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15 ATTORNEYS FOR THE UNITED STATES

16 **IN THE UNITED STATES DISTRICT COURT**
17 **DISTRICT OF NEVADA**

18 UNITED STATES OF AMERICA,

19 Plaintiff,

No. 2:98-cv-531-LRH

20 v.

21 CLIVEN BUNDY,

**UNITED STATES' REPLY IN SUPPORT
OF MOTION TO ENFORCE
INJUNCTION**

22 Defendant.
23
24

25 I. INTRODUCTION

26 The United States established in its motion to enforce injunction (ECF Nos. 50-52) that
27 Defendant Bundy has violated the permanent injunction issued by this Court on November 3,
28

1 1998 (ECF No. 19), and modified on September 17, 1999 (ECF No. 46). In the first order, this
2 Court permanently enjoined Bundy from grazing livestock on the former Bunkerville Allotment
3 (“Allotment”), ordered him to remove his livestock from that Allotment by no later than
4 November 30, 1998, and ordered him to pay damages to the United States in the amount of
5 \$200.00 per day per head for any livestock belonging to Bundy remaining on the former
6 Allotment after November 30, 1998. When Bundy failed to comply, this Court issued a second
7 order directing him to comply with the November 30, 1998, injunction, in addition to modifying
8 the trespass damages owed to the United States.

9 A party seeking enforcement of a permanent injunction must simply demonstrate that the
10 enjoined party continues to engage in conduct that violates the injunction. See Clark v. Coye, 60
11 F.3d 600, 604 (9th Cir. 1995). Bundy has not complied with the orders, has admitted that his
12 cattle have grazed continuously on the Allotment since 2000, and does not challenge the United
13 States’ evidence of trespass. Instead, he advances numerous objections in his opposition (ECF
14 No. 53) directed towards this Court’s jurisdiction to enforce its permanent injunction and the
15 timeliness of the United States’ motion, and he re-argues his opposition to entry of the permanent
16 injunction in the first instance. As discussed below, none of these arguments holds merit and the
17 Court should enter an order enforcing the injunction as sought by the United States.

18 The facts are clear and undisputed that Bundy has grazed his cattle upon the Allotment in
19 violation of the Court’s injunction. It is equally clear that his legal defenses are without merit.
20 The United States, therefore, is entitled to an order that enforces the injunction.

21
22 **II. ARGUMENT**

23 **A. Bundy has violated the Court’s orders by continuing to graze his livestock on the**
24 **Allotment**

25 In its moving papers, the United States established beyond dispute that Bundy has
26 continued to violate this Court’s orders. Motion (ECF No. 50) at 7-8. Bundy has openly and
27 readily admitted that he has never complied with the Court’s orders to remove his cattle from the
28 Allotment, and that he has allowed his cattle to graze routinely within the Allotment for at least

1 the last 12 years. Motion at 7 (citing Ex. 4, Excerpts of Oct. 23, 2011 Bundy Deposition, 35:2-
2 11; 99:21-100:6); *id.*, citing Ex. 2, Rugwell Declaration ¶ 14 (Bundy has publicly stated that he
3 “fired the BLM” and that his cattle graze in the Gold Butte area without a permit). The United
4 States has also documented evidence of Bundy grazing his cattle on the Allotment on numerous
5 occasions. Motion at 7-8 (citing Ex. 2, Rugwell Declaration ¶¶ 19, 22, 26; Ex. 5, Declaration of
6 Deborah Sullivan ¶¶ 4-12 and Attachments B-D; Ex. 6, Declaration of Victoria Worfolk ¶¶ 6-19
7 and Attachments B, C, D, F and K; Ex. 7, Declaration of Lauren Brown ¶¶ 4-16, 24; Ex. 8,
8 Declaration of Jesus Navarro ¶¶ 5-11 and Attachments A and B; Ex. 9, Chart Documenting
9 Sightings of Defendant Bundy’s cattle; Ex. 13, Declaration of Alice Newton ¶¶ 5-6). Nowhere
10 in his opposition does Bundy dispute any of the evidence introduced by the United States. Thus,
11 undisputed evidence shows that Bundy continues to graze his cattle on the Allotment in violation
12 of this Court’s injunction.

13
14 B. Bundy’s legal defenses are without merit

15 1. The United States is authorized to seize and impound Bundy’s trespass cattle

16 Decrying it as a “back door approach” and characterizing it as a “new claim for relief,”
17 Bundy takes umbrage that the United States requests the Court acknowledge the authority the
18 United States already possesses to seize and impound trespassing livestock on federal land.
19 Docket No. 53, Opp’n at 2, 3. See also id. at 4, 11, 12.

