THE UNITED STATES

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,	CV-S-98-531-JBR (RJJ)
Plaintiff,	**NOTICE OF RELATED CASES**
v.	
CLIVEN BUNDY,	
Defendant.	

The United States submits this Notice of Related Cases pursuant to LR 7-2.1, which requires counsel to set forth the title and number of each possibly related action, together with a brief statement of their relationship and the reasons why assignment to a single district judge and/or magistrate may be desirable.

1

This litigation is related to United States v. Cliven Bundy, 2:12-cv-00804 (D. Nev. Filed May 14, 2012) (hereafter "Cliven Bundy II"). Both cases involve claims by the United States against Mr. Bundy for grazing his livestock on federal lands without first obtaining a permit or other federal authorization, and without paying the requisite grazing fees. Both cases also involve similar questions of law. The federal lands at issue, however, are not the same. Whereas the litigation in the above-captioned case involved land previously known as the Bunkerville Allotment, Cliven Bundy II involves federal lands within the Gold Butte area *other than* those that encompass the former Bunkerville Allotment.

The final judgment in this case was issued in 1999, and the case has since been closed. In addition, the district judge who presided over this case, the Honorable Johnnie B. Rawlinson, no longer sits in the District Court for the District of Nevada. The United States, however, reserves the right to pursue further enforcement remedies in connection with the injunction previously granted in this case. In the event that the United States pursues such remedies, it will file a renewed notice at that time and address whether the changed circumstances merit assignment of the two cases to a single district judge and/or magistrate, and whether such assignment would further judicial economy. The United States respectfully asserts that the case should be assigned to the Honorable Lloyd D. George, the same judge who is overseeing Cliven Bundy II, given the similar factual and legal issues in the two cases and the possibility that the United States may seek coordinated enforcement of the remedy previously granted in this case and any relief that may be granted in Cliven Bundy II.

DATED this 5th day of June, 2012.

IGNACIA S. MORENO, Assistant Attorney General

/s/ Terry M. Petrie
TERRY M. PETRIE, Trial Attorney
U.S. Department of Justice
Environment and Natural Resources Division

DANIEL G. BOGDEN, United States Attorney
NADIA AHMED
Special Assistant United States Attorney
ATTORNEYS FOR THE UNITED STATES

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of June 2012, a true and correct copy of NOTICE OF RELATED CASES was sent via U.S. First Class Mail to the following:

Cliven Bundy
3315 Gold Butte Road
Bunkerville, NV 89007

/s/ Terry M. Petrie
TERRY M. PETRIE

U.S. Department of Justice

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June 5, 2012

VIA Overnight Federal Express

U.S. District Court
District of Nevada
U.S. Courthouse
333 S. Las Vegas Blvd
Las Vegas, NV 89101
(702) 464-5400

Re: *United States v. Bundy*,
No. CV-S-98-531-JBR (RJJ)

Dear Court Clerk:

Enclosed please find a copy of the United States **NOTICE OF RELATED CASES** for filing in the above captioned case. I attempted to file the document through the courts ECF filing system, but due to the age of the case, it was not available. The Clerk's office instructed me to send the document and they would place the case in the ECF system and then file it for me.

If you need anything else from me or have any questions, please contact me at the above number. Thank you.

Sincerely,

Susan Middagh
Paralegal Specialist

Encl.

Defendant offers that according to the "Warning" issued with respect to Doc #48 that Bundy I is determined by the Court as a matter of fact that the case is closed as of 9/17/1999. It appears the Court was trying to signal Plaintiff that which is established in NRS 11.90 and Nevada case law establishing the effects of the statute of limitations and when remedies could have been applied by Plaintiff in the face of Plaintiff's assertions which state in part as follows:

> [T]he United States, however, reserves the right to pursue further enforcement remedies in connection with the injunction previously granted in this case. In the event that the United States pursues such remedies it will file a renewed notice at that time and address whether the changed circumstances merit assignment of the two cases to a single district judge and or magistrate, and whether such assignment would further judicial economy. Doc #48, pg-2, Ln 11-16.

Defendant respectfully submits that based on the "Warning" determination that the case was closed as of 9/17/1999, Plaintiff's Motion and all relief therein requested should be denied.

IV.

PLAINTIFF IS BARRED RELIEF UNDER THE DOCTRINE OF LACHES

Laches is defined as "remissness", "slackness", and is an "unreasonable delay pursuing a right or claim". When asserted in litigation, it is an equitable defense, or doctrine. The person invoking laches is asserting that an opposing party has "slept on its rights," and that, as a result of this delay, circumstances have changed such (13 ½ years later) that it is no longer just to grant the plaintiff's original claim. Put another way, failure to assert one's rights in a timely manner results in a claim being barred by laches. Laches is a form of *estoppel* for delay.

Clearly in this instant matter, Plaintiff has never had the Court authority to seize any of Defendant's property and is now attempting to acquire such authority some 13 ½ years after the fact.

Plaintiff now brings a new motion for enforcement that does not meet the procedures set forth in renewing an enforcement authority by proper affidavits submitted in a proper and timely manner and tries to enhance the original relief sought.

Therefore, Plaintiff's Motion and relief sought therein should be barred by the Doctrine of Laches and denied.

V.

