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13
14 **IN THE UNITED STATES DISTRICT COURT**
15 **DISTRICT OF NEVADA**

16 UNITED STATES OF AMERICA,

17 Plaintiff,

18 v.

19 CLIVEN BUNDY,

20 Defendant.

No. 2:12-cv-804-LDG-GWF

**UNITED STATES' REPLY IN SUPPORT
OF MOTION FOR SUMMARY
JUDGMENT AND OPPOSITION TO
CROSS-MOTION TO DISMISS**

21
22 **I. INTRODUCTION**

23 The United States established in its motion for summary judgment, through undisputed
24 evidence, that Defendant Bundy's cattle have grazed and continue to graze in trespass since 2000
25 on lands owned by the United States in southeastern Nevada. These lands, which have been
26 described as the New Trespass Lands for purposes of this motion, were transferred to the United
27 States initially under the Treaty of Guadalupe Hidalgo in 1848, and are administered today on
28

1 behalf of the United States by the Department of the Interior’s Bureau of Land Management
2 (BLM) and National Park Service (NPS).

3 In response to the United States’ motion, Defendant Bundy does not produce any
4 evidence or dispute any of the United States’ facts. Instead, Defendant Bundy appears to seek
5 dismissal of this case for lack of subject-matter jurisdiction. Defendant Bundy also argues, *inter*
6 *alia*, that the State of Nevada appropriated the federal lands in 1979, that the Endangered Species
7 Act is not an appropriate basis for the United States’ claim,¹ and that Nevada’s “open range”
8 statute excuses any trespass. None of these arguments have merit, and most have been explicitly
9 rejected by the United States Court of Appeals for the Ninth Circuit.

10 The facts are clear and ultimately undisputed that Defendant Bundy has grazed his cattle
11 in trespass upon the New Trespass Lands. It is equally clear that his legal defenses are without
12 merit. The United States, therefore, is entitled to summary judgment.

13 **II. ARGUMENT**

14 **A. The United States is Entitled to Summary Judgment.**

15 **1. No genuine issue of material fact exists.**

16 “When the party moving for summary judgment would bear the burden of proof at trial,”
17 as is the case here, “it must come forward with evidence which would entitle it to a directed
18 verdict if the evidence went uncontroverted at trial.” C.A.R. Transp. Brokerage Co., Inc. v.
19 Darden Restaurants, Inc., 213 F.3d 474, 480 (9th Cir. 2000) (citations omitted).

20 Once the moving party presents evidence that would call for judgment as a matter of law
21 at trial if left uncontroverted, the non-moving party – in this case Defendant Bundy – must show
22 by specific facts the existence of a genuine issue of material fact for trial. Anderson v. Liberty
23 Lobby, Inc., 477 U.S. 242, 250 (1986). Facts are “material” only if they “might affect the
24 outcome of the suit under the governing law.” Id. at 248. Moreover, in demonstrating the
25 existence of a “genuine issue,” the Supreme Court has cautioned that evidence that is merely
26

27 ¹ As discussed below, the United States agrees but for different reasons. Infra. at 10. The
28 United States has not brought this action against Defendant Bundy under the Endangered Species
Act.

1 colorable or not significantly probative will not suffice. Id. at 249-50. Nor will a “mere scintilla
2 of evidence” suffice because a jury may not resort to speculation. British Airways Bd. v. Boeing
3 Co., 585 F.2d 946, 952 (9th Cir. 1978). If the factual context makes the non-moving party’s
4 claim implausible, that party must come forward with more persuasive evidence than otherwise
5 would be necessary to show that there is a genuine issue for trial. Matsushita Elec. Indus. Co. v.
6 Zenith Radio Corp., 475 U.S. 574, 587 (1986). It is well settled that conclusory statements as to
7 the ultimate issue cannot raise a genuine issue of material fact. F.T.C. v. Stefanchik, 559 F.3d
8 924, 929 (9th Cir. 2009) (“A non-movant’s bald assertions” are insufficient to withstand
9 summary judgment). Even “[a]n affidavit that contradicts the plaintiff’s own deposition
10 testimony is not sufficient to defeat summary judgment.” Progressive Cas. Ins. Co. v. F.D.I.C.,
11 No. 2:12-cv-665-KJD-PAL, 2012 WL 5418298, at *1 (D. Nev. Nov 2, 2012) (citing Orr v. Bank
12 of America, 285 F.3d 764, 780 n.28 (9th Cir. 2002)).

