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## **SPECIAL REPORT**

# **BLM and USFS Lack Enforcement Authority on Federally Managed Lands**



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The U.S. Constitution and laws of Congress have never provided for a general grant of law enforcement authority to the federal government. Our national government was purposefully created by our founding fathers to be a government of “limited” powers. World history has repeatedly proven that an uncontrollable and intrusive bureaucracy destroys a free society. When unelected, union protected, life-time bureaucrats assume the role of a national police force, which has no accountability to the citizens, we step dangerously close to tyranny. The recent para-military raid by the Bureau of Land Management (BLM) at the Bundy Ranch in Nevada was an appalling example of such tyranny.

When state and county law enforcement jurisdiction is usurped by armed federal employees, acting under color of office, it places the citizen in the difficult position of either submitting to an unlawful act by the federal employee or resisting under threat of bodily harm and/or death. As citizens of our states become increasingly aware of the fact that the armed employee of the BLM, U.S. Forest Service (USFS), U.S. Fish and



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Wildlife Service (USFWS) and other federal land management agencies most likely exercise only the power of citizen's arrest, a right vested in all citizens, the opportunity for a major breach of the peace arises. That fact that a massacre was averted during the Bundy raid under the I-15 highway interchange near Mesquite, NV is considered by many observers to be a miracle.



Both civil and criminal jurisdiction were vested by the Constitution in the States, including instances where lands within a state's boundaries are managed by a federal agency. In 1956, the U.S. Attorney General issued a comprehensive two-volume report entitled, *Jurisdiction Over Federal Areas Within the States: Report of the Interdepartmental Committee for the Study of Jurisdiction Over Federal Areas Within the States*. The *Report* was the first comprehensive federal study on the subject of jurisdiction on federally managed or owned lands. The *Report* also inventoried all federal areas to determine what type of legislative jurisdiction applied to those lands. In Nevada where over 86 percent of the land within its borders is managed by the federal government, the issue of jurisdiction becomes essential to determine whether the federal or state government is vested with police power, the power of taxation, management of wildlife, etc.

The only lands identified by the *Report* on which the federal government assumes all police power and law enforcement authority are lands commonly known as "federal enclaves". These are lands which were specifically acquired by the federal government under article I, section 8, clause 17, of the U.S. Constitution. This clause provides that the federal government, "shall have exclusive legislative jurisdiction over such areas not exceeding 10 miles square as may become the seat of government of the United States, *and like authority over all places acquired by the Government, with the consent of the State involved, for Federal works.*" Federal buildings such as post offices, federal courthouses, or arsenals and docks, etc. may fall under the exclusive jurisdiction status of clause 17. In Nye Co. Nevada, the third largest county in the United States, 93% federally managed and the home of the Nevada Test Site and top secret Area 51, the only land on which the government has exclusive jurisdiction is the Tonopah Post Office.

Most federally managed lands however fall under the designation of "proprietary interest only" jurisdiction, defined below. They include, "...the vast areas of land which constitute the Federal public domain



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generally [which] are held by the United States in a proprietorial status only.”<sup>1</sup> Included among these lands are most military bases, and lands managed by the USFS, BLM, USFWS and Bureau of Reclamation.

The type of legislative jurisdiction the federal government retains over lands it manages determines which sovereign, the state or federal government, has civil and criminal jurisdiction, authority for levying various taxes, certain regulatory jurisdiction such as licensing rights, control over public utility rates, and control over wild game and livestock. The definitions for the various categories of legislative jurisdiction are as follows:

**“Exclusive Jurisdiction** refers to the power to “exercise exclusive legislation” granted to Congress by article I, section 8, clause 17 of the Constitution, and to like power which may be acquired by the United States through cession by a State, or by a reservation made by the United States in connection with the admission of the State into the Union...The Federal Government theoretically displaces the State in which the area is contained of all its sovereign authority, executive and judicial as well as legislative.”<sup>2</sup>

**Concurrent Legislative Jurisdiction**—This term is applied to those instances wherein in granting the United States authority which would otherwise amount to exclusive legislative jurisdiction over an area the State concerned has reserved to itself the right to exercise, concurrently with the United States, all of the same authority.

**Partial Legislative Jurisdiction**—This term is applied to those instances wherein the Federal Government has been granted for exercise by it over an area in a State certain of the State’s authority, but where the State concerned has reserved the right to exercise, by itself or concurrently with the United States, other authority constituting more than merely the right to serve civil or criminal process in the area.