PLAINTIFF ASSERTS IT HAS POWER WITHOUT LIMITATIONS THEN MAKES A REQUEST OF THIS COURT FOR AN ORDER THAT WOULD MAKE THEIR ACTIONS LAWFUL UNDER NEVADA STATE LAW

Plaintiff states in its Motion that it has all power without limitations and then relinquishes to the fact that Nevada has superior authority by and through its Brand Inspectors as follows:

> Although BLM and NPS have the legal authority to impound trespass livestock under federal law (following notice and other regulatory requirements), and to transport or sell such livestock to private parties if the impounded livestock are not redeemed by the owner, the State of Nevada requires a brand inspection certificate to either transport or transfer legal ownership of the cattle. NEV. REV. STAT. §§ 565.090; 565.100; 565.120. These certificates are issued by the State Brand Inspector, and no rancher will agree to purchase impounded livestock from the United States absent such a brand inspection certificate. Ex. 12, Declaration of Amy Lueders 7. (Plaintiff Motion, Pg-11, Ln-5-11)

Plaintiff then cites the governing statute enacted by the State of Nevada as follows:

> In 2005, the State of Nevada enacted a new statute that prohibits the State Brand Inspector from issuing a brand inspection certificate to a federal agency unless the agency first obtains a court order approving its seizure of cattle. This statute states:
>
> 1. Notwithstanding any provision of this chapter to the contrary, if a governmental entity seizes any privately owned animals subject to brand inspection pursuant to this chapter, the Department or its authorized inspector shall not issue brand inspection clearance certificates or permits to remove the animals from a brand inspection district or for the transfer of ownership of the animals by sale or otherwise unless:

> (a) Before the seizure, the governmental entity obtains approval for the seizure **from a court of competent jurisdiction**; and
> (b) The governmental entity submits a copy of the order approving the seizure to the Department or its authorized inspector.

NEV. REV. STAT. § 565.125.[7] (Emphasis Added)

The Nevada Statute was enacted as a Sovereign Act of the State of Nevada in their ongoing ability to manage the Public Lands of Nevada. Moreover, within this statute clear instruction is given that the governmental body must first obtain proper seizure orders **from a court of competent jurisdiction**.

Plaintiff further acknowledges that the State of Nevada has asserted its Sovereignty, which creates a case in controversy for Plaintiff wherein Plaintiff states in part as follows:

> ...[I]n communications with BLM, however, the State of Nevada has clarified its position that a permanent injunction prohibiting trespass on public lands, such as the orders issued by this Court in 1998 and 1999, does not meet the requirements of NEV. REV. STAT. § 565.125, which states that a court of competent jurisdiction must specifically approve of the proposed "seizure." (Plaintiff's Motion, Pg-12, Ln 1-5)
>
> ...[T]he United States does not agree with Nevada's characterization of the statute or the 1998 and 1999 Orders. Notwithstanding this, in order to facilitate the Department of the Interior's coordination with the State and to allow the Nevada Department of Agriculture to cooperate in such impoundment by issuing brand inspection certificates, the United States requests that any Court order enforcing the injunction explicitly authorize the United States to seize (i.e., impound) any trespass cattle that remain on the former Allotment should Bundy fail to remove them. (Plaintiff's Motion, Pg-12, Ln 6-12)
>
> ...[I]n addition to the State's requirement that a court order be presented for issuance of brand clearance certificates by the State Brand Inspector, the Clark County Sheriff – whose cooperation would also be vital should an impoundment be necessary – has indicated that he would require a court order authorizing such impoundment in order for him to cooperate with (i.e., provide local law enforcement support to) the United States. (Plaintiff's Motion, Pg-12, Ln 13-17)

The Plaintiff admits hereinabove that the State of Nevada has Sovereign authority over the public lands within its borders.

Taking the State's instruction about a court of competent jurisdiction coupled with NRS 321.596 et seq (Nevada Public Lands Ownership Act, 1979) and the enactment of AB227 by the 2013 Nevada Legislature, entitled (*AN ACT relating to public lands; creating the Nevada Land Management Task Force to conduct a study addressing the transfer of public lands in Nevada from the Federal Government to the State of Nevada; and providing other matters properly relating thereto.*), the State has asserted its Sovereignty over all the Public Lands within its boundaries.

These are the very State Laws that Defendant has relied upon from the beginning. Plaintiff requests that it needs this Court to issue an Order so that it makes things go smoothly in the illegal confiscation of Defendant's property and then says it won't follow other similar Nevada Sovereign Laws. Moreover, the action taken by Nevada demanding an Order **from a court of competent jurisdiction** Defendant asserts then that this Court is not that **court of competent jurisdiction** because this Court is not able to protect Defendant's property rights which include, adjudicated water rights, grazing and forage rights and any and all other rights that accompany Defendant's water rights. Defendant has never made a claim beyond that which he has nor has he ever made the claim that he owns the public lands in fee simple title.

Plaintiff's assertions that Defendant is violent and is a danger to the public safety are baseless and without foundation and Plaintiff claiming it needs protection from Defendant in the form of some super styled Order from this Court is silly and Plaintiff should be sanctioned for trying to prejudice this Court and gaining an unfair advantage with perpetuation of such lies.

Plaintiff's Motion and relief requested therein should be denied.