13 **a. The United States owns and administers the New Trespass**
14 **Lands under the Property Clause.**

15 The United States has presented clear and substantial evidence that establishes its
16 ownership of the New Trespass Lands. See United States Motion for Summary Judgment
17 (“Motion” at 7) (ECF No. 18). The “New Trespass Lands” are lands in southern Nevada, in the
18 vicinity of Lake Mean and within an area known as Gold Butte. The United States acquired
19 what is now the State of Nevada in 1848 as part of the land ceded from Mexico to the United
20 States through the Treaty of Guadalupe Hidalgo. 9 Stat. 922 (1848); see also Sparrow v. Strong,
21 70 U.S. (3 Wall.) 97, 104 (1865) (“The Territory, of which Nevada is part, was acquired by
22 treaty.”); United States v. Gardner, 107 F.3d 1314, 1318 (9th Cir.1997) (reaffirming that the
23 United States has held title to the unappropriated public lands in Nevada since Mexico ceded the
24 land to the United States in 1848 and that the United States may regulate grazing on those lands
25 because it owns title to those lands). Thus, the “New Trespass Lands” are owned by the United
26 States and administered by BLM and NPS, respectively. Motion, Ex. 5 (ECF No. 19-6), Morlan
27 Declaration ¶¶ 4-22; Ex. 2 (ECF No. 19-2), Rugwell Declaration ¶ 3; Ex. 3 (ECF No. 19-4),
28 Warshefski Declaration ¶ 2. Defendant Bundy has presented no evidence disputing this fact.

1 The United States administers the federal lands within the State of Nevada pursuant to the
2 Property Clause which states:

3 The Congress shall have Power to dispose of and make all needful Rules and
4 Regulations respecting the Territory or other Property belonging to the United
5 States, and nothing in this Constitution shall be so construed as to Prejudice any
Claims of the United States, or of any particular State.

6 U.S. CONST., art. IV, § 3, cl. 2. The Property Clause authorizes the federal government to retain
7 and to manage lands within the United States. A long line of cases establishes that the Property
8 Clause authorizes Congress to do more than simply sell or give away federal lands. See, e.g.,
9 United States v. Gratiot, 39 U.S. (14 Pet.) 526, 537 (1840) (Property Clause vested Congress
10 with the power to lease, as well as to sell, federal lands); Gibson v. Chouteau, 80 U.S. (13 Wall.)
11 92, 99 (1871) (Congress may determine the conditions, method, and timing of the disposal of
12 federal lands).

13 Importantly, for our purposes here, in Camfield v. United States, 167 U.S. 518 (1897),
14 the Supreme Court addressed the breadth of the United States' power over public lands and
15 established that the federal government may retain its lands:

16 While the lands in question are all within the State of Colorado, the government
17 has, with respect to its own lands, the rights of an ordinary proprietor, to maintain
18 its possession and to prosecute trespassers. It may deal with such lands precisely
19 as a private individual may deal with his farming property. It may sell them or
withhold them from sale. It may grant them in aid of railways or other public
enterprises.

20 167 U.S. at 524 (emphasis added).

21 The Supreme Court further elaborated upon the federal government's broad power over
22 its lands in Light v. United States, 220 U.S. 523 (1911). In upholding the federal government's
23 right to require a rancher to obtain a permit before grazing his cattle on federal land, the Supreme
24 Court held:

25 The United States can prohibit absolutely or fix the terms on which its property
26 may be used The courts cannot compel it to set aside the lands for
27 settlement; or to suffer them to be used for agricultural or grazing purposes; nor
interfere when, in the exercise of its discretion, Congress establishes a forest
reserve for what it decides to be national and public purposes.

28 220 U.S. at 536-37.