20 As discussed in the United States’ Motion, the United States Department of the Interior’s
21 Bureau of Land Management (“BLM”) and the National Park Service (“NPS”), which manage
22 federal lands within the Allotment, are both authorized under federal law to seize and impound
23 trespass livestock. Motion at 10 (citing 43 C.F.R. §§ 4150.4-1 to 4150.4-5 (2005); 36 C.F.R. §
24 2.60(c)). Those regulations provide procedures for appropriate notice and opportunity to cure
25 before an impoundment operation commences. Id.

26
27 As further explained in the motion, the United States has requested that the Court
28 explicitly recognize this impoundment authority to facilitate the handling of trespass cattle *after*

1 impoundment as an accommodation to the State of Nevada. Motion at 10-12.¹ That
2 accommodation, undertaken solely as a practical matter to facilitate a gather, does not in any way
3 undermine, diminish, or suggest the absence of authority for the United States to impound the
4 cattle.² Indeed, this Court recognized that the United States has regulatory authority to impound
5 the cattle in its 1998 Order, when it commended the United States for its restraint in exercising
6 that authority. November 3, 1998 Order at 11. That authority continues today.
7

8 Furthermore, because the United States possesses the authority to impound – with or
9 without an injunction – and because the enactment of the 2005 State of Nevada statute relates to
10 solely to brand certificate documentation but not to the state of the evidence of Bundy’s trespass
11 or to the United States’ ownership of the Allotment, the United States has justified the issuance
12 of a revised order to enforce that includes the specific recognition of the United States authority
13 to impound. Sys. Fed’n No. 91 Ry. Emps’ Dep’t v. Wright, 364 U.S. 642, 646-47 (1961); Rufo v.
14 Inmates of Suffolk Cnty Jail, 502 U.S. 367, 383 (1992) (the party seeking the modification bears
15 the burden to show that modification is warranted and the court must consider whether the
16 modification is appropriate under the changed circumstances). To the extent the Court feels that
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22 ¹ Prior to 2005, the State of Nevada issued brand inspection certificates for cattle impounded on
23 federal lands upon BLM showing it had complied with regulatory requirements for notice and
24 impoundment. In 2005, Nevada enacted a statute prohibiting its State Brand Inspectors from
25 issuing a brand inspection certificate to a government entity unless the government agency has
26 first obtained a court order approving its seizure of cattle. Motion at 11 and n.7.

27 ² Nor does this accommodation remotely suggest, contrary to Bundy’s assertion, that the United
28 States has admitted that the State of Nevada has sovereign authority over public lands within the
boundaries of the State. Opp’n at 13-14. The United States manages the federal public lands
pursuant to its powers under the Constitution, primarily the Property Clause, and the Supreme
Court has interpreted this power to be expansive, observing that “[t]he power over the public
land thus entrusted to Congress is without limitations.” See, e.g., Kleppe v. New Mexico, 426
U.S. 529, 539 (1976) (internal quotation marks and citation omitted).

1 the United States is seeking a modified permanent injunction, that relief is well within this
2 Court's discretion and is justified by the facts of this case.

3 2. The United States is not time barred from seeking enforcement of the permanent
4 injunction entered by this Court against Bundy

5 Bundy incorrectly contends that the United States is barred from seeking enforcement of
6 the injunction because it allegedly brings this motion after the limitations periods contained in
7 Nevada State statutes and 28 U.S.C. § 2462 have elapsed. Def. Obj. at 2-3. Contrary to Bundy's
8 assertions, Nevada law does not apply to a federal action to enforce a District Court permanent
9 injunction, and 28 U.S.C. § 2463 also does not apply because the instant motion is not a new
10 action to enforce a "civil fine, penalty, or forfeiture."³ Defendant Bundy's arguments are without
11 merit.

12 As for the State of Nevada statutes, sections 11.190 and 17.214 -- which address actions
13 other than those for the recovery of real property and renewing a judgment not paid -- Bundy
14 cites no apposite case law to support his contention that Nevada State law applies or governs the
15 proceedings here. On the contrary, absent a federal statute expressly imposing or adopting one,
16 it is settled law that the United States is not bound by state statutes of limitation in enforcing its
17 rights. See, e.g., United States v. Summerlin, 310 U.S. 414, 417 (1940) ("When the United
18 States becomes entitled to a claim, acting in its governmental capacity and asserts its claim in
19 that right, it cannot be deemed to have abdicated its governmental authority so as to become
20 subject to a state statute putting a time limit upon enforcement"); Chesapeake & Del. Canal Co.
21 v. United States, 250 U.S. 123, 125 (1919) ("settled beyond controversy"); Bresson v. C.I.R.,
22 213 F.3d 1173, 1176 (9th Cir. 2000) (citing Summerlin, 310 U.S. at 416-17).

23 Bundy also maintains that the United States' motion to enforce violates 28 U.S.C. § 2462
24 which provides:

25
26
27 ³ The United States has not sought recoupment of past trespass damages imposed or sought
28 new trespass damages in its motion.