VI

PUBLIC LAND OWNERSHIP ISSUE NEEDS REVISITED

Since Plaintiff has taken license to now try to enlarge its authority long after the time has expired to do so, then Defendant shall now, (if he does not prevail with the defenses of the statute of limitations and laches) respectfully request this Court to revisit the land title issue to the public lands. Defendant asserts that the lower federal courts have by way of bootstrapping together decisions in a roundabout way held back in the 1990's that the United States owns the public lands here in Nevada. However, close examination of how those rulings came to be needs to be revisited based on the following arguments:

Defendant seeks relief on the grounds that this Court lacks proper jurisdiction in this matter because he does not graze any cattle on any lands owned by the United States. Now the counter argument to Defendant's assertion here is that all the questions of who owns the lands in question has long been settled, when in fact it will be shown that that is not true. Plaintiff tries to establish foundation that the question of the public lands ownership was settled in U.S. v. NYE COUNTY, NEV. 920 F. Supp. 1108 (1996), however it will be shown that that case actually did not settle the land ownership matter as the Plaintiff would like us to believe. The Sovereign State of Nevada spoke and acted back in 1979 (NRS 321.596-599 *et seq* (effective July 1, 1979)) and settled the public lands ownership matter within the boundaries of the State and this Court said in Nye that it did in fact take such an act that does establish a controversy. This Court however, did not conclude a complete judicial determination on that matter back then as the then Nevada Attorney General intervened and filed a stipulation that the United States owned the public lands which was in defiance of the Act. Defendant contends that the Nevada AG did not have that unilateral power to make such a determination and waive the sovereignty on some 93%

of the land surface of the State of Nevada. This Court then followed the wishes of the Nevada AG when it stated in its opinion in part as follows:

> [N]evada concedes that, by statutes enacted in 1979, it claims ownership of some of the lands in question. Nevada's enactment of statutes claiming ownership is sufficient to create an adverse legal interest to the United States' assertion of ownership. See United States v. Oregon, 295 U.S. 1, 26, 55 S.Ct. 610, 620, 79 L.Ed. 1267 (1935). This is particularly true where, as in the present matter, a political subdivision of Nevada has relied upon that adverse legal position to take actions opposing the United States' asserted title. While Nevada now concedes that its statutory claim is legally untenable, that concession does not moot the question of whether it claims ownership of the public lands. **Rather, the concession is tantamount to a consent that judgment should be entered in favor of the United States**. Id @ 1113-14. (Emphasis added).

The above language of this very Court is very clear that no proper adjudication of the public lands ownership happened in that matter. Plaintiff tries to run with that from that point forward stating it was again settled in several cases thereafter dealing with this same issue. Only the assumption of ownership has been there in all of the cases dealing with public lands disputes from time in memorial. A Sovereign State has not ever stood to defend their ownership claim in the court of original jurisdiction the Supreme Court of the United States.

VII

NEVADA APPROPRIATED THE PUBLIC LANDS IN 1979

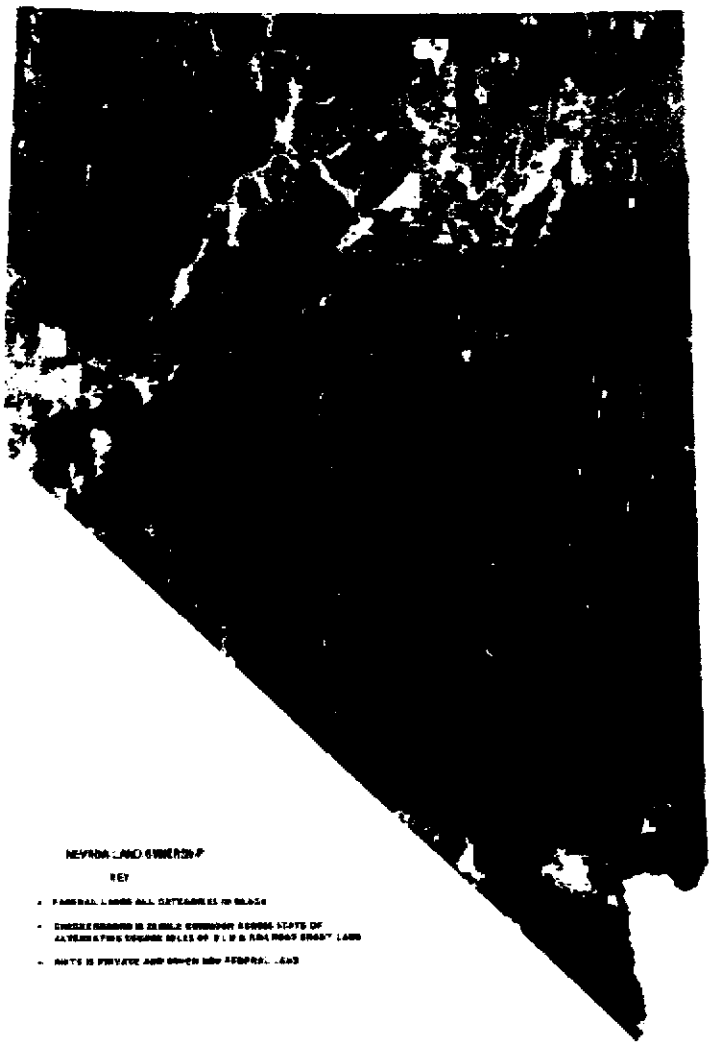
NRS 321.596-599 *et seq* (effective July 1, 1979) and its Legislative Findings therewith did what congress failed to complete in its promise in the Enabling Act admitting Nevada into the Union in 1864. Defendant stipulates that the United States acquired the public domain making up Nevada by and through the Treaty of Guadalupe Hidalgo in 1848. It is what happened in 1864 that instructed Congress to honor certain terms and conditions to have another new State of the Union join in. The common challenge to Defendant's claim herein is the disclaimer clause in the Enabling Act which states as follows:

