

BUREAU OF LAND MANAGEMENT CHALLENGE TO

NEVADA STATE JURISDICTION

On May 3, 2003, the state office of the Bureau of Land Management (BLM) in Nevada posted notice in the Federal Register of the intent to engage in enforcement of alcohol and drug laws on "public land" within the state of Nevada. The proposal by state BLM Director, Robert Abby, is a continuation of BLM's ongoing challenge to Nevada's exclusive jurisdiction in law enforcement matters. A BLM summary of the proposed rules posted in the Federal Register at Volume 69, Number 85; pages 24185 – 24188 reads as follows:

"The Bureau of Land Management, (BLM) is establishing these proposed supplementary rules for application to the public lands within the State of Nevada. The rules relate to the illegal use of alcohol and drugs on public lands. The BLM needs supplementary rules to protect natural resources and the health and safety of public land users. These supplementary rules will allow BLM Law Enforcement Officers to enforce regulations pertaining to alcohol and drug laws on public lands in a manner consistent with current state of Nevada State laws as contained in the Nevada Revised Statutes."

Mr. Abby fails to discuss the fact that Congress has never given a general grant of law enforcement to the federal government and that law enforcement with very narrow exceptions, is within the exclusive jurisdiction of the several States. The proposition that law enforcement and civil and criminal jurisdiction is exclusively within the power of the individual states is well attested to by decisions of the United States Supreme Court, the constitution for the United States of America and fully recognized in the laws and statutes of Nevada State. The United States Supreme Court opined in *United States v Alphonzo Lopez*, April 26, 1991 Case #93-1265:

"Under our federal system, the 'States possess primary authority for defining and enforcing the criminal law' *Brecht v Abrahamson*, 507 U.S., 1993 (Slip op., at 14) quoting *Engle v Isaac*, 456 U.S. 107, 128 [1982]; see also *Screws v United States*, 325 U.S. 91, 109 [1945]: "Our National government is one of delegated powers alone. Under our federal system the administration of criminal justice rests with the States except as Congress, acting within the scope of those delegated powers, has created offenses against the United States. When Congress criminalizes conduct already denounced as criminal by the States, it effects a 'change in the sensitive relation between federal and state criminal jurisdiction; *United States v Enmons*, 410 U.S. 396, 411-412 [1973] (Quoting *United States v Bass*, 404 U.S. 336, 349 [1971])"

EXHIBIT <u>I</u> Lands	Document consists of <u>4</u> pages
<input checked="" type="checkbox"/> Entire document provided.	
<input type="checkbox"/> Due to size limitations, pages ____ through ____ provided.	
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“Although we have supposedly applied the substantial effects test for the past 60 years, we always have rejected . . . the scope of federal power that would permit Congress to exercise police power; our cases are quite clear that there are real limits to federal power. See New York v United States, 505 US. (1992) (slip op., at 7: ‘No one disputes the proposition that the Constitution created a federal government of limited powers’” Quoting Gregory v Ashcroft, 501 U.S. 452, 457 (1991); Maryland v Wirtz, 392 U.S. 183, 196 (1968); NLRB v Jones & Laughlin Steel Corp., 301 U.S. 1, 37 (1937), Chisholm v Georgia, 2 Dall. 419, 435 (1793) (Iredell, J.) ‘Each State in the Union is sovereign as to all the power reserved. It must necessarily be so, because the United States have no claim to any authority but such as the States have surrendered to them’”

The Constitutional aspects of federal v state jurisdiction was fully explored in the publication by the United States Government Printing Office in 1956. The 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, Part 1**, explores four types of jurisdiction exercised by the federal government on property it holds. Those four types of jurisdiction are exclusive jurisdiction, concurrent jurisdiction, partial jurisdiction and proprietorial status. This very extensive, in-depth report, states, in pertinent part:

“The Federal Government has only a proprietorial interest without the right to exercise legislative jurisdiction in the Clause 17 sense, in vast areas of land which it owns . . . (pg. 2)”

“It should be noted that lands already under the proprietorship of the United States, when the general consent statutes were enacted, such as the lands of the so called public domain, were not affected by the statutes, and legislative jurisdiction with respect to them remained in the several states. Curiously, therefore, the vast areas of land which constitute the Federal public domain generally are held by the United States in a proprietorial status only.” (pg. 8) (Emphasis added)

