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April 9, 2014

VIA EMAIL

Mr. Jim Barbee
Board of Agriculture
Nevada Department of Agriculture
405 South 21st Street
Sparks, NV 89431

Dear Jim and Members of the Board of Agriculture:

Upon further investigation of the Judgment and Orders against Cliven Bundy involving livestock seizure and impoundment, and the manner in which they are being enforced, I have become extremely concerned about several possible deficiencies in this action and the brand inspector's involvement. While we are not a party to this matter, it appears that Mr. Bundy's procedural due process rights may be violated. I want to officially go on the record as being opposed to anything that would violate Nevada brand law including the Director's role as a peace officer in matters involving livestock seizure and impoundment.

Background:

In the early 1990's, Clark County ranchers became victims of the threatened listing of the desert tortoise under the ESA. The BLM proceeded to manage for tortoises without an official listing adding economically devastating and physically impossible terms and conditions to the grazing permit to drive those ranchers out of business and off their Constitutionally protected grazing preferences. Mr. Bundy chose a different course, refused to sign another grazing permit that was designed to break him, and didn't pay grazing permit fees.

A few short years after the ranchers were gone the BLM began selling the same land to developers. The BLM insisted cattle couldn't possibly cohabitate with tortoises, as they had for over 100 years, because they may step on tortoise eggs. However, the BLM was apparently unconcerned about the effect excavators and paving equipment would have on tortoise "habitat." In other words, the tortoise under the ESA was merely a political weapon to forcibly clear title on federally managed lands without compensation.

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Fast forward to today with the looming sage grouse listing under the ESA. A lot of other ranchers are about to get to walk a thousand miles in Mr. Bundy's shoes. If the BLM and USFS continues on their current path, it is likely there will be future impoundments. Therefore, the Department and Board needs to be very clear on who has what authority.

Mr. Bundy owns a ranch which has vested rights to water and forage, as well as improvements dating back to the late 1800's. Those rights are recognized and protected by every land law passed by Congress including the Taylor Grazing Act. Mr. Bundy has attempted to assert those rights, albeit in a manner that was ill-advised and in my opinion would not survive in the courts. However, his underlying case is very similar factually to *Hage v. U.S.* and *U.S. v. Hage*. He now has several court orders against him to seize and impound his livestock which must be enforced by the Department. He will have to pursue his claims against the BLM in another manner. My concern is that we, in the Department of Agriculture, make sure those orders are enforced lawfully and peaceably.

Department of Agriculture Duties in a Livestock Impoundment:

We have two distinct issues which must be understood jurisdictionally. First the lawful execution of a court order under the police power of the state and its brand laws. Second, police power or law enforcement to keep the peace.

Under federal and state law a seizure as ordered by the Court must take place under the laws of the state. Federal Rules of Civil Procedure state:

Rule 64. Seizing a Person or Property

(a) REMEDIES UNDER STATE LAW — IN GENERAL. At the commencement of and throughout an action, every remedy is available that, under the law of the state where the court is located, provides for seizing a person or property to secure satisfaction of the potential judgment. But a federal statute governs to the extent it applies.

Furthermore, FRCP Rule 70 (d) Enforcing a judgment for a specific act, states, "On application by a party who obtains a judgment or order for possession, the clerk must issue a writ of execution or assistance. That writ is then perfected and executed by the Sheriff under NRS Chapter 21, Enforcement of Judgments.

The U.S. Supreme Court has held that livestock fall under the state's police powers. That is why we have state brand inspectors rather than federal brand inspectors. Therefore, the BLM like any private citizen must follow the state's brand laws for feral and stray livestock. Since the federal government is deemed a "person" in law, under NRS Chapters 565 and 569, they may "gather" the livestock and hold them under the provisions of NRS 569.100 until relieved of custody by the Department.

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NRS 569.100 Person taking up estray or feral livestock entitled to hold animal until relieved of custody; unlawful use or taking of estray or feral livestock; penalties.

1. A person who takes up an estray or feral livestock as provided for in NRS 569.040 to 569.130, inclusive, is entitled to hold the estray or feral livestock lawfully until relieved of custody by the Department.

2. A person shall not use or cause to be used, for profit or otherwise, any estray or feral livestock in the person's keeping under the provisions of NRS 569.040 to 569.130, inclusive. A violation of this subsection shall be deemed grand larceny or petit larceny, as set forth in NRS 205.2175 to 205.2707, inclusive, and the person shall be punished as provided in those sections.

However, a "gather" must not be confused with law enforcement authority.