1 Pursuant to its authority under the Property Clause, the United States through the United
2 States Department of the Interior has administered the federal lands within the State of Nevada
3 pursuant to Congressional legislation and regulations enacted pursuant to those laws. Those laws
4 and regulations are spelled out in detail in the United States' Motion at 17-21. They provide,
5 among other things, that ranchers must obtain permits prior to grazing their cattle on public
6 lands, must abide by certain conditions when using those lands, and must pay grazing fees.
7 Those laws also establish means by which Interior may revoke a grazing permit or impound and
8 dispose of trespassing cattle.

9 In Gardner, the defendants argued, as does Defendant Bundy here (see Opp'n at 10 (ECF
10 No. 28)), that "the state of Nevada, not the United States, is the rightful owner of the public lands
11 within Nevada." 107 F.3d at 1315-16. The Ninth Circuit rejected this argument and held that,
12 "as the United States has held title to the unappropriated public lands in Nevada since Mexico
13 ceded the land to the United States in 1848, the land is the property of the United States." Id. at
14 1318. Thus, legally and factually, it cannot be disputed that the United States owns the New
15 Trespass Lands.

16 **b. There is no dispute that Defendant Bundy has grazed his cattle**
17 **on the New Trespass Lands since 2000 without authorization**
18 **from the United States.**

19 Defendant Bundy testified at his deposition that he has continuously grazed his cattle
20 year-round on the New Trespass Lands since 2000. Motion at 9, Ex. 4, Bundy Depo. at 35:2-18,
21 47:15-21, 61:16-25, 62:1-5. See also Ex. 1A (ECF No. 19-1), Bundy Depo. Map; Ex. 4 (ECF
22 No. 29-1), Bundy Depo. at 52:12-62:5 (colloquy with Defendant Bundy marking the outer limits
23 on Exhibit 1A where his cattle have grazed in the New Trespass Lands). In addition to his
24 testimony, the United States also provided further evidence of trespass of his cattle on numerous
25 occasions since 2000. Motion at 9, Ex. 9 (ECF No. 23-2), Chart Documenting Sightings of
26 Defendant Bundy's Livestock. He has done so without authorization from the United States. He
27 has never held a permit and has never been authorized to graze livestock on BLM Lands or NPS
28 Lands that constitute the New Trespass Lands. Motion at 8, Ex. 2, Rugwell Declaration ¶ 11;
Ex. 3, Warshefski Declaration ¶ 7.

1 Defendant Bundy now questions whether the United States has proved that the branded
2 or unbranded cattle that have grazed on the New Trespass Lands are actually his cattle and
3 suggests a number of other possibilities: the cattle might belong to other former permittees who
4 left their cattle in the Clark County area; that “very conceivabl[y]” Defendant Bundy has
5 “gathered all of what was his herd” (Opp’n at 21); that maybe Defendant Bundy “stuck a brand
6 on a wild cow now and then” (*id.* at 21-22); and maybe “even some domestic cattle held in
7 fenced areas on private lands have jumped those fences and gone wild” (*id.* at 22). But
8 Defendant Bundy presents no evidence to support his hypotheses, and “bald assertions” are
9 insufficient to defeat summary judgment. Stefanchik, 559 F.3d at 929.

10 Although Defendant suggests or hypothesizes that cattle bearing his brand may
11 potentially not be owned by him, this “suggestion” runs counter to Nevada State law. Defendant
12 Bundy does not deny that the United States has identified livestock bearing a brand registered to
13 him. Under Nevada law, this brand is used to identify livestock ownership. Nev. Rev. Stat. §
14 564.020 (2012); State v. Cardell, 19 Nev. 319 (1886) (holding that even an unrecorded brand can
15 be used to prove ownership in case of grand larceny); Nev. Rev. Stat. § 564.090 (whereby a
16 registered brand is prima facie evidence of ownership in suits at law or equity or in criminal
17 proceedings). State law also holds that it is a crime to brand an animal with one’s brand with the
18 intent to defraud, steal, appropriate, or prevent identification of that animal. Nev. Rev. Stat. §
19 205.220. Therefore, notwithstanding Defendant Bundy’s mere suggestions to the contrary, the
20 United States’ identification of Defendant’s brand on trespass cattle is prima facie evidence that
21 the cattle are owned by Defendant – whether or not Defendant illegally appropriated such cattle
22 by placing his brand on cattle that were not his.