> Section 1. Authorization for formation of state. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the inhabitants of that portion of the territory of Nevada included in the boundaries hereinafter designated be, and they are hereby, authorized to form for themselves, out of said territory, a state government, with the name aforesaid, which said state, when formed, **shall be admitted into the Union upon an equal footing with the original states, in all respects whatsoever**. (Emphasis Added).
>
> Sec. 4. Authorization to form constitution and state government; limitations. *And be it further enacted,*
>
> Third. That the people inhabiting said territory do agree and declare that they **forever disclaim all right and title to the unappropriated public lands lying within said territory, and that the same shall be and remain at the sole and entire disposition of the United States**; and that the lands belonging to citizens of the United States residing without the said state shall never be taxed higher than the land belonging to the residents thereof; and that no taxes shall be imposed by said state on lands or property therein belonging to, or which may hereafter be purchased by, the United States. (Emphasis Added).
>
> Sec. 10. Five percent of subsequent sales of public lands by United States to be paid to state for public roads and irrigation. *And be it further enacted,* That five percentum of the proceeds of **the sales of all public lands lying within said state, which shall be sold by the United States subsequent to the admission of said state into the Union**, after deducting all the expenses incident to the same, shall be paid to the said state for the purpose of making and improving public roads, constructing ditches or canals, to effect a general system of irrigation of the agricultural land in the state, as the legislature shall direct. (Emphasis Added).

It appears in the Third part of Sec-4 of the Act that the People of the new State have disclaimed all rights, title claim etc. forever to the United States. Upon clear examination of Section 1 and 10 all that the disclaimer is a Quit Claim Deed to the United States by the Inhabitants putting a condition on the new State that when the United States disposed of the public lands that the State would not have any claim to cloud title to the new owners. When coupling all of these Sections together, which includes the Equal Footing status guaranteed to Nevada by Congress, we see the United States was only appointed the sole real-estate agent for Nevada, the same as Ohio did to settle the Revolutionary War debt with the sale proceeds of the public lands in that State. The school sections granted prior to statehood was an appropriation

prior to statehood, not a waiver as some would claim. Once statehood happened, that was instant and Nevada was on an Equal Footing with all her Sister States of the Union.

Fig-1 LAND MASS IN NEVADA CLAIMED BY FEDERAL GOVERNMENT



Sec-10 made it clear that Congress agreed to dispose of the public lands when it was agreed by the parties that; the sales of all public lands lying within said state, … shall be sold by the United States subsequent to the admission of said state into the Union. The above map (Fig-1) clearly shows that Congress did not keep that promise and then unilaterally withdrew all

disposals in 1976 with the enactment of the *Federal Land Policy and Management Act,* or *FLPMA* (Pub.L. 94-579), which is well known that was the Act that fueled the Sagebrush Rebellion and hence NRS 321.596-599 *et seq*. Let us examine history and what Congress said about these enabling acts and the intention set forth by the Congressional House Public Lands Committee stating in part as follows:

> "When these States stipulated not to tax the lands of the United States until they were sold, they rested upon the implied engagement of Congress to cause them to be sold, within a reasonable time. No just equivalent has been given those States for a surrender of an attribute of sovereignty so important to their welfare, and to an equal standing with the original States. ... A remedy for such great evils may be found in carrying into effect the spirit of the Federal Constitution, which knows of no inequality in the powers and rights of the several States." 20th U.S. Congress, Public Lands Committee Report, February 5, 1828.
>
> Delaying the transfer of public lands "would not only contravene the spirit of the several acts of cession which have been adverted to, but would be inconsistent with the several compacts between the general government and the new States on their admission." And would "have been pronounced on all hands a violation of the compact, and a most revolting breach of good faith on the part of the United States?" 23rd U.S. Congress, Public Lands Committee Report, December 27, 1833.

The evidence is overwhelming that Congress has ever been duty-bound to transfer title to the public lands within a reasonable time from the new states being admitted into the Union. Congress itself said so in this Committee. So did the formerly "western states" of Illinois, Florida, Missouri, Louisiana, and many others during those prior years in the early 1800's and we see Congress then did dispose of the public lands within those new States and they were on a **full** Equal Footing with the Original 13 Sovereign States. The disposals stopped at the Colorado border and west. More of the record from the House Committee dealing with the matter:

> Illinois "cannot resist impressing in on the serious attention of the Congress of the Union how injurious must be the operation of such a retarded disposition of the vast bodies of public land lying within this State, and how inevitably it must

check its increase and population, and consequent improvement and resources, proving highly detrimental to the State, in point of revenue, by withholding from taxation such vast proportions of its soil." (Supplementing the original record).