Law Enforcement Authority or Police Power:

The Bundy livestock impoundment, as it is presently being conducted, may expose the Board and Department to liability since the BLM is not only gathering the cattle, but has also been granted all law enforcement duties in this matter. The manner in which this impoundment is being conducted is clearly outside the BLM's lawful delegated authority, or that of the other federal agencies involved. Furthermore it is disturbingly excessive.

The Director and his designees are level II "peace officers" under Nevada law to enforce the brand law in NRS Chapter 50.

NRS 289.290 Field agents and inspectors for State Department of Agriculture; officer appointed by Nevada Junior Livestock Show Board.

1. A person designated by the Director of the State Department of Agriculture as a field agent or an inspector pursuant to subsection 2 of NRS 561.225 has the powers of a peace officer to make investigations and arrests and to execute warrants of search and seizure, and may temporarily stop a vehicle in the enforcement of the provisions of titles 49 and 50 of NRS and chapters 581, 582, 583, 584, 586, 587, 588 and 590 of NRS...

3. In carrying out the provisions of chapter 565 of NRS, an inspector of the State Department of Agriculture has the powers of a peace officer to make investigations and arrests and to execute warrants of search and seizure.

NRS 561.225 Appointment of staff; designation of field agents and inspectors.

1. The Director shall appoint such technical, clerical and operational staff as the execution of the Director's duties and the operation of the Department may require.

2. The Director may designate such department personnel as are required to be field agents and inspectors in the enforcement of the provisions of Titles 49 and 50 of NRS and chapters 581, 582, 583, 584, 586, 587, 588 and 590 of NRS.

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The Clark County Sheriff's duties are defined as follows:

NRS 248.090 General duties. Sheriffs and their deputies shall keep and preserve the peace in their respective counties, and quiet and suppress all affrays, riots and insurrections, for which purpose, and for the service of process in civil or criminal cases, and in apprehending or securing any person for felony, or breach of the peace, they may call upon the power of their county to aid in such arrest or in preserving the peace.

Here is what is happening on the ground as of yesterday. Sheriff Gillespie is taking a "neutral" stance in the impoundment and thereby has abdicated his duties to "keep and preserve the peace" as he is charged under his office. As a result he may be committing malfeasance of office. He apparently has allowed employees of the federal agencies including the BLM, National Park Service, Homeland Security, and FBI to conduct a paramilitary raid unilaterally. According to witnesses there are several hundred armed federal officials swarming the Bundy ranch and surrounding allotments. Public roads have been blocked. There are rumors of snipers surrounding the ranch which the BLM has not denied. A "first amendment" area has been designated.

According to a local police officer on the Mesquite police department, not only has Sheriff Gillespie ordered them to stand down but the Bundy's were specifically warned that these were not BLM employees but specially trained forces and other highly trained individuals hired by the BLM. Mrs. Bundy was quoted in the paper as saying, "We're not pointing guns at anyone but we're sure getting a lot of guns pointed at us."

It has been reported by a witness that a military helicopter landed at a private airport near the ranch with men clad in full military gear disembarking. If this is an actual military involvement that may invoke the Treaty of Posse Comitatus.

Sunday, one of the Bundy son's was arrested for photographing the incident in his vehicle on a public right of way. He was later released after being roughed up.

These developments are deeply disturbing and indicate an excessive and dangerous show of force by a federal agency operating outside their lawful delegated authority. The Sheriff and possibly the Department of Agriculture may be abdicating our respective duties as in this breach of the peace. Meanwhile, our brand inspectors are in this middle of this fracas. All of us, the Director, the Board and Sheriff agreed to carry out our duties as state officials. We cannot abdicate them merely because they are uncomfortable or because we may have been intimidated by federal officials.

While we as the Board and Department must remain neutral in executing a court order, we must be ensure the court order is executed properly, or we could be party to a denial of Mr. Bundy's procedural due process rights.

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For the above mentioned reasons, I want to officially go on the record as being opposed to anything that would be in violation of the state's police powers as it relates to livestock or the brand law. This includes the Director's role as a peace officer in matters involving livestock seizure and impoundment in this matter, or any future impoundments.

I further request this Board to ask Congress to open an investigation into the BLM/USFS/USFWS assertion of law enforcement powers within the boundaries of Nevada, and a corresponding investigation into the appropriation of tax payer dollars for guns, ammunition, and equipment for the same.

Respectfully,



Ramona Hage Morrison
Member

Attachments

cc: Governor Brian Sandoval
Attorney General Catherine Cortez Masto
Nevada Cattlemen's Association
Nevada Farm Bureau