23 Defendant Bundy’s efforts to dodge the facts are unpersuasive because the abundant
24 evidence produced by the United States demonstrates conclusively that the trespassing cattle
25 belong to him (Motion at 9, Ex. 4, Bundy Depo. at 35:2-18, 47:15-21, 52:12-62:5; Ex. 1A,
26 Bundy Depo. Map; Ex. 9, Chart Documenting Sightings of Defendant Bundy’s Livestock).
27 Indeed, Defendant Bundy testified under oath during his deposition that that he has continuously
28 grazed his livestock year-round on the New Trespass Lands since 2000. See Motion, Ex. 4,

1 Bundy Depo. at 35:2-18; 47:15-21; 61:16-25, 62:1-5; see also Ex. 1, Map; Ex. 2, Rugwell
2 Declaration ¶ 14 (Bundy public speech in which he states that he “fired the BLM” and that his
3 cattle had continually grazed without a permit). By contrast, Defendant Bundy’s assertion that
4 the cattle may belong to other former ranchers is mere conjecture, devoid of any evidentiary
5 support. See Fed. R. Civ. P. 56(c)(1). “When opposing parties tell two different stories, one of
6 which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court
7 should not adopt that version of the facts for purposes of ruling on a motion for summary
8 judgment.” Scott v. Harris, 550 U.S. 372, 380 (2007).

9 Defendant Bundy’s arguments must also fail because they are premised on a fundamental
10 misunderstanding of the United States’ burden of proof. In order to obtain summary judgment,
11 the United States need not demonstrate that every single cow grazing on the New Trespass Lands
12 since 2000 belongs to Defendant Bundy. See Opp’n, at 21 (arguing that “[t]he burden is upon
13 the Plaintiff to make certain that the cattle in the area are all livestock belonging to Defendant.”)
14 (emphasis added); see also id. (suggesting the United States must show Defendant Bundy is “the
15 only person in the world that has cattle” in the New Trespass Lands). It is sufficient to show that
16 Defendant Bundy has repeatedly grazed cattle on those lands without a permit, and the United
17 States has unquestionably satisfied that burden. Defendant Bundy’s speculation that cows
18 belonging to other ranchers might also have grazed on the New Trespass Lands since 2000 is
19 therefore immaterial. See Anderson, 477 U.S. at 248 (holding that facts are material only if they
20 “might affect the outcome of the suit under the governing law”).

21 In sum, no genuine, legitimate factual dispute exists. The United States has proved that
22 Defendant Bundy owns trespassing cattle and that Defendant Bundy’s cattle have continuously
23 trespassed without authorization on the New Trespass Lands for years.

24 **2. The United States is entitled to judgment as a matter of law.**

25 Defendant Bundy asserts a number of different legal arguments to defend his trespass
26 activities. As discussed below, each is without merit and judgment should be entered in favor of
27 the United States under the controlling law. In an effort to refute the United States’ ownership
28 of the New Trespass Lands and its authority to administer those lands pursuant to the Property

1 Clause, Defendant Bundy argues that the State of Nevada appropriated the federal government’s
2 public lands within its boundaries in 1979 and that the United States lacks authority to regulate
3 its federal lands within the State of Nevada. These arguments have been thoroughly rejected by
4 the courts,² and should be rejected here as well for the reasons described below.

5 **a. The Disclaimer Clause in the Nevada Statehood Act of March**
6 **21, 1864, is valid and declares the right already held by the**
7 **United States to administer its property.**

8 Defendant Bundy incorrectly argues that the Disclaimer Clause of the Nevada State
9 Constitution carries no legal force. Opp’n at 11. The United States required the State of Nevada
10 to include in its state constitution a provision (the “Disclaimer Clause”) that proclaimed that
11 Nevada would ““forever disclaim all right and title to the unappropriated public lands lying
12 within said territory, and that the same shall be and remain at the sole and entire disposition of
13 the United States”” Gardner, 107 F.3d at 1319 (quoting Nevada Statehood Act of March 21,
14 1864, 13 Stat. 30, 31 § 4). The State of Nevada did so. Id.