“Proprietorial interest only – This term applies 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 . . . ”(pg. 14)

Subject to these conditions, in the case where the United States acquires only a proprietorial interest, the State retains all the jurisdiction over the area which it would have it a private individual rather than the United States owned the land. (pg.21)

“Agencies preferring a proprietorial interest only – “. . .Among the agencies in this group are the Department of Interior as to the great bulk of its lands, (and) the Department of Agriculture . . . ” (pg. 34)

Characteristics of Proprietary Interest Status – When the United States acquires land without acquiring over such lands legislative jurisdiction from the State in which they are located, in many respects the United States holds the lands as any other landholder in the state. However the State cannot tax the Federal Government's interest in the lands or in any way interfere with the Federal Government in carrying out of proper Federal functions upon the land. *The relation of the states with persons resident upon such Federal lands, with all its rights and corresponding obligations, is undisturbed. Both the civil and criminal laws of the State are fully applicable* (pg. 65) (Emphasis added)

On October 21, 1976, Congress passed the Federal Land Policy and Management Act (FLPMA). In holding to the same constitutional principles, the Act states in Section 701 (g)(6) of the Session Laws of 1976 in the Savings Provisions:

Nothing in this Act shall be construed . . . as a limitation 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 . . . (Emphasis added)

Statutes of the state of Nevada, 1955, Chapter 22, Page 300 relating to Federal land acquisitions state in pertinent part:

Sec. 4: Service of process – The State of Nevada reserves the right to serve or cause to be served, by any of its proper officers, any criminal or civil process upon such lands or within such premises for any cause there or elsewhere in the state arising, where such cause comes properly under the jurisdiction of the laws of this state or any legal subdivision thereof.

The constitution for the United States of America, the Courts and Nevada statutes all agree that the enforcement of drug or alcohol laws as well as all other civil and criminal laws of the state of Nevada are the responsibility and obligation of the State and not a jurisdiction to be usurped by the BLM, USFS or any other federal agency. The County Sheriff is the primary law enforcement officer in the state, backed by the County District Attorney, the State Attorney General and the laws, statutes and constitution of the State.

Nevada Revised Statutes 248.90 relating to General Duties – Sheriff states:

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 and 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. (1861, 1873, 1885, 1900, 1912, 1929)

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 submitting to an unlawful act by the federal employee or resisting under threat of bodily harm and/or death. As citizens in Nevada become increasingly aware of the fact that the

armed employee of the BLM or USFS most likely exercises only the power of citizen's arrest, a right vested in all citizens, the opportunity for a major breach of the peace increases.

NRS 200.200 Oppression under color of office

1. An officer or a person pretending to be an officer, who unlawfully and maliciously, under pretense or color of official authority:

- (a) Arrests another or detains him against his will;
- (b) Seizes or levies upon another's property;
- (c) Dispossesses another of any lands or tenements; or
- (d) Does any act whereby another person is injured in his person, property or rights, commits oppression.

1. An officer or person committing oppression shall be punished . . . where physical force or the immediate threat of physical force is used, for a category D felony as provided in NRS 193.130.

It is their duty and obligation under the law for state and county officials to reverse the trend toward a federal police force in Nevada which is a usurpation of the power and authority lawfully delegated to the county sheriff. A major reason the citizens of Nevada elect county sheriffs is to avoid the tyranny and anarchy which will ensue if unelected and uncontrollable armed federal employees are allowed to prey on Nevada citizens.

FLPMA provides a remedy for federal agencies such as the BLM and USFS if they, in fact, need law enforcement assistance. Sec. 303 ©(1) of the Act in the Session Laws states in pertinent part:

When the Secretary determines that assistance is necessary in enforcing Federal laws and regulation relating to the public lands or their resources, he shall offer a contract to appropriate local officials having law enforcement authority within their respective jurisdictions with the view of achieving maximum feasible reliance upon local law enforcement officials in enforcing such laws and regulations. . . . (2) . . . Such cooperation may include reimbursement to a state or its subdivisions for expenditures incurred by it in connection with activities which assist in the administration and regulation of use and occupancy of the public lands.

Mr. Abby has a lawful remedy to his problems. He does not need to defy the well settled law of jurisdiction which has served Nevada and the nation so well for over one hundred and forty years.