Delaying the disposal of the public lands "operates as a virtual infraction of the compact." (Supplementing the original record)

"From the terms of that compact, and upon the supposition that the same is obligatory upon the parties to it, any act on the part of the government to delay the sales of the land in a reasonable period, whether accomplished by a positive refusal to sell, or by demanding for it a sum greatly beyond its value, by which the sales would be defeated, in a great measure, if not wholly so, would doubtless be an infraction of the compact itself."

"Should the present oppressive system continue, and no amelioration take place, it will not be denied that this question is susceptible of being presented in so grave an aspect as to involve considerations of the deepest magnitude, and demand the most serious and enlightened reflection of those charged with the interests of the confederacy." 20th Congress, 2nd Session, February 2, 1829.

Fig-2 Federal lands within the United States

Fig-2 shows further that Congress withheld their side of the obligation to dispose of the public lands starting at the Colorado border and then to the west. The Equal Footing doctrine has been ruled to be nothing more than political equality and not meant to be in the truest sense of the words. But if that be the case the courts have a conflict in these rulings and that needs to be corrected. Notice in Fig-1 that the only lands that are the State of Nevada are the white spots which are hardly distinguishable; the black portions are federally claimed lands and still remain in territorial status. Note what Plaintiff rightly puts forth in its motion as to what the status of their claimed lands are:

> [T]he United States retains and manages these federal lands pursuant to its powers under the Constitution, primarily the Property Clause, which gives the Congress the "power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States." U.S. Const. art. IV, § 3, cl. 2. The Supreme Court has consistently interpreted this power to be expansive, repeatedly observing that "the power over the public land thus entrusted to Congress is **without limitations**." United States v. City & County of S.F., 310 U.S. 16, 29 (1940). See also Kleppe v. New Mexico, 426 U.S. 529, 539 (1976); Alabama v. Texas, 347 U.S. 272, 273 (1954); United States v. California, 332 U.S. 19, 27 (1947); Gibson v. Choteau, 80 U.S. 92, 99 (1871); United States v. Gratiot, 39 U.S. 526, 537 (1840). The Supreme Court has emphasized that Congress properly exercises "the powers of both a proprietor and of a legislature over the public domain." Kleppe, 426 U.S. at 540; Alabama, 347 U.S. at 273. (Plaintiff's Motion @ pg-22, Ln 26-28 and pg-23, Ln 1-9) (Emphasis Added).

Defendant concedes that the case law holding that the United States, as Plaintiff contends in this matter does have the unlimited powers over federally owned lands "without limitations". The implication of that is that on the black portions of the lands in Fig-1 clearly means there are no rights protected under the Constitution. Defendant has no water rights; Nevada water law does not apply to allow him to graze his cattle. All water rights that were developed over several generations of adjudications under state law are extinguished and taken without the due process of eminent domain or just compensation, i.e. no constitutional protections for property owned by

the Defendant. This was never the intent of the Inhabitants of the Territory of Nevada or the Citizens of the new State of Nevada. The "western states" of 1828 (Illinois, Indiana, Missouri, Arkansas, Louisiana, Alabama, and Florida) struggled with the same issues we face today from the federal government failing to transfer title to their public lands (i.e., poor education funding, stifled economy, restricted access to abundant resources, etc.). Those 1828 "western states" succeeded in compelling the federal government to transfer title to their public lands. Nevada has done the same through its Sovereign Legislature through NRS 321.596-599 *et seq* and the Legislative Findings therewith.

Moreover, Defendant has operated under and relied upon the authority in NRS 321.596-599 *et seq* wherein the Sovereign State of Nevada by and through its Legislature laid claim to the lands in question in the *Bundy I* matter and the lands named in this pending matter. The State of Nevada laid claim to all lands within its borders retroactively to its coming into the Union. Defendant asserts that the arguments offered herein with respect to the proper reading of the Enabling Act for Nevada is a matter of first impression as is the element that the **"without limitations"** powers of the United States cannot be allowed to thrive within a Sovereign State of the Union. That in and of itself violates those holdings of the courts that the Equal Footing Doctrine only applies to political equality with sister states.

Such power is a full governing power unbridled by the limits of the Constitution. Pursuant to such power the Congress is authorized to establish an executive, a legislature, and courts and not the Republican form of government guaranteed by Art. VI; indeed, a territorial act is itself a constitution. We see such governing power clearly ceases immediately on Nevada's statehood. American Insurance v. 356 Bales of Cotton, 26 U.S. 511 (1828); Brenner v. Porter, 50 U.S. 234 (1850).

> "The Constitution deals with states, their people and their representatives. The sole object of the territorial clause was to transfer to the new government the Northwest Territory and to give power to apply that territory to the objects dictated by the states. The Constitution does not extend to territories of its own force. Congress has power over territory it does not possess in the States". Downes v. Bidwell, page 773.

The clear implication of this holding is that the powers authorized to Congress pursuant to Article IV, Section 3, Clause 2, can **exist only outside the boundaries of states admitted into the union**. It is irrational to assert that such full powers of governance covering 93% of the land surface (see Fig-1) of a Sovereign State of the Union and at the same time assert that such state has been admitted to the Union on an equal footing with the original states in every respect whatsoever.