15 Like the plaintiffs in Gardner, Defendant Bundy now contends that the Disclaimer Clause
16 is invalid. Opp’n 4-5, 10-11. He acknowledges that, if the Disclaimer Clause is valid, his equal
17 footing arguments and arguments based upon and NEV. REV. STAT. §§ 321.596-599 have to fail.
18 See Opp’n at 9 (conceding that courts have recognized Congress’ power over federal owned
19 lands to be “without limitation”), 11 (arguing that the “long held interpretation of the Disclaimer
20 Clause” is inappropriate). The Ninth Circuit has already addressed this issue and held that the
21 Disclaimer Clause means what it says and is constitutional. Gardner 107 F.3d at 1320 (“The
22 disclaimer clause, then, is declaratory of the right already held by the United States under the
23 Constitution to administer property, and as such is valid under the United States Constitution”);

24 ² Much of Defendant Bundy’s argument was specifically rejected earlier by this Court in United
25 States v. Bundy, No. CV-S-98-531-JBR, (“Bundy I”) Docket No. 19, Order dated November 3,
26 1998 (“1998 Order”). There, the Court included findings that the United States owns the public
27 lands within the State of Nevada and that federal lands located within states are federal territories
28 under federal jurisdiction. 1998 Order at 7-8. Under the doctrine of collateral estoppel, those
findings apply here as well. Robi v. Five Platters, Inc., 838 F.2d 318, 329 n.8 (9th Cir. 1988)
(quoting Parklane Hosiery Co. v. Shore, 439 U.S. 322, 326 n.4 (1979)).

1 see also id. (rejecting Tenth Amendment and Equal Protection challenges to the United States’
2 title to federal lands in Nevada). Thus, the Ninth Circuit has addressed and rejected the same
3 arguments advanced by Defendant Bundy in this case.

4 In sum, the Ninth Circuit has determined that the Disclaimer Clause is valid and the
5 United States’ continued ownership of federal lands in Nevada is constitutional. The
6 authoritative pronouncements of a superior court bind this court. Zuniga v. United Can Co., 812
7 F.2d 443, 450 (9th Cir.1987); Hasbrouck v. Texaco, Inc., 663 F.2d 930, 933 (9th Cir.1981).
8 Thus, Defendant Bundy’s arguments are without merit.

9 **b. The United States is authorized to manage its federal lands**
10 **within the boundaries of Nevada and doing so does not negate**
11 **the force of the United States Constitution.**

12 Defendant Bundy argues that the power of the United States to manage its federal lands
13 under the Property Clause is so extensive that this power “cannot be allowed to thrive within a
14 Sovereign State of the Union.” Opp’n at 10. He also argues that the “implication” of the United
15 States’ exercise of its authority under the Property Clause “clearly means there are no rights
16 protected under the Constitution.” Id. at 9. He cites no authority for these arguments, nor is
17 there any authority for these arguments.

18 These arguments should be rejected out of hand. The Property Clause is a part of the
19 Constitution and the Supreme Court has, on numerous occasions, exercised its authority to
20 interpret that Clause. See Marbury v. Madison, 5 U.S. 137, 177 (1803) (holding that it is the
21 “province and duty” of the judiciary “to say what the law is”). In exercising that authority, the
22 Supreme Court has never held the Property Clause to apply only to federal lands outside the
23 borders of the states; to the contrary, it has interpreted the Property Clause as applying to federal
24 lands within state borders. See e.g. Camfield, 167 U.S. at 524 (describing the federal
25 government’s ownership of and authority over lands located within the State of Colorado). In
26 addition, the Ninth Circuit has rejected the notion that the United States’ exercise of authority
27 under the Property Clause is necessarily incompatible with the existence of other rights under the
28 U.S. Constitution. See e.g. Gardner, 107 F.3d at 1320 (finding harmony between the United
States’ exercise of rights under the Property Clause and the State of Nevada’s exercise of powers

1 reserved to it by the Tenth Amendment). Defendant Bundy’s theories therefore find no support
2 in relevant case law and must be rejected.