**Proprietorial Interest only**—This term is applied to those instances wherein the Federal Government has acquired some right or title to an area in a State but has not obtained any measure of the State’s authority over the area. In applying this definition recognition should be given to the fact that the United States, by virtue of its functions and authority under various provisions of the Constitution, has many powers and immunities not possessed by ordinary landholders with respect to areas in which it acquires an interest, and of the further fact that all its properties and functions are held or performed in a governmental rather than a proprietary capacity.

Proprietorial interest jurisdiction was further clarified by the *Report*. “Where the Federal Government has no legislative jurisdiction over its land, it holds such land in a proprietorial interest only and has the same rights in the land as does any other landowner.” In addition, however, there exists a right of the Federal Government to perform the limited functions or enumerated powers delegated to it by the Constitution without interference from any source. The Congress has special authority, vested in it by article



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IV, section 3, clause 2, of the Constitution to enact laws for the protection of property belonging to the United States.<sup>3</sup> Within the scope of those limitations, the State retains all legislative jurisdiction making all State civil and criminal laws fully applicable on federally managed lands. Other lands included in the proprietary interest status are Bureau of Reclamation lands including dams, flood control works, power stations, etc.<sup>4</sup>

Congress has consistently and expressly reserved civil and criminal jurisdiction to the states. For example, the Weeks Forestry Act, which relates to the acquisition of land for national forest purposes, provides that the State shall not, by reason of establishment of the national forest, "...lose its jurisdiction, or the inhabitants thereof their rights and privileges as citizens."<sup>5</sup>

In fact, every federal land law passed by Congress contains protections for both preexisting property rights and the states' civil and criminal jurisdiction. For example, the Savings Clause of the omnibus Federal Land Policy and Management Act of 1976 provides:

"Sec. 701 (b) SAVINGS PROVISIONS:

(a) Nothing in this Act, or in any amendment made by this Act shall be construed as terminating any valid lease, permit, patent, right-of-way, or other land use right or authorization existing on the date of approval of this Act . . . . .

(g) Nothing in this Act shall be construed as limiting or restricting the power and authority of the United States or . . .

(6) as a limitation upon any State criminal statute or upon the police power of the respective States, or as derogating the authority of a local police officer in the performance of his duties, or as depriving any State or political subdivision thereof of any right it may have to exercise civil and criminal jurisdiction on the national resource lands; or as amending, limiting or infringing the existing laws providing grants of lands to the States.

Employees of the federal government often quote the Supremacy Clause of the Constitution to assert that federal law trumps state law, including the state's police powers. However, bureaucrats usually only quote the first half of the clause. The Supremacy Clause in the Constitution of the United States of America 1789 found at article VI, clause 2 makes is very specific as to what it says.

"This Constitution, and the laws of the United States which shall be made in Pursuance thereof, and all Treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land, and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

Gun wielding federal bureaucrats, as seen in recent federal raids such as the Bundy raid, USFWS raid on Gibson Guitar Company, and many others, are operating outside their lawful delegated authority. Unless the



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federal agencies are required by the sheriff and state to follow the law they will continue to illegally encroach upon state jurisdiction. When the local sheriff, as in the case of Clark Co. Sheriff Gillespie in the Bundy raid, abdicates his Constitutional duties and transfers his law enforcement authority to the federal government, he may subject himself to removal for malfeasance of office.

The recent breach of the peace that we witnessed in Clark Co., Nevada emphasizes the gravity of allowing unelected federal employees to assert law enforcement powers never granted to them by Congress or the Constitution. State and local officials need to strip federal land management employees of any trappings of law enforcement authority. Congress, which has oversight authority over federal agencies, needs to open an investigation into agency acquisitions of guns, ammunition and law enforcement equipment for purposes outside the authority granted them by Congress. Officials from the BLM, USFS and other agencies should be called before Congress to testify under oath about where in law they obtain their law enforcement authority. While the BLM asserts in the Bundy matter they were merely enforcing a lawful court order, Congress and the Courts need to hold these same agencies accountable for the numerous court orders against them which they ignore with impunity. The rule of law should to apply equally to everyone, including employees of the federal government.

<sup>1</sup> *Report, Part I, p. 8*

<sup>2</sup> *Report, Part I, p. 13-14*

<sup>3</sup> *Report, Part I, p. 21.*

<sup>4</sup> *Report, Part I, p. 98*

<sup>5</sup> *Report, Part I, p. 234*