The well settled law of how important the terms and instructions of the Enabling Act are is cemented in HAWAII ET AL. v. OFFICE OF HAWAIIAN AFFAIRS ET AL. 556 U. S. ____ (2009) wherein the Court stated in part; ...("[T]he consequences of admission are instantaneous, and it ignores the uniquely sovereign character of that event ... to suggest that subsequent events somehow can diminish what has already been bestowed"). "And that proposition applies *a fortiori* where virtually all of the State's public lands ... are at stake." Id @ ____.

Defendant contends that this language is instructive that the long held interpretation of the Disclaimer Clause in the Enabling Act is inappropriate because Section-10, the five percentum clause in the Act dictates in no obfuscation that the United States shall be the real-estate agent for the new just admitted State of Nevada and shall dispose of all of the public lands in that new State in a timely manner and when the Congress defaulted on its promise and obligates the State of Nevada exercising its sovereign powers within its borders did dispose of all the public lands to itself.

To allow this type of inequality to continue where Nevada is not on an Equal Footing with the original 13 States and the others east of Colorado perpetuates the "separate but equal" doctrine held early on in this nation's jurisprudence which was properly overturned in Brown v Board of Education 347 U.S. 483 (1954).

VIII

THE ORIGIN OF BUNDY I WAS BASED ON AN ILLEGAL ENFORCEMENT OF THE ENDANGERED SPECIES ACT OF 1973

The origin of the decision in Bundy I was based on a fraudulent application of a Full Force and Effect Decision issued to Defendant back in 1993 which was illegally implementing the Endangered Species Act of 1973, wherein the decision issued by the BLM states in part as follows on the very first page of the decision:

> On August 4, 1989 the U.S. Fish and wildlife Service (USFWS) listed the Desert Tortoise within its range in the Mojave Desert as endangered under an emergency ruling in the Federal Register Notice, Vol. 54, No. 149 in compliance with the Endangered Species ACT of 1973 as amended and 50 CFR 424.20.

(BLM, Full Force and Effect Decision, Pg-1, Para-1, January 28, 1993)

The BLM alleged back in Bundy I that Defendant violated the Endangered Species Act (ESA) way back in the 1990's and has continued the same violations to this day. The BLM offered back then that a determination by the Agency was made based upon a biological opinion and all cattle in basically the whole of Clark County, Nevada were to be removed. At the time there were 52 Permittees running cattle in the questioned area claimed by the United States and everyone was ordered to remove their cattle. Defendant took a civil disobedient stand and said no. More on that stand later.

The then and now entire authority claimed by Plaintiff even now in their Motion to Enforce the Permanent Injunction was at that time and is now pursuant to the *Endangered Species Act of*

1973 (ESA; 7 U.S.C. § 136, 16 U.S.C. § 1531 et seq.) establishing the so called "Desert Tortoise", and now plants etc., in Southern Nevada "threatened and endangered" pursuant to said Act. However, the particular "Desert Tortoise" and the plants they used were never proven to meet the criteria of the Act wherein the critter and the plants had to be engaged in "foreign commerce" pursuant to the originating Treaties; see these sections of the Act which state in part as follows:

> ***(a) Findings***
>
> *The Congress finds and declares that—*
> *(1) various species of fish, wildlife, and plants in the United States have been rendered extinct as a consequence of economic growth and development untempered by adequate concern and conservation;*
> *(2) other species of fish, wildlife, and plants have been so depleted in numbers that they are in danger of or threatened with extinction;*
> *(3) these species of fish, wildlife, and plants are of esthetic, ecological, educational, historical, recreational, and scientific value to the Nation and its people;*
> *(4) the United States has pledged itself as a sovereign state in the international community to conserve to the extent practicable the various species of fish or wildlife and plants facing extinction, pursuant to—*
> *(A) migratory bird treaties with Canada and Mexico;*
> *(B) the Migratory and Endangered Bird Treaty with Japan;*
> *(C) the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere;*
> *(D) the International Convention for the Northwest Atlantic Fisheries;*
> *(E) the International Convention for the High Seas Fisheries of the North Pacific Ocean;*
> *(F) the Convention on International Trade in Endangered Species of Wild Fauna and Flora; and*
> *(G) other international agreements; and*
>
> ***(b) Purposes***
>
> *The purposes of this chapter are to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, to provide a program for the conservation of such endangered species and threatened species, and to take such steps as may be appropriate to achieve the purposes of the treaties and conventions set forth in subsection (a) of this section.*

And then a final definition of what the critter and the plants need to be engaged in:

(9) The term "foreign commerce" includes, among other things, any transaction—
(A) between persons within one foreign country;
(B) between persons in two or more foreign countries;
(C) between a person within the United States and a person in a foreign country; or
(D) between persons within the United States, where the fish and wildlife in question are moving in any country or countries outside the United States.

The linchpin being used by Plaintiff for the authority to gather and impound Defendant's cattle is the Endangered Species Act of 1973. The effect that they wanted to bring about appears to be the removal of only Defendant's property (cattle) from the range for the Desert Tortoise and plants etc., all listed under the Act. The Act was passed pursuant to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (1973). Moreover, the Act derives its sole authority from international agreements. Sec. 2(a)(4)(A-G) of the Act.