3 **c. The Equal Footing Doctrine does not affect the United States’**
4 **ownership and management of public lands located within the**
5 **State of Nevada**

6 Defendant Bundy finds it “irrational” that the United States exercises its authority under
7 the Property Clause to “93% of the land surface” of Nevada and at the same time asserts that
8 Nevada “has been admitted to the Union on an equal footing with the original states in every
9 respect whatsoever.” Opp’n at 11. Moreover, he contends that this “type of inequality . . . where
10 Nevada is not on Equal Footing with the original 13 States . . . perpetuates the ‘separate but
11 equal’ doctrine . . . which was properly overturned in Brown v. Board of Education, 347 U.S.
12 483 (1954).” Opp’n at 12.

13 As with his Disclaimer Clause arguments discussed above, Defendant Bundy’s equal
14 footing argument was explicitly rejected by the Ninth Circuit in Gardner. 107 F.3d at 1319. See
15 also United States v. Nye County, 920 F. Supp. 1108, 1117 (1996) (“title to federal lands within
16 Nye County did not pass to the State of Nevada upon its admission pursuant to the equal footing
17 doctrine”). Thus, Defendant Bundy’s equal footing argument is without merit.

18 **d. The Endangered Species Act has no bearing on this trespass**
19 **action.**

20 Defendant Bundy argues broadly about the Endangered Species Act (“ESA”), 16 U.S.C.
21 §§ 1631, et seq., and his belief that the ESA is unconstitutional or that the United States has
22 improperly designated certain species for protection under the auspices of the ESA. Opp’n at 13-
23 20. He mistakenly contends that the United States is charging him with violating the ESA (id. at
24 13) and that the “linchpin being used by [the United States] for the authority to gather and
25 impound [his] cattle is the Endangered Species Act of 1973.” Opp’n at 15.

26 The United States has charged Defendant Bundy with trespass, not with violating the
27 ESA. Compl. (ECF No. 1) at ¶¶ 1, 3, 26-39. Unauthorized use of federal lands constitutes an
28 unlawful trespass. 43 C.F.R. § 2920.1-2(a); 36 C.F.R. § 2.60. Both the BLM and NPS are
authorized to impound trespass livestock. See 43 C.F.R. §§ 4150.4-1 to 4150.4-5 (2005); 36

1 C.F.R. § 2.60(c) (2012). Defendant Bundy’s ESA arguments are a red herring.

2 **e. Nevada’s “Open Range” statute does not excuse Defendant**
3 **Bundy’s trespass**

4 Because the State of Nevada is an “open range” state, Defendant Bundy indirectly argues
5 his cattle could not be in trespass because “it is the burden of the property owner to ‘fence out’
6 unwanted livestock.” Opp’n at 21. NEV. REV. STAT. § 568.355 defines “open range” to mean
7 “all unenclosed lands outside of cities and towns upon which cattle, sheep, or other domestic
8 animals by custom, license, lease or permit are grazed or permitted to roam.” (emphasis added).

9 Nevada’s “open range” law has no application here for two reasons. First, the plain
10 language of NEV. REV. STAT. § 568.355 does not support his position about trespass. Rather, the
11 statute is entirely consistent with the United States’ position that Defendant Bundy needs to have
12 a permit from the Department of the Interior to graze the federal lands, which he does not have.
13 Motion at 8, Ex. 2, Rugwell Declaration ¶ 11; Ex. 3, Warshefski Declaration ¶ 7. It does not
14 state that the United States must fence out the federal range on which it authorizes permittees to
15 graze. Second, even if the statute means what Defendant Bundy believes, under the Supremacy
16 Clause the statute cannot trump the federal law requiring a permit to graze. See, e.g., Gardner,
17 107 F.3d at 1320 (quoting Kleppe v. New Mexico, 426 U.S. 529, 543 (1976)).

18 **B. The United States is entitled an injunction for Defendant Bundy’s trespass.**

19 The United States has established conclusively irreparable harm not only through the
20 continuing nature of Defendant Bundy’s trespass, City of Walla Walla v. Walla Walla Water
21 Co., 172 U.S. 1, 12 (1898); Newfound Mgmt. Corp. v. Lewis, 131 F.3d 108, 115 (3d Cir. 1997),
22 but also because Defendant Bundy’s cattle have caused and continue to cause damage to natural
23 and cultural resources and pose a threat to public safety. See Motion at 12-13. The United
24 States has also demonstrated that the equities and the public interest strongly favor an injunction.
25 The public interest is best served by having the federal lands managed without the presence of
26 trespass cattle on lands that are closed to grazing. The public interest is also best served by
27 removal of trespass cattle that cause harm to natural and cultural resources or poses a threat to
28 the health and safety of members of the public who use the federal lands for recreation. No

1 doubt exists that the public interest is negatively affected by Defendant Bundy's continuing
2 trespass.