1 Except as otherwise provided by Act of Congress, an action, suit or proceeding for
2 the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise
3 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.

4 Def. Obj. at 3-4. Section 2462, however, provides no support for Bundy's argument because it
5 does not apply to the kind of relief sought here.

6 The statute speaks to the commencement of "an action, suit or proceeding for the
7 enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise." The instant motion
8 to compel, however, is not a new action, subject to the provisions of Section 2462. The United
9 States has moved the Court to enforce the injunction entered in this pre-existing case; it has not
10 instituted a separate legal proceeding to enforce a civil fine, penalty, or forfeiture. It is beyond
11 cavil that this Court retains continuing jurisdiction to enforce its permanent injunction. Crawford
12 v. Honig, 37 F.3d 485, 488 (9th Cir. 1994). Section 2462 does not bar the United States from
13 seeking to enjoin Bundy's trespass because it does not address injunctive relief.

14
15 3. The United States is not barred by laches from seeking enforcement of the
16 injunction

17 Bundy incorrectly claims the United States may not seek enforcement of the injunction
18 under the doctrine of laches. Opp'n at 11-12. Bundy is wrong because the defense of laches
19 does not apply where the United States enforces its rights. Summerlin, 310 U.S. at 414-416;
20 Chesapeake & Del. Canal Co., 250 U.S. at 125; Olshausen v. Comm'r, 273 F.2d 23, 28-29 (9th
21 Cir. 1960) (laches is not a defense against the United States).

22
23 4. The administrative closing of the court docket following the issuance of a
24 permanent injunction does not deprive the United States from seeking
enforcement of the injunction

25 Bundy mistakenly believes that the administrative processes the Court used to document
26 the status of this case following entrance of final judgment in 1998 and 1999 now precludes the
27 United States from seeking enforcement of his violation of the terms of the injunction. Opp'n at
28

1 4-11. Not so. On its face, those administrative processes merely reflect the Court's efforts to
2 track the current status of this case as well as other cases on its docket. Further, these
3 administrative processes cannot be reasonably understood to negate the continuing jurisdiction
4 district courts possess to enforce their injunctions. See System Fed'n No. 91 v. Wright, 364 U.S.
5 642, 647 (1961).

6
7 5. The United States possesses the authority to regulate its federal lands within the
8 State of Nevada

9 In an effort to refute the United States' ownership of the Allotment and its authority to
10 administer those lands pursuant to the Property Clause, Defendant Bundy argues that the State of
11 Nevada appropriated the federal government's public lands within its boundaries in 1979 and
12 that the United States lacks authority to regulate its federal lands within the State of Nevada.
13 These arguments have been thoroughly rejected by the courts. Further, much of Bundy's
14 argument was specifically rejected earlier by this Court in its November 3, 1998 Order. ECF No.
15 19. There, the Court included findings that the United States owns the public lands within the
16 State of Nevada and that federal lands located within states are federal territories under federal
17 jurisdiction. 1998 Order at 7-8.

18 Those findings continue to apply as the law of the case. Christianson v. Colt Industries
19 Operating Corp., 486 U.S. 800, 815-16 (1988) ("As most commonly defined, the doctrine [of the
20 law of the case] posits that when a court decides upon a rule of law, that decision should
21 continue to govern the same issues in subsequent stages in the same case"); United States v.
22 Sommerstedt, 481 Fed. Appx. 386 (9th Cir. 2012) (law of the case doctrine precluded
23 consideration of plaintiff's challenges to the underlying decision of summary judgment for the
24 United States in his challenge to an order of contempt). Further, Bundy has pointed to no
25 intervening changes in law or fact that require different results to this Court's findings.
26 Touissaint v. McCarthy, 801 F.2d 1080, 1092 n.11 (9th Cir. 1986) (compilation of considerations
27 for when the law of the case doctrine recognizes a court may reconsider issues in its discretion).

28 Nor has Bundy met the requirements under Fed.R.Civ.P. 59(e) ("[a] motion to alter or

1 amend a judgment must be filed no later than 28 days after the entry of the judgment”) or
2 Fed.R.Civ.P. 60(b) (grounds for relief from a final judgment or order) and 60(c) (timing for a
3 motion under Rule 60(b)), to try to advance again arguments already rejected by the courts. In
4 sum, Bundy’s arguments concerning the United States’ ownership and control over federal lands
5 in Nevada must be rejected, and the United States’ motion to enforce injunction should be
6 granted.

7 Respectfully submitted May 9, 2013,

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CERTIFICATE OF SERVICE

I hereby certify that, on May 9, 2013, I caused the "United States' Reply in Support of Motion to Enforce Injunction" to be served by Federal Express on the following:

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

/s/ Terry M. Petrie
TERRY M. PETRIE