The purpose of the Act is all predicated on achieving the purposes of treaties and conventions which are international in nature. Sec 2(b) of the Act. The commercial activity, which has to be foreign commerce, referred to in the Act only involves individuals that are not described or defined persons such as the Defendant or the type of business Defendant is not now nor ever have been engaged in. Sec 3(1) & (6) (A-D) of the Act.

The following line of cases that deal with International Treaty Law show lack of standing on the part of Plaintiff should it pursue such a scheme to impose International Treaty Law upon Defendant's property. The following cases state in part;

Santovincenzo v. Egan,284 U.S. 30, 40, 52 S.Ct. 81 (1931):

> "The treaty-making power is broad enough to cover all subjects that properly pertain to our foreign relations, and agreement with respect to the rights and privileges of citizens of the United States in foreign countries, and of the nationals of such countries within the United States, and the disposition of the property of aliens dying within the territory of the respective parties, is within the scope of that power."

In re Reid, 6 F. Supp. 800, 803 (D. Ore., 1934):

> "For, although the treaty making power extends to all subjects which are proper for negotiation between nations, 'it would not be contended that it extends so far as to authorize what the Constitution forbids."

Rev. on other grounds, 73 F.2d 153 (9th Cir., 1934).

Skiriotes v. State of Florida, 313 U.S. 69, 72, 73, 61 S.Ct. 924, 927 (1941):

> "International law is a part of our law and as such is the law of all States of the Union..., but it is a part of our law for application of its own principles, and these are concerned with International rights and duties and not with domestic rights and duties."

Spies v. McGhee, 316 Mich. 614, 25 N.W.2d 638, 644 (1947):

> "We do not understand it to be a principle of law that a treaty between sovereign nations is applicable to the contractual rights between citizens of the United States when a determination of these rights is sought in State courts."

Antosz v. State Comp. Comm., 43 S.E.2d 397 (W.Va. App., 1947): (Workmen's comp case with NRAs claiming benefits):

> "But such construction should not be extended so as to infringe upon the Constitution of the United States, or to invade the province of the states of the Union in matters inherently local, or to restrict the various states in the exercise of their sovereign powers, " Id., at 399, 400.

Seery v. United States, 127 F. Supp. 601, 606 (Ct. Cl., 1955):

> "{A}n executive agreement, not being a transaction which is even mentioned in the Constitution, cannot impair Constitutional rights."

Pierre v. Eastern Air Lines, Inc., 152 F. Supp. 486 (D.N.J., 1957): (Baggage lost on international flight):

> "The Warsaw Convention regulates and applies to all international transportation of persons, baggage, or goods performed by aircraft for hire," Id., at 487.
>
> "It is well settled that no article or term of a treaty may nullify any guarantee of a right preserved by constitutional provision to our citizens. No treaty may authorize what the Constitution forbids," Id., at 488.

Powell v. Zuckert, 366 F. 2d 634, 640 (D.C. Cir., 1966): (Discharge of Airman in Japan, government asserted treaty as authority):

> "[N]o agreement with a foreign nation can confer power on the Congress, or on any other branch of Government, which is free from the restraints of the Constitution. Reid v. Covert, 354 U.S. 1, 16, 77 S.Ct. 1222, 12430..."

Hjelle v. Brooks, 377 F. Supp. 430, 438 (D. Alaska, 1974): (Crab fisherman sued state to enjoin fish regulations):

> "As to the treaties, plaintiffs lack standing to invoke them on their behalf, for plaintiffs are 'not in a position to invoke the rights of other governments or of the nationals of other countries.'"

Soucheray v. Corps of Engineers of U.S. Army, 483 F. Supp. 352, 357 (W. D. Wis., 1979): (Landowners sued for damages for water level of Lake Superior rising):

> "The Court is in full agreement with plaintiffs that a treaty may not violate the constitutional rights of American citizens."

And, even the United Nations Charter, Art. 2, par. 7:

> "Nothing contained in the present charter shall authorize the United Nations to interfere in matters which are essentially within the domestic jurisdiction of any state..."

Based on the authorities cited above, the Plaintiff and this Court cannot impose the power of International Treaty Law against Defendant and his property in this instant matter and this Court must deny Plaintiff's Motion and the requested relief sought therein. In addition, if this entire matter is based on a false and fraudulent premise for its authority when it was conceived, then it is even unto this day fruit of the poisonous tree and all actions for enforcement of it that have been implemented are indeed *void ab initio* and do not attach to Defendant or his property.

Plaintiff may assert that the Act and all authority therefrom operate against Defendant and his property via the Commerce Clause. For the answer on that we need to examine what the Supreme Court has stated in part in the following cases;

A.L.A. Schecter Poultry Corp. v. United States, 295 U.S. 495, 55 S.Ct. 837 1935):

> "If the commerce clause were construed to reach all enterprises and transactions which could be said to have an indirect effect upon interstate commerce, the federal authority would embrace practically all the activities of the people, and the authority of the state over its domestic concerns would exist only by sufferance of the federal government. Indeed, on such a theory, even the development of the state's commercial facilities would be subject to federal control," Id., at 546.

United States v. Lopez, --- US --- (1995) citing from the slip opinion @ 18-19

> "In Jones & Laughlin Steel, 301 U. S., at 37, we held that the question of congressional power under the Commerce Clause "is necessarily one of degree." To the same effect is the concurring opinion of Justice Cardozo in Schecter Poultry:"
>
> 'There is a view of causation that would obliterate the distinction of what is national and what is local in the activities of commerce. Motion at the outer rim is communicated perceptibly, though minutely, to recording instruments at the center. A society such as ours 'is an elastic medium which transmits all tremors throughout its territory; the only question is of their size.'" 295 U. S., at 554 (quoting United States v. A.L.A. Schecter Poultry Corp, 76 F. 2d 617, 624 (CA2 1935) (L. Hand, J., concurring)).'
>
> "These are not precise formulations, and in the nature of things they cannot be. But we think they point the way to a correct decision of this case. The possession of a gun in a local school zone is in no sense an economic activity that might, through repetition elsewhere, substantially affect any sort of interstate commerce. Respondent was a local student at a local school; there is no indication that he had recently moved in interstate commerce, and there is no requirement that his possession of the firearm have any concrete tie to interstate commerce."
>
> "To uphold the Government's contentions here, we would have to pile inference upon inference in a manner that would bid fair to convert congressional authority under the Commerce Clause to a general police power of the sort retained by the States. Admittedly, some of our prior cases have taken long steps down that road, giving great deference to congressional action. See supra, at 8. The broad language in these opinions has suggested the possibility of additional expansion, but we decline here to proceed any further. To do so would require us to conclude that the Constitution's enumeration of powers does not presuppose something not enumerated, cf. Gibbons v. Ogden, supra, at 195, and that there never will be a distinction between what is truly

national and what is truly local, cf. Jones & Laughlin Steel, supra, at 30. This we are unwilling to do."

"For the foregoing reasons the judgment of the Court of Appeals is Affirmed."

Lopez: Justice Thomas, concurring. Citing that slip opinion @ 13-14

"There is a much better interpretation of the "affect[s]" language: because the Court had earlier noted that the commerce power did not extend to wholly intrastate commerce, the Court was acknowledging that although the line between intrastate and interstate/foreign commerce would be difficult to draw, federal authority could not be construed to cover purely intrastate commerce. Commerce that did not affect another State could never be said to be commerce "among the several States."

"But even if one were to adopt the dissent's reading, the "affect[s]" language, at most, permits Congress to regulate only intrastate commerce that substantially affects interstate and foreign commerce. There is no reason to believe that Chief Justice Marshall was asserting that Congress could regulate all activities that affect interstate commerce." See Ibid.

"The second source of confusion stems from the Court's praise for the Constitution's division of power between the States and the Federal Government:"

'The genius and character of the whole government seem to be, that its action is to be applied to all the external concerns of the nation, and to those internal concerns which affect the States generally; but not to those which are completely within a particular State, which do not affect other States, and with which it is not necessary to interfere, for the purpose of executing some of the general powers of the government.' Id., at 195.

"In this passage, the Court merely was making the well understood point that the Constitution commits matters of "national" concern to Congress and leaves "local" matters to the States. The Court was **not** saying that whatever Congress believes is a national matter becomes an object of federal control. The matters of national concern are enumerated in the Constitution: war, taxes, patents, and copyrights, uniform rules of naturalization and bankruptcy, types of commerce, and so on. See generally U. S. Const., Art I, Sec. 8. Gibbons' emphatic statements that Congress could not regulate many matters that affect commerce confirm that the Court did not read the Commerce Clause as granting Congress control over matters that "affect the States generally.' Gibbons simply cannot be construed as the principal dissent would have it." (Emphasis in original) Lopez @ --- .

> "I am aware of no cases prior to the New Deal that characterized the power flowing from the Commerce Clause as sweepingly as does our substantial effects test. My review of the case law indicates that the substantial effects test is but an innovation of the 20th century." Lopez @ ---.

The above authority clearly denies Plaintiff and this Court the ability to assert Commerce Clause jurisdiction over the Defendant and his property with respect to the ESA authority by and/or through International Treaty Law jurisdiction or any other attempted combination of schemes to impose any such authority.

Also, throughout all these several years, no one from the Plaintiff's side has asserted, brought forth or entered any evidence that any of the Desert Tortoises or plants etc., in and around the lands in question of Clark County, Nevada area are migrating internationally and/or even engaged in interstate migrations or foreign commerce. It would have to be proven that the very Tortoises, plants, etc., in and around the area are such migratory types involved/used in foreign commerce and have engaged/used in that specific manner to trigger any type of Commerce Clause jurisdiction. This Court must deny Plaintiff's Motion and the requested relief sought therein because there is no Commerce Clause jurisdiction available to the Plaintiff and/or this Court to proceed against Defendant and his property.

CONCLUSION

WHEREFORE, Defendant respectfully submits his **DEFENDANT BUNDY'S OBJECTION TO UNITED STATES' MOTION TO ENFORCE INJUNCTION** and for all the foregoing reasons argued herein above respectfully requests that Plaintiff's Motion and request for relief therein be denied and grant Defendant such relief as this Court deems just and proper.

DATED this 28 day of April, 2013

Respectfully submitted,

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PROOF OF SERVICE

I, **Cliven D. Bundy**, certify that this document entitled **DEFENDANT BUNDY'S OBJECTION TO UNITED STATES' MOTION TO ENFORCE INJUNCTION** was served upon Plaintiff on this date by the below identification method of service:

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