3 Moreover, the United States is entitled to injunctive relief as a matter of law once trespass
4 on federal lands is proven. See United States v. Noguiera, 403 F.2d 816, 825 (9th Cir. 1968)
5 (citations omitted). The same result followed in United States v. Gardner, 903 F. Supp. 1394,
6 1403 (D. Nev. 1995), aff'd 107 F.3d 1314 (9th Cir. 1997), where this Court also held that the
7 United States was entitled to injunctive relief to prevent a continuing trespass. The public interest
8 is also served by the enforcement of Congress' mandate for management of the public
9 rangelands, and by having federal laws and regulations applied to all citizens such that one
10 individual, such as Defendant Bundy, cannot obtain a benefit through trespass that is unavailable
11 to everyone else.

12 **III. DEFENDANT'S CROSS-MOTION SHOULD BE DENIED**

13 Defendant Bundy requests that the Court dismiss this case for lack of subject-matter
14 jurisdiction. Opp'n at 12-13. The United States construes this argument as a cross-motion to
15 dismiss under Fed. R. Civ. P. 12(b)(1). Defendant Bundy's cross-motion should be denied
16 because it is without merit.

17 Defendant Bundy argues that "Nevada never ceded its sovereignty to a court below the
18 US Supreme Court;" thus, this Court (in Defendant Bundy's view) lacks subject-matter
19 jurisdiction over the United States' trespass claims against him. Opp'n at 12. Defendant
20 Bundy's arguments find no support in the law.

21 This is not a case between the states. This is an action by the United States against an
22 individual. Article III, Section 2 of the United States Constitution provides, in part, that "[t]he
23 judicial Power shall extend * * * to Controversies to which the United States shall be a party."
24 Furthermore, Article III, Section 1 gives Congress authority to establish "such inferior Courts as
25 the Congress may from time to time ordain and establish." Congress has exercised its power and
26 established United States district courts. See 28 U.S.C. § 132. When it established the district
27 courts, the Congress gave them original jurisdiction over "all civil actions, suits or proceedings
28 commenced by the United States, or by an agency or officer thereof expressly authorized to sue

1 by Act of Congress.” 28 U.S.C. § 1345. “The federal government, of course may sue a state in
2 federal court under any valid cause of action, state or federal, even if the state attempts to limit
3 the cause of action to suits in state courts only.” United States v. Cal., 655 F.2d 914, 918 (9th
4 Cir. 1980). This Court unquestionably has subject-matter jurisdiction over the United States’
5 claims against Defendant Bundy.

6 **IV. CONCLUSION**

7 For the foregoing reasons, the United States is entitled to summary judgment as well as:
8 a declaration that Defendant Bundy has placed or allowed his livestock to graze on the New
9 Trespass lands in trespass and in violation of federal statutory and regulatory requirements; a
10 judgment in favor of the United States; an order permanently enjoining Defendant Bundy from
11 placing or allowing his livestock to graze on these lands; an order directing Defendant Bundy to
12 remove his livestock from the land within 45 days of judgment; and an order explicitly
13 authorizing the United States to seize and impound Defendant Bundy’s livestock if they have not
14 been removed within 45 days of judgment or if they are found on the federal lands at any time in
15 the future.

16 Defendant Bundy’s cross-motion to dismiss this case on jurisdictional grounds should be
17 denied.

18 Respectfully submitted January 28, 2013,

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Office of the Solicitor

CERTIFICATE OF SERVICE

I hereby certify that, on January 28, 2013, I caused the attached document to be served by U.S. Mail on the following:

Cliven D. Bundy
3315 Gold Butte Road
Bunkerville, NV 89007

/s/ Terry M. Petrie
TERRY M. PETRIE

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