

TO: ALL TAYLOR COUNTY,(TEXAS) COMISSIONERS:
FROM: Tim McAtee, Abilene, Texas

Enclosed is documentation (NYE COUNTY RESOLUTIONS)
obtained from a meeting in Odessa Texas sept 1994.

The Speakers at this meeting were Graham County, Arizona,
Sheriff Richard I. Mack, and; Nye county, Nevada, commissioner Richard Carver.

Mr. Mack was a dynamic and powerful speaker with a fantastic
message. Mack detailed results of his fight against the Brady
Bill, and has written a book entitled "from my cold dead fingers"
order book from: Rawhide Western Publishing, PO Box 327,
Safford AZ 85548 or call: 1-800-428-5956

The last speaker at the Odessa meeting was County Commissioner
Richard Carver of Nye County Nevada. Carver spoke softly, it was
hard to hear him at first. After his words began to sink in to
our minds it was apparent that although he spoke softly- Carver
carried a BIG STICK! He detailed his ordeal as County commissioner
as he fought the Federal Government for possession of Nye County,
Nevada public lands. The research that Carver has done is a service
to all people of this Nation. Please take the time to study it.

At the time of this writing (Oct. 8, 1994)

The US Fish and Game service, The US Forest Service,
and the Environmental Protection Agency (EPA) are attempting
to control lands of Texas landowners, no doubt it is going
on all over the United States. The thing that Landowners have not
understood yet, is this LAND GRAB is done to prepare us to
accept and ENFORCE the UNITED NATIONS Bio Diversity treaty.
The EPA, and US Fish and Game service under the Clinton Administration
have already adopted the measures and are attempting to ENFORCE them.

Note that as of this writing..the Senate has not Ratified the
UN convention on Biodiversity. The policies and actions of these
Federal agencies are nothing short of TYRANNY, and CONFISCATION.
If the US Senate Ratifies the Biodiversity Treaty, The United Nations
will be our "Landlord". This will not be accepted by the Landowners
of the several States. Rest assured that this fight for control
of property rights will not remain peaceful. Mr. Carvers' Tactics and
research may be the last peaceful option for the Citizens of the
several States to utilize to keep their property rights.

County Commissioners, you have the POWER TO OPPOSE Federal
interventions in your county, YOU HAVE A DUTY to protect your
State Citizens from Federal Tyranny!

Another tool for your fight, a book;

"Surviving the second civil war: The Land rights Battle
and how to win it"

order book from: Rawhide Western Publishing, PO Box 327,
Safford AZ 85548 or call: 1-800-428-5956 \$15.00 price includes shipping.

COUNTY OF NYE * PO BOX 153 * TONOPAH, NEVADA 89049 * (702) 482-8191
RESOLUTION 93-48

A Resolution recognizing that the State of Nevada owns all public lands within the borders of the State of Nevada and the Counties of Nevada have a duty to manage these lands, to protect all private rights held on these lands, and to preserve local customs, culture, economy and environment:

Whereas, Nye County Commissioner Richard Carver and others from throughout Nevada and the United States have spent considerable amounts of time researching who owns the public lands within the borders of a state, and; Whereas, Article II of the Articles of Confederation, "Each state retains its sovereignty, freedom and independence, and every power, jurisdiction and right, which is not by this confederation expressly delegated to the United States, in Congress assembled," and;

Whereas, Article IV of the Articles of Confederation, "...provides also that no state shall be deprived of territory for the benefit of the United States," and; Whereas, the United States Constitution, being an instrument of limited and enumerated powers, Congress exercises its conferred powers subject to the limitations contained in the Constitution, and;

Whereas, the only enumerated power of the Constitution that allows the Federal Government to own and regulate land within the border of a state is found in Article I of the United States Constitution, and;

Whereas, Article I of the United States Constitution, the Federal Government is authorized to acquire land in any of the several states, by purchase, providing it shall be with the consent of the legislature of that state. Such lands shall be used for the erection of forts, magazines, arsenals, dock yards, and other needful buildings, and;

Whereas, Article IV of the United States Constitution, "The Property Clause," grants Congress complete power to dispose of and regulate land and property within the territory before it becomes a state, and;

Page 2/93-48

Whereas, Article VI of the United States Constitution, "...engagements entered into before the adoption of this Constitution shall be made valid against the United States under this Constitution as under the Confederation..." and; Whereas, Article VI of the United States Constitution, "This Constitution, and 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;
Whereas, the framers of the United States Constitution were statesmen from various states, carefully limiting powers to the Federal Government, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to (retained by) the States respectively, or to the people," through the tenth amendment of the United States Constitution, and;*

Whereas, Section 1 of the Enabling Act of Nevada, "Enable the people of the territory of Nevada to form a Constitution and State Government and for the admission of such state into the Union on an equal footing with the original states in all respects whatsoever," and;

Whereas, Section 4, Clause 3 of the Enabling Act of Nevada, "That the people inhabiting said territory do agree to declare that they forever disclaim all right and title to the unappropriated public lands lying within said territory...," a substantial line of cases decided by the Supreme Court of the United States holds that ordinances enacted by a territorial government or convention are not binding on a new State.

*Whereas, the title to the public lands passed to the State of Nevada under the equal footing doctrine upon Nevada's admission to the Union in 1864. Utah Division of State Lands v United States, 482 US 193, 96 L Ed 2d 162, 107 S CT 2318 (1987), and;
Whereas, Nevada Revised Statutes 328.075(2), "Federal jurisdiction over land to which this state has not ceded its jurisdiction is limited to carrying out governmental purposes authorized by the Constitution of the United States," and;
Whereas, NRS 328.100 (3), The cession of jurisdiction does not vest until certified copies of it have been filed with the state land registrar and recorded in the offices of the county recorders of the counties in which the land is located.*

Page 3/93-48

Whereas, Nevada Revised Statutes 321.5973, "Public lands and minerals are property of the state; rights and privileges under federal law to be preserved; administration of land to conform with treaties and compacts," and;

Whereas, Nye County has a "Policy Plan for Public Lands" which was developed with the cooperation of the State of Nevada, SB 40, under Nevada Revised Statutes 321.770 inclusive and approved on April 3, 1985, and;

*Whereas, Article 4, Section 26 of the Constitution of the State of Nevada, county commissioners shall jointly and individually perform such duties as may be prescribed by law, and;
Whereas, Article 15, Section 2 of the Constitution of the State of Nevada, "Members of the Legislature, and all officers, executive, judicial and ministerial, shall, before they enter*

upon the duties of their respective offices, take and subscribe to the following oath:

I,, do solemnly swear that I will support, protect and defend the Constitution and Government of the United States, and the Constitution and government of the State of Nevada, against all enemies, whether domestic or foreign, and that I will bear true faith, allegiance and loyalty to the same, any ordinance, resolution or law of the State notwithstanding, and that I will well and faithfully perform all the duties of the office of, on which I am about to enter, so help me God; under the pains and penalties of perjury.

And Now;

Therefore, Be it Resolved by the Nye County Board of Commissioners, an administrative agency of the State of Nevada, on this 7th Day of December, 1993, that the Board adopts the doctrine set forth in:

Letter Dated November 5, 1993

To: Robert Miller

Governor of the State of Nevada

To: Bruce Babbitt

Secretary of the Interior

To: Michael Espy

Secretary of Agriculture

To: Jim Baca, Director,

Bureau of Land Management

Page 4/93-48

To: David Unger, Acting Director

U.S. Forest Service

Subject: Public Lands and Other Matters Related Thereto

signed: Richard L. Carver, Vice Chairman

Nye County Board of Commissioners

HCR 60 Box 5400

Round Mountain, NV 89045-9801

And;

A copy of said letter to be attached to this Resolution and made a part thereof.

And;

Therefore, be it Further Resolved that the Nye County Board of Commissioners are upholding their oath of office and recognize that within the borders of the State,

NEVADA OWNS ALL PUBLIC LANDS

And;

That a copy of the Resolution be forwarded to the Honorable Governor of the State of Nevada, Bob Miller, to the Nevada Congressional Delegation, to each member of the Nevada Legislature, and to the Board of County Commissioners of the several counties in Nevada.

*Dated this 7th day of December, 1993.
Cameron McRae, Chairman, Nye County Board of Commissioners
Richard Carver, Vice Chairman Dave Hannigan, Member
Ira Copass, Member Joe Maslach, Member
ATTEST:
Arte Robb, Clerk*

November 5, 1993

*TO: Robert Miller
Governor of the State of Nevada*

*TO: Bruce Babbitt
Secretary of the Interior
TO: Michael Espy
Secretary of Agriculture
TO: Jim Baca, Director
Bureau of Land Management
TO: David Unger, Acting Chief
U.S. Forest Service*

SUBJECT: PUBLIC LAND AND OTHER MATTERS RELATED THERETO

Gentlemen:

INTRODUCTION

My name is Dick Carver, I am a Nye County Commissioner, member of the Nevada State Land Use Planning Advisory Council, a member of the Consumer Advisory Panel to Sierra Pacific Power Company, past member of the Nevada State Conservation Commission, past member of the United States Department of Interior Bureau of Land Management Battle Mountain District Advisory Council, a conservationist, and a second generation rancher here in Smoky Valley, Nye County, Nevada. There are two more generations living on the Carver Ranch today, my son and my grandchildren. My ranch does not have any dependency on public lands for grazing, nor do I have any mining claims on public land today. The Carver family has a long history involving the use of the public lands. The carver family was in the cattle business when they came from the Salt Lake area to Hangtown (Placerville), California, to supply beef for the miners of the California Gold Rush. The Carver family was the first family of non-hispanic, non-native American settlers to graze cattle on the public lands in what is now Yosemite National Park, including Yosemite Valley and Tuolumne Meadow. In 1869, because of drought, the Carvers moved their cattle south along the west slope of the Sierra Nevada mountains to the Kern River area, where they continue to operate today on public lands.

*Public Lands
November 5, 1993
Page 2*

Because of my "deep roots" in the public lands issue, and as a Nye County Commissioner, taking the oath of office to uphold the Constitution and laws of the United States and the Constitution and laws of the State of Nevada, I am addressing the above-mentioned topic.

These views are my own and as a Nye County Commissioner, but may or may not be the views of the Board of Nye County Commissioners. I am addressing the most critical issue before us today;

WHO OWNS THE PUBLIC LANDS IN NEVADA?

POINTS OF INTEREST

- 1. The United States Federal Government, Department of the Interior, and the Department of Agriculture are now regulating and managing certain public lands within the borders of the State of Nevada.*
- 2. The United States Federal Government, Department of the Interior, Bureau of Land Management (BLM) is in the process of developing a new Tonopah Resource Management Plan (RMP). "The purpose of the Tonopah RMP is to provide the BLM direction to manage its natural resources in the Tonopah Resource Area." (Draft Tonopah Resource Management Plan and Environmental Impact Statement, p 1-1).*
- 3. The United States Federal Government, Department of the Interior, and the Department of Agriculture have presented "a proposal to improve management of rangeland ecosystems and the administration of livestock grazing on public lands." "As the nation's principal conservation agency, the Department of Interior has responsibility for most of our nationally-owned public lands and natural resources." (Rangeland Reform '94).*
- 4. After a thorough review of the United States Constitution, and the intent and concerns of the framers of the United States Constitution, it does not contain any authorization for the federal Government of the United States to own, hold, or exert its dominion over any public lands except for whatever land it needs for its own governmental purpose as specified. Furthermore, the United States Government is authorized to acquire such needed land in any of the several states, by purchase, providing it shall be with the consent*

*Public Lands
November 5, 1993
Page 3*

of the legislature of the state involved, and for those purposes specified. (Article 1, Section 8, Clause 17, of the United States Constitution, hereafter referred to as 1.8.17).

- 5. The State of Nevada legislature has granted certain cessions*

to the United States Federal Government pursuant to 1.8.17 in Nye County as follows: The land for the Post Office and Federal building in Tonapah (NRS 328.270 and NRS 328.280), the Federal acquisition of land required by the Department of Defense or Atomic Energy Commission. (Appendix B PART A - State Constitution Provisions and Statutes of General Effect Relating to the Acquisition of Legislative Jurisdiction by the United States, for Nevada, found in Report of the Interdepartmental Committee for the Study of Jurisdiction over Federal Areas within the States, Part I, The Facts and Committee Recommendations Submitted to the Attorney General and Transmitted to the President, April 1956, pages 175-178).

6. The Nevada Revised Statutes clearly limit federal jurisdiction over the land in Nevada.

NRS 328.075(2) STATES AS FOLLOWS:

Federal jurisdiction over land to which this state has not ceded its jurisdiction is limited to carrying out governmental purposes authorized by the Constitution of the United States, and federal jurisdiction over lands held for other purposes is limited to that exercisable by an ordinary proprietor under the laws of this state. (my emphasis added).

7. The conclusion submitted to the Attorney General of the United States, the Honorable Herbert Brownell, Jr. and transmitted to President Eisenhower in 1956 by The Interdepartmental Committee for the Study of Jurisdiction over Federal Areas within the States is as follows:

1. "In the usual case there is an increasing preponderance of disadvantages over advantages as there increases the degree of legislative jurisdiction vested in the United States."

2. "With respect to the large bulk of federally owned or operated real property in the several states

Public Lands

November 5, 1993

Page 4

and outside of the District of Columbia, it is desirable that the federal government not receive, or retain, any measure whatever of legislative jurisdiction, but that it hold the installations and areas in a proprietorial interest status only, with the legislative jurisdiction remaining in the several states." (Id 70, Part I).

8. The intent of the framers of the Constitution of the United States was to guarantee to each of the states sovereignty over all matters within its boundaries except for those powers specifically granted to the United States as agent of the state. (NRS 321.596(4)). (my emphasis added).

9. The certain public lands mentioned in my first point of this letter are in fact public lands that belong to and are under

the jurisdiction and control of the State of Nevada.

NRS 321.5973 STATES AS FOLLOWS:

Public lands and minerals are property of the State; rights and privileges under Federal laws to be preserved; administration of land to conform with Treaties and Compacts.

1. Subject to existing rights, all public lands in Nevada and all minerals not previously appropriated are the property of the State of Nevada and subject to its jurisdiction and control.

2. Until equivalent measures are enacted by the State of Nevada, the rights and privileges of the people of the State of Nevada under the National Forest Reserve Transfer Act (16 U.S.C. && 471 et seq.), the General Mining Laws (30 U.S.C. && 21 et seq.), the Homestead Act (43 U.S.C. && 161 et seq.), the Taylor Grazing Act (43 U.S.C. && 641 et seq.), the Carey Act (43 U.S.C. && 641 et seq.), and the Public Rangelands Improvement Act (43 U.S.C. && 1901 et seq.), and all rights of way and easements for public utilities must be preserved under administration by the state.

Public Lands

November 5, 1993

Page 5

3. Public lands in Nevada which have been administered by the United States under international treaties or interstate compacts must continue to be administered by the state in conformance with those treaties or compacts. (Added to NRS by 1979, 1976).

10. On the public lands owned by Nevada, there is a split estate or other private property rights (i.e., water rights, minerals, grazing rights, timber rights, access rights, etc.). These rights must be recognized and are by state law.

NRS 321.5973(1) STATES AS FOLLOWS:

"Subject to existing rights, all public lands in Nevada and all minerals not previously appropriated are the property of the State of Nevada and subject to its jurisdiction and control."

11. The following discusses the administration of the public lands within the State of Nevada.

NRS 321.5977 STATES AS FOLLOWS:

Objectives in administering public lands. The public lands of Nevada must be administered in such a manner as to conserve and preserve natural resources, wildlife, artifacts, prehistoric sites and artifacts, paleontological resources and to permit the development of compatible public uses for recreation, agriculture, ranching, mining and timber production and the development, production and transmission of energy and other public utility services under principles of multiple use which provide the greatest benefit to the people of Nevada.

(Added to NRS by 1979, 1365, A 1981, 323).

12. Nye County, as a governmental subdivision of the State of Nevada, is responsible for public lands management in cooperation with the State of Nevada on public lands within the borders of Nye County. Nye County has a Policy Plan for Public Lands which was developed with the cooperation of the State of Nevada (NRS 321.630-770) and approved by the Nye

Public Lands
November 5, 1993
Page 6

County Board of Commissioners on April 3, 1985. Nye County has been in the process of updating this plan. I have been holding any further action on this plan until I could research who owns the public lands.

In conclusion, unless evidence can be produced to the contrary, Nye County in cooperation with the State of Nevada, is the public land management authority within the borders of Nye County on all public lands with the exception of those lands pursuant to 1.8.17 of the United States Constitution.
ISSUES

To understand clearly how this conclusion was drawn, one must look back over the past history of the public lands. These lands at one time were called "public domain." We have to go back even further into the past, back to the original thirteen colonies (1783), where there was no "public domain" as we later came to know it. When the thirteen colonies became free sovereign states, all the land within the border of each state was either privately owned or belonged to that state. There was no central government, and each unit was a complete independent sovereign state or small nation unto itself. In the states that were created out of the Northwest Territory, lands not privately owned were called waste or unappropriated lands.

The book "Golden Fleece in Nevada" written by Judge Clel Georgetta states "In 1730, the Continental Congress adopted a resolution requesting the thirteen original states to surrender to the central government (the Confederation) all the lands they claimed in the territory west of their original boundaries to the Mississippi, so such lands could be sold to private interests for money to pay off the debt incurred by the Revolutionary War, and then the area would be divided into new states to be admitted into the Confederation on the same basis as the original states." (@ 151).

Judge Georgetta continues "The thirteen independent sovereign states were first joined together in a Federal Union known as 'The Confederation' and in 1781 ratified 'The Articles of Confederation and Perpetual Union.' Those Articles contain the following words:

Article II. Each state retains its sovereignty, freedom and independence, and every power, jurisdiction and right, which

is not by this confederation expressly delegated to the United States in Congress assembled.

Article IX. ...provides also that no state shall be deprived of territory for the benefit of the United States. (Id 150). There can be no doubt that the purpose of guaranteeing each state its complete sovereignty was to waylay all fear of joining the organization. It was those words of guaranty in the Articles that the various states joined the 'Confederation' in order to form a Central Government to perform certain functions for all the states as a group. It was to be a central government with very limited power." (Id 151).

"The transfer of the dominion of the central government comprised of the land west of the Appalachian Mountains to the Mississippi became known as 'the Northwest Territory.' In 1737, the Continental Congress created, by the Articles of Confederation, passed a legislative act which came to be known as 'the ordinance of 1787' pertaining to the Northwest Territory. It contained these words":

"Section 13 ...to provide also for the establishment of states, and permanent government therein, and for their admission to a share in the Federal Councils on an equal footing with the original states."

Article V ...and whenever any of said states shall have sixty thousand free inhabitants therein, such state shall be admitted, by its delegates, into the Congress of the United States, on equal footing with the original states, in all respects whatsoever..." (Id 152, 153).

"In view of the fact that the Articles of Confederation did not contain any provision for the Central Government to own, hold, or control any public land, it was considered that the Central Government - 'The Confederation' - held these lands in trust for the states that would be later created in the area." (Id 152).

"Since this was a legislative act adopted by the Continental Congress before the United States Constitution was adopted, there seemed some doubt that it continued to be in full legal effect. Therefore, after the new Constitution was in effect, the Congress of the United States, created by the Constitution, reenacted the ordinance of 1787 in its exact words." (Id 152).

To insure the continuation of "the Articles of Confederation" and those of "the Ordinance of 1787", the Constitution of the United States which became effective on March 4, 1789 contains Article VI, Section 1 (hereafter referred to as 6.1).

6.1 STATES AS FOLLOWS:

"All debts contracted and engagements entered into before the

adoption of this Constitution shall be as valid against the United States under this Constitution as under the Confederation." The United States operates under the numerous restrictions of the Constitution. No matter what Congress or the States might wish to do, they have to stay within the boundaries of the Constitution. This is why the framers are credited with the invention of a new kind of republic based on "Constitutional Supremacy." This makes the "supremacy clause" the cornerstone of the whole American political structure." (The Makings of America, W. Cleon Skousen @657).

The "Supremacy clause" Article VI, Section 2 (hereinafter referred to as 6.2) recognized both the supremacy of the United States Constitution and laws, and the supremacy of the State Constitution and laws.

6.2 STATES AS FOLLOWS:

"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 of laws of any State to the contrary notwithstanding."

The purpose of the supremacy clause was to prevent the States from invading those areas which had been specifically delegated to the federal government. The framers were equally concerned with the possibility of the federal branches of government invading the supreme authority retained by the States or trying to acquire exclusive domination of areas in which there was joint jurisdiction. Either case involved the ugly word 'usurpation,' which all of the Framers so vigorously warned against. (Id 657-658 The Makings of America, Skousen). "The word supreme means

*Public Lands
November 5, 1993
Page 9*

no more than this - that the Constitution and laws made pursuant thereof, cannot be controlled or defeated by any other law...the State, as well as individuals, are bound by these laws; but the laws of Congress are restricted to a certain sphere, and when they depart from this sphere, they are no longer supreme or binding."

(Id 659, Skousen citing Hamilton).

The misconception of the Supremacy Clause is "that Congress has supreme power." Congress has only those powers granted by the Constitution. The evidence is clear that "the laws of the United States shall be made according to the Constitution of the United States and shall be supreme." Another reading is that "the Constitution expressly confines this supremacy to laws made pursuant to the Constitution of the United States."

"This Constitution as the powers therein granted, is constantly to be the supreme law of the land... It is not the supreme law in the exercise of a power not granted. It can be supreme only in cases consistent with the powers specially granted, and not

in usurpation." (Id 659, Skousen citing Davie).

6.2 (1ST PART) STATES AS FOLLOWS:

"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;..."

Given the most casual reading of this part of the provision clearly demonstrates that it is talking about the supremacy of the laws of the United States made pursuant to the United States Constitution.

6.2 (2ND PART) STATES AS FOLLOWS:

"...and the judges in every state shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding."

Again, "even the most casual reading of this part of the provision clearly demonstrates that it is talking about the state constitution, not the national Constitution." This supremacy is with the States. (The makings of America, Skousen @ 662).

Public Lands

November 5, 1993

Page 10

The United States Congress was not granted the power to make state law pursuant to state constitution. Only the state can make laws pursuant to the state constitution. The United States Constitution, "when adopted, will become a part of our state constitution; and the latter must yield to the former only in those cases where power is given by it. It is not to yield to it in any other case whatever..." (Id 659, Skousen citing Iredell).

Thus, I conclude that there are two supremacies, that of the United States Constitution and that of the State Constitution. State supremacy is "auxiliary" (Id 663) to the supremacy of the laws made pursuant to the United States Constitution. Powers not delegated in the United States Constitution to Congress are reserved to the States or to the people through the Tenth Amendment to the United States Constitution.

The Tenth Amendment, "powers retained by the states and the people," clearly strengthens my position that the powers granted to Congress through the Constitution of the United States by the people are limited, and all other powers are retained by the states or the people.

This amendment was adopted to reassure the people that the national government would not swallow up the states. It confirms that the states or the people retain all powers not given to the national government, (The Worldbook Encyclopedia CI-CZ Volume 4, page 798). (my emphasis added)

TENTH AMENDMENT STATES AS FOLLOWS:

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people."

This brings us to the "powers granted to Congress." The

enumerated powers delegated to Congress are clear. Congress shall have the exclusive power to make ALL federal laws, and that those laws would pertain only to the powers enumerated in the Constitution. (The Making of America, Skousen @252). From reading the intent of the framers of the Constitution, we begin to see how much they had suffered from war and what they had learned from their bitter experience with the weak constitutional structure of the Articles of Confederation. In 1787, "they sat in solemn contemplation of the powers they were not willing to admit they must relinquish to a central government. Many of

Public Lands
November 5, 1993
Page 11

those powers were volatile and dangerous - open to abuse." (Id 371). The framers therefore tried to incorporate into the Constitution the necessary checks and balances so that if these powers were abused, there would be peaceful remedies available to protect the people and preclude the necessity of going to war to regain their rights. "One of the most important reasons the States united was to promote their mutual defense. Spelling out the war powers was, therefore, a highly significant segment of the Constitution. " (Id 439). The enumerated powers of Article 1, Section 8, Clauses 11-16 are considered the war powers. One of the war powers, Article 1, Section 8, Clause 14 (hereinafter referred to as 1.8.14) has the word land in it.

1.8.14 STATES AS FOLLOWS:

1.8.14, "To make rules for the government and regulation of the land and naval forces."

This power clearly does not have anything to do with public lands, but refers to land forces (i.e., United States Army) and naval forces. "This provision gave the Congress the right to dictate the specific rules and regulations under which the land and naval forces of the United States would operate. This is a very important provision. The Constitution made the President the commander in chief, but it gave the Congress the power to lay down the regulations and restrictions under which, he would be required to operate." (The Makings of America, Skonsen @449).

It is also interesting to note that following the "war power" provisions 1.8.11-16, the next enumerated power 1.8.17 gives Congress the AUTHORITY to set up a ten square mile restricted area for the seat of government, to be exclusively under the control of the Congress, (Id 456) for Congress should have a permanent, secure location. The individual States had failed to protect Congress in the past. 1.8.17 also gives the Congress the AUTHORITY to exercise complete jurisdiction over lands and facilities for defense of the nation which it purchased with consent of the state legislatures of the purposes specified. Here, in this provision, is still the concern of war, and is the only enumerated power that mentions land.

1.8.17 STATES AS FOLLOWS:

"To exercise exclusive legislation in all cases whatsoever

over such district (not exceeding ten square miles) as may, by cession of particular states and the

*Public Lands
November 5, 1993
Page 12*

acceptance of Congress, become the seat of government of the United States and to exercise like authority overall places purchased, by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings."

1.8.17 is very clear that the people of the States empowered Congress to exercise complete jurisdiction and authority over all lands or facilities purchased within a state, providing it shall be with the consent of the legislature of that state. Such lands shall be used for the "erection of forts, magazines, arsenals, dock yards, and other needful buildings." Nowhere does Congress have enumerated power to exercise complete jurisdiction and authority over state owned public lands within the borders of Nevada. "It was assumed that as soon as a new territory was granted statehood, the people of that state would acquire title to every acre of land other than a very small percentage granted to the federal government for the erection of forts, magazines, arsenals, dock yards, and other needful buildings." (The Making of America Skousen @458). (my emphasis added).

"The consent requirement of 1.8.17 was intended by the framers of the Constitution to preserve the State's jurisdiction integrity against federal encroachment. The federal government cannot, by unilateral action on its part, acquire legislative jurisdiction over an area within the exterior boundaries of a state." (Report of the Interdepartmental Committee for the study of Jurisdiction over Federal Areas within the States. Part II @46, 47).

Article 1, Section 8, Clause 18 (hereafter referred to as 1.8.18), which is called an "implied power" (The Making of America Skousen @778) gives the Congress the AUTHORITY to pass any other laws needed to implement the provisions of the Constitution. It does not delegate additional powers. "The Constitution hand enumerated all the powers which the government should have, but did not say how they were to be exercised. This clause explained how they were to be exercised." (Id 459-460 Skousen citing Nicholas).

1.8.18 STATES AS FOLLOWS:

"To make all laws which shall be necessary and proper for carrying into execution, the foregoing powers, and all other powers vested by this

*Public Lands
November 5, 1993
Page 13*

Constitution in the government of the United States or any department or officer thereof."

We have reviewed Article I, the Legislative Branch which includes the powers granted to Congress, Section 8. There is Article II that is the Executive Branch, and Article III, the Judicial Branch, the three branches divide the powers of the United States government. This division, called the separation of powers, is designed to prevent any branch of the government from becoming too powerful.

Next there is Article IV, much of this article was taken word for word from the old Articles of Confederation. This Article is "the relation of the states to each other". (The World Book Encyclopedia CI-C2 @ 798M). This is another section of the United States Constitution that deals with land, lands that are to become states. This is the section that will be referred to as the statehood section, Article IV, Section 3 (hereinafter referred to as 4.3). At the time the United States Constitution was formed and adopted, remember that the Confederation held the Northwest Territory in trust for the establishment of states. Also remember that "the Articles of Confederation" and "the Ordinance of 1787" were valid under the new constitution, 6.1. The question of how the new central government was going to form and admit new states in the future, beyond the original 13 states, had to be addressed. This is how and why Article IV, Section 3, Clause 1 (hereinafter referred to as 4.3.1) was inserted into the United States Constitution (my emphasis added).

4.3.1 STATES AS FOLLOWS:

New states may be admitted by the Congress in the Union; but no new states shall be formed or erected within the jurisdiction of any other state; nor shall any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned, as well as of the Congress.

Now that we see how the Constitution covers property in the future, what about the existing property that the government held from the original 13 states? How was Congress going to dispose of the lands pertaining to the Northwest Territory and any other property that the original 13 states had ceded to the Confederation, and recognized by the new Constitution in 6.1.

Public Lands

November 5, 1993

Page 14

This is how and why Article IV, Section 3, Clause 2 was inserted into the Constitution.

4.3.2 STATES AS FOLLOWS:

"The Congress shall have powers to dispose of and make all needful rules and regulations, respecting the Territory belonging to the United States; and nothing in the Constitution shall be construed to prejudice any claim of the United States, or of any particular state." (my emphasis added).

The Supreme Court has decided this "property clause" pertains

only to a certain territory at the time the Constitution was adopted and was considered to only last until the Territory was made into states, and the debt was paid. Thereafter, the only power Congress was to have was to be one of the enumerated powers of 1.8 or the United States Constitutions. The statehood article surely would not have given Congress unlimited power to make any laws necessary and proper over whatever Congress wanted to do. This would have defeated the limiting powers of 1.8 of the United States Constitution and would also make it impossible to determine the exact powers retained by the states in the Tenth amendment.

Others consider this "property clause" as pertaining to a territory and property before it becomes a state, as when a state is admitted, all property is granted to the state on an equal footing with the original thirteen states.

It is true that Article 4, Section 3, Clause 2 of the Constitution states the Federal Government shall have power to make rules and regulations respecting "the territory or other property belonging to the United States." What did those words refer to? "... other property belonging to the United States" no doubt referred to its "forts, magazines, arsenals, dock yards, and other needful buildings" specifically listed in Article 1, Section 8, Clause 17. What did the word "territory" refer to? According to various debates among early American Statesmen, it referred to the lands west of the Appalachian Mountains which the central government had accepted from the original states to be held in trust until new states could be created and admitted to the Union as full sovereign states on an equal basis with the original states, which owned and had full dominion over all lands within their borders. (Golden Fleece in Nevada, Clel Georgetta, Judge @153).

Public Lands

November 5, 1993

Page 15

The Framers of the Constitution could have enumerated other powers in 1.8 of the Constitution that could have included the AUTHORITY for the federal government to own, manage and control all public lands. The enumerated powers delegated to Congress limits the control of land. The management and control of certain public lands were clearly retained by the states through the Tenth Amendment.

There were many lengthy debates in Congress on issues dealing with public lands. Senator Hendricks made one while speaking of the ordinance of 1787: "this union is in theory formed of sovereign, equal people and independent states. In the older members of this Confederation, the federal government sets up no claim to the waste and unappropriated lands, has no land office, derives no revenue from the sale of land. The ordinance contemplated the public lands as belonging to new states, after their admission in the union... As a further inducement to the new states to join the Confederation the ordinance stipulated

that they should be admitted into the union... on an equal footing with the original states in all respects whatever, and the Constitution in substance of the same policy, provides that all engagements entered into before the adoption of the Constitution shall be as valid against the United States, under the Constitution as under the Confederation so that the Articles of Confederation, the Acts of Cessions, the ordinance of 1787 and the Constitution itself, form a perfect and harmonious chain of policy - the grand object of which was the union and equality of the states. Then Mr. President, if at all correct in this view, it may well be asked by what means have the new states been deprived of their equality of the right of soil... The public lands should be ceded to the states in which they lie because their present condition is not warranted by the letter of the Constitution of this government... Its powers are carefully enumerated and specified. I deny, sir, the limits of the states, except for the purpose designated by the Constitution such as forts, magazines, arsenals, dockyards and other needful buildings and to enable Congress to hold lands even for these purposes, the consent of the legislature of the states is declared to be necessary by the expressed language of the Constitution..." (Id 154, 155).

As one can see, waste or unappropriated lands, later public domain, and still later, public lands were always a concern and discussed, but their ownership and control were retained by the states through the 10th amendment to the Constitution.

*Public Lands
November 5, 1993
Page 16*

We definitely do not want to overlook treaties, because they are also "supreme law of the land."

A PORTION OF 6.2 STATES AS FOLLOWS:

"...and all Treaties made, or which shall be made, under the Authority of the United States, shall be made the supreme Law of the Land..."

Earlier, we mentioned the importance of "the ordinance of 1787."

Let us now discuss a treaty between Mexico and the United States. It should be pointed that there are several treaties of great importance to the public lands issue between 1787 and 1848 (i.e., Louisiana Purchase, etc.).

In 1848, by the Treaty of Guadalupe Hidalgo, Mexico ceded to the United States the vast southwest. "The states of California, Arizona, Nevada, Utah, and parts of New Mexico, Colorado, and Wyoming were carved out of this combination of purchase and treaty. This treaty contains an interesting section: ...shall be formed into free, sovereign, and independent states and incorporated into the Union of the United States as soon as possible, and the citizens thereof shall be accorded the enjoyment of all the rights, advantages, and immunities as citizens of the original states..." (Golden Fleece in Nevada, Judge Georgetta @165). This is very

interesting because we are now talking about the very land that is to become the state of Nevada.

What is an independent sovereign state as one of the original thirteen states? It is a state that retains its sovereignty, freedom and independence, and every power, jurisdiction and right, which is not expressly delegated to the United States Congress by the Constitution and shall not be deprived of Territory for the benefit of the United States. (The articles of confederation, and 6.1 of the United States Constitution). It is also very interesting to note that "when the original states became free sovereign states, all the land within the border of each state was to be either privately owned, or belong to the state." (Golden Fleece in Nevada, Judge Georgetta @150). Nevada cannot be a free sovereign state, as the original thirteen states, unless all the lands within its borders are either privately owned or belong to the state except those pursuant to 1.8.17. This is why the Federal Government must purchase, with the consent of the state legislature, land for specified

*Public Lands
November 5, 1993
Page 17*

purposes. The land belongs to the state, this was the intent of the framers of the United States Constitution and is the limit placed upon the federal government today.

It is important to look at how Nevada became a state. On March 21, 1864, Congress passed an act called "The Enabling Act."

THE ENABLING ACT STATES AS FOLLOWS:

A part of Section 1: "Enable the people of the Territory of Nevada to form a Constitution and State Government and for the admission of such State into the Union on an Equal Footing with the original States in all respects whatsoever."

So, again we have the same intent as the Treaty of Guadalupe Hidalgo of 1848 - free sovereign state as the original thirteen states.

SECTION 4, CLAUSE 3 OF "THE ENABLING ACT" STATES AS FOLLOWS

"That the people inhabiting said territory do agree to declare that they forever disclaim all right and title to the unappropriated public lands lying within said territory, and that the same shall be and remain at the sole and entire disposition of the United States..."

Let's get a clear reading and understanding of this part of "The Enabling Act." The United States Congress was the only one that could pass an act to allow the people of the Nevada Territory to form a Constitution and State Government and to admit this Territory into the Union as a state. (4.3.1 U.S. Constitution).

The people of the Nevada Territory had no authority to pass this act. Research has shown that first, the people of the Territory of Nevada had to give up all their "interest" in the unappropriated lands of the Nevada territory to the Congress of the United States so Congress could pass said lands to the State

of Nevada upon acceptance of Nevada into the Union. Then Nevada would become a free sovereign state as the original-thirteen states relating to land.

If the unappropriated public lands referenced in "The Enabling Act" were not passed from Congress to the new state of Nevada and Congress held these lands in the name of the Federal Government, it would be a "violation of the United States Constitution as

*Public Lands
November 5, 1993
Page 18*

these lands are not pursuant to 1.8.17 of the U.S. Constitution." (Golden Fleece in Nevada, Judge Georgetta @168). Remember that the Constitution limits what the federal government can own; it does not grant unlimited ownership to the federal government. It would also be a violation of:

- a. The congressional Act of 1834 which provided any land held by the federal government within a new state would be held in trust for the state until it could pass into private hands.*
- b. The Treaty of Guadalupe Hidalgo of 1848, as Nevada would be denied the right of a free sovereign as an original state in all respects whatsoever.*

And it would be a breach of trust, and void President Lincoln's proclamation where he said, "...do hereby declare and proclaim that the said State of Nevada is admitted into the Union on an equal footing with the original states."

The Constitution of the United States provides the basis of government. It divides the powers and duties between the federal and state governments, limiting the power of the federal government, and the states retaining all other powers.

AUTHORITIES

Judicial review is the method used to answer basic questions as to what the Constitution means in case of dispute, and confirms the state and national governments with their constitutional limits. (The Worldbook Encyclopedia, U-V, Volume 20, page 83). Review of some authorities from court cases relevant to the public lands issue.

"When the state of Alabama was admitted to the Union, one of the requirement laid down by the federal government was that the state must relinquish claim to all public lands within its borders. The compact between the United States and the state of Alabama provided that the people of Alabama forever-disclaimed all right or title to the waste or unappropriated lands lying within the state and that the same would remain at the sole disposal of the United States. That is almost the same wording we have in the Nevada 'Enabling Act.'" (Golden Fleece in Nevada, Judge Georgetta @158).

*Public Lands
November 5, 1993
Page 19*

"Later there was a dispute over the legal effect of such a compact. One party contended the federal government was the out-and-out owner of the land and had complete jurisdiction and sovereignty over it. The other party contended the federal government had no power under the Constitution to hold land in Alabama after it became a state." (Id 159).

"The dispute finally reached the Supreme Court of the United States in the case of: Pollard V. Hagen, 44 U.S., (3 How), 212 (1845) 11 Law Ed. 565. Fact: Pollard claimed the land in the City of Mobile under a patent issued by an act of Congress." (Id 159). "Hagen claimed the land by a chain of title through the state of Alabama going back to a 'Spanish Grant.' At the time Alabama was admitted to the Union as a state, this land was under the Mobile River, a navigable stream." (Id 158).

"The United States Supreme Court held Alabama had the same jurisdiction over navigable rivers, and the soil under them, as the original thirteen states had. The compact (Enabling Act) through which Alabama became a state contained the provision 'that the people of Alabama forever disclaimed all right or title to the waste or unappropriated lands lying within the state, and that the same should remain at the sole disposal of the United States. The United States Supreme Court held that provision was in violation of the United States Constitution and was therefore void.'" (Id 158). (my emphasis added)

The misconception about the "Enabling Act' of Alabama and Nevada, is that the people of the state of Alabama disclaimed all right and title to waste or unappropriated lands after statehood, where in Nevada the people of the Nevada Territory (before statehood) disclaimed all right and title to unappropriated public lands in the Nevada Territory. There is a very big difference. Could it be that the Nevada Territory disclaimer (Enabling Act) is being interpreted as being the people of the state of Nevada rather than the people of the territory of Nevada? There is no constitutional provision for the people of a territory to discard the sovereignty and equal footing of a future state. The people of the Territory of Nevada were only giving up their interest at that time to the unappropriated public lands.

Nevada V. United States 512 F. Supp. 166 (1981). The State of Nevada brought an action alleging that the Federal Land Policy and Management Act (FLPMA) of 1976 was unconstitutional. The question of ownership of the public lands was not asked. The court entered judgment for defendants that the FLMPA was

*Public Lands
November 5, 1993
Page 20*

constitutional. The Ninth Circuit affirmed the lower court decision and referenced that this case does not involve a claim to title of land. The Ninth Circuit upholding the lower court decision, "The federal government owns approximately 88 percent of the land within the borders of the state of Nevada, according to the uncontroverted allegation of the state in this case...

Nevada agrees that this case does not involve the claim of title to land... Any further challenges to actual or anticipated federal action with respect to federally held land will arise in a different legal and historical context from that surrounding the 1964 moratorium which prompted this suit." (699 F 2d 486-488, Judge Schroeder, Ninth Circuit).

"The purposes of the cessions of unappropriated lands to the federal government was for the land to be sold, and the proceeds applied to paying the public debt incurred in the Revolutionary War." "...(t)he United States never held any right to the vacant lands in any of the new states except temporarily to execute the trusts created by the original states in their deeds of cession of their western lands to the federal government.

'Both of these deeds of cession stipulated, that all the lands within the territory ceded, and not reserved or appropriated to other purposes, should be considered as a common fund for the benefit of all the United States, to be faithfully and bona fide deposited of for that purpose, and for no other use or purpose whatever.'" (Id 170, District Court citing Pollard v. Hagen).

In 1787, Congress also specified that new states shall be admitted into the Union "...on an equal footing with the original states in all respects whatever." (Id 170, District Court citing Pollard v. Hagen).

"Whenever the United States shall have fully executed these trusts, the municipal sovereignty of the new states will be complete throughout their respective borders, and they, and the original states, will be upon an equal foot, in all respects whatever." (Id 170, District Court citing Pollard v. Hagen).

The Nevada court addressing the property clause declares that "the limitations on what the federal government can do with its property, by reason of the origin of the property clause, apply only to lands within the original thirteen states..." (Id 171, citing United States V. Gratiot, 39 U.S. (14 Pet) 526 10 L. Ed. 573) (1840).

Public Lands

November 5, 1993

Page 21

Said court discussed the reasons for insertion of the property clause in the Constitution. "The federal government was to be one of carefully limited powers, and it had no grant of authority to receive and administer the unappropriated lands and other properties, such as military equipment and supplies, which the thirteen original sovereign states wished to cede to it for the common good." (Id 170, District Court citing Pollard V. Hagen). The raising of money to pay the public debt by selling the lands was the main object of the cessions. The property clause provided the United States government with the power to take possession of the properties and protect them, so that they could be disposed of in an orderly fashion. It applies only to the property which the states held in common at that time, and has no reference whatever to any territory or other property which the new sovereignty might afterwards itself acquire."

Dred Scott v. Stanford, 60 U.S. (19 How) 393, 15, L. Ed. 691 (1856). "It does not speak of any territory, nor of territories, but uses language which, according to its legitimate meaning points to a particular thing. The power is given in relation only to the territory of the United States. That is, a territory then in existence, and known or claimed as the territory of the United States. It begins its enumeration of powers by that of depositing, in other words, meaning sale of the lands, or raising money from them, which as we already said, was the main object of the cessions, and which accordingly the first thing provided for in the article." *Dred Scott v. Stanford*, 60 U.S. (19 How) 393, 436 (1856).
In *Kansas v. Colorado*, 206 U.S. 46, "The first article, treating legislative powers, does not make a general grant of legislature power. It reads Article 1, Section 1, all legislative powers herein granted shall be vested in a Congress, etc." Then, in Section 3 it mentions and defines the legislative powers that are granted. By reason of the fact that there is not a general grant of legislative power, it has become an accepted constitutional rule that this is a government of enumerated powers. Further, *Kansas* citing *Fairbanks V. United States*, 191 U.S. 283, 288: "We are not confronted here with a question of the extent of the powers of Congress, but one of the limitations imposed by the Constitution on its action, and it seems to us clear that the same rule and spirit of construction must also be recognized. If powers granted are to be taken as broadly granted and as carrying with them authority to pass those acts which may be reasonably necessary to carry them to full execution; in other words, if the Constitution in its grant of powers is to be construed that Congress shall be able to carry into full effect the powers

Public Lands
November 5, 1993
Page 22

granted, it is equally imperative that, where prohibition or limitation is placed upon the powers of Congress, prohibition or limitation should be enforced in its spirit and to its entirety. It would be a strange fault of construction that language granting powers is to be liberally construed, and that language of restriction is to be narrowly and technically construed." (Id 91).

"But it is useless to pursue the inquiry further in this direction. It is enough for the purpose of this case that each state has full jurisdiction over the lands within its borders, including the beds of streams and other waters." (Id 93).
St. Louis-San Francisco Ry. v. Satterfield 27F 2d 586 (1928),
"The legislature of a state has unlimited power to transfer jurisdiction to the United States except as it may be restricted by state or federal Constitutions."
Kleppe v. New Mexico 426 U.S. 529, 49 L. Ed. 2d 34 (1976), is another constitutional issue like the Nevada case. The question asked was if the Wild and Free-Roaming Horse and Burros Act was

constitutional. Here again this case did not involve a claim of title to the land. The Supreme Circuit Court found the Wild Horse Act constitutional.

This case was a reversal of the District Court ruling. Supreme Court Justice Marshall, "...appellees mistakenly read this language to limit Congress' power to regulate activity on the public lands...and while the furthest reaches of the power granted by the Property Clause have not yet been definitively resolved, we have repeatedly observed that the power over the public lands thus entrusted to Congress is without limitation...we find that, as applied to this case, the act is a constitutional exercise of congressional power under the Property Clause...we need not, and do not decide whether the Property Clause would sustain the act in all of its conceivable applications." (Id 538, 539, 546).

A most recent case *New York v. United States* 120 L. Ed 2d 120 (1992), "...the Constitution question is as old as the Constitution: it consists of discerning the proper division of authority between the federal government and the states. We conclude that while Congress has substantial power under the Constitution to encourage the states to provide for the disposal of the radioactive waste generated within their borders, the Constitution does not confer upon Congress the ability simply to

Public Lands

November 5, 1993

Page 23

compel the states to do so..." (Id 133).

"...If a power is delegated to Congress in the Constitution, the Tenth Amendment expressly disclaims any reservation of the power to the states; if a power is an attribute of state sovereignty reserved by the Tenth Amendment, it is necessarily a power the Constitution has not conferred on Congress." See *United States v. Oregon* 366 U.S. 643, 649, 6 L E. 552, 66 S ct 438 (1946); *Oklahoma ex Rel. Phillips v. quy F. Atkinson Co.*, 313 U.S. 508, 534, 85 L. Ed. 1487, 61 S ct 1050 (1941) (Id 137).

"It is in this sense that the Tenth Amendment 'states but a truism that all is retained which has not been surrendered.' *United States v. Darby*, 312 U.S. 100, 124, 85 1 Ed. 609, 61 S ct 451, 132 ARL 1430 (1941). As Justice Story put it, 'This amendment is a mere affirmation of what, upon any just reasoning, is a necessary rule of interpreting the Constitution. Being an instrument of limited and enumerated powers, it follows irresistibly, that what is not conferred, is withheld, and belongs to the state authorities...' (Id 137).

"Congress exercises its conferred powers subject to the limitations contained in the Constitution." (Id 137). (my emphasis added).

The United States Constitution did not allow for the Congress to regulate private property in the states; the regulation of private property in any state falls under the sovereignty and jurisdiction of the state's policy power. In *New York v. United States*, the court further states, "As an initial matter,

Congress may not simply commandeer the legislative process of the states by directly compelling them to enact and enforce a federal regulatory program." Hodel v. Virginia Surface Mining and Reclamation Association Inc., 452 U.S. 254, 288, 69 L Ed 2d 1, 101 S ct 2352 (1981). In Hodel, the court upheld the Surface Mining Control and Reclamation Act of 1977 precisely because it did not 'commandeer' the states into regulation mining." The court found that "the states are not compelled to enforce the steep-slope standard, to expend any state funds, or to participate in the federal regulatory program in any manner whatsoever." (Id 141).

If the state ratified or gives consent to any authority which is not specifically granted by the United States Constitution, it is null and void.

Public Lands

November 5, 1993

Page 24

The New York court further states: "Where Congress exceeds its authority relative to the states; therefore, the departure from the Constitutional plan cannot be ratified by the "consent" of state officials." An analogy to the separation of powers among the branches of the federal government clarifies this point.

The Constitution's division of power among the three branches is violated where one branch invades the territory of another, whether or not the encroached-upon branch approves the encroachment. In Buckley v. Valeo, 424 U.S. 1, 118-137, 35 L. Ed. 2d 659, 96 S ct 612 (1976), for instance, the court held

that the Congress had infringed the President's appointment power, despite the fact that the President himself had manifested his consent to the statute that caused the infringement by signing it into law. See National League of Cities V. Usery, 426 U.S., AT 842, N 12, 49 L. Ed. 2d 245, 96 S ct 2465...Congress cannot be expanded by the 'consent' of the governmental unit whose domain is thereby narrowed, whether that unit is the executive branch or the state's." (Id 154).

"State officials cannot consent to the enlargement of the powers of Congress beyond those enumerated in the Constitution." (Id 154). (my emphasis added).

SUMMARY

When the United States Constitution was adopted, it was a new basic law of the land. Some people today consider it as the "Supreme Land Management Plan" (Cliff Gardner, Elko County Rancher/Historian, October 1, 1993).

The evidence is clear that the United States Constitution does not delegate any powers to Congress that allows Congress to grant to any federal agency legal claim to all public lands within Nevada's borders, except those pursuant to 1.8.17. Nor does Congress have any delegated power to grant power to the federal agencies to regulate private property on the public lands within Nevada's borders.

The Supreme Court of the United States holds that the federal

government has no right or power under the constitution to own, hold control of, or exercise any complete municipal sovereignty over any land of any kind except - the District of Columbia; land it had purchased within a state, with the consent of the state legislature, for its own governmental uses, (forts, arsenals, dockyards and other needful buildings) and over acquired territory before it is divided into states. That is exactly what

*Public Lands
November 5, 1993
Page 25*

the Constitution says and that is what the Supreme Court said it means.

Some consider the case of New York V. United States (1992) as the strongest states rights case ever by the United States Supreme Court (Don Bowman, Churchill County Businessman, October 27, 1993). The Supreme Court of the United States held that Congress exercises its conferred powers subject to the limitations contained in the Constitution, if the state ratifies or gives consent to any authority which is not specifically granted by the United States Constitution, it is null and void, state officials can not consent to the enlargement of the powers of Congress beyond those enumerated in the Constitution. The United States Constitution is clear, Nevada law is clear. Nevada owns all the public lands in Nevada and all the minerals subject to existing rights, and has complete jurisdiction and control of these lands. NRS 321.5973(1)

The Tonopah Resource Management Plan and Environmental Impact Statement and Rangeland Reform '94 apply only to federal property in Nye County pursuant to 1.8.17 of the United States Constitution.

Again, if anyone can produce any evidence to the contrary, please bring your evidence forward.

As I was born and raised in Smoky Valley, Nevada and as a Nye County Commissioner, I strongly believe in the principals of multiple use which will provide the greatest benefit to the people of Nye County, the State of Nevada, and the United States. As a county commissioner, I believe in management of our natural resources that is closest to the people and to the resources themselves. This being with county government, as our founders of this great country believed in when they settled America.

With the strong leadership in Nye County, we can address through our Nye County Land Use Plan, all issues presently being managed by the federal agencies. With the appointment of a Nye County Public Lands Commission, we can involve the actual public land users as advisors to the Nye County Board of Commissioners. Article 15, Section 2 of the Constitution of the State of Nevada required that I take the oath to support, protect and defend the Constitution and Government of the United States and the Constitution and Government of the State of Nevada. The United

States Constitution limits the land that the federal government can own and manage. The Nevada state law clearly establishes ownership of the public lands. The supremacy clause of the United States Constitution makes Nevada law supreme in the absence of power granted to Congress by the United States Constitution. My constituents are demanding that I fulfill my oath of office by making sure it is recognized that within the borders of the state

NEVADA OWNS ALL PUBLIC LANDS.

*Richard L. Carver, Vice Chairman
Nye County Board of Commissioners
HCR 60, Box 5400
Round Mountain, NV 89045-9801
(702) 377-2175*

RESOLUTION 93-49

Nye County Public Roads

*A Resolution declaring certain Public Travel corridors across Public Lands within Nye County as Nye County Public Roads:
Whereas, before the Territory of Nevada was settled, the area was inhabited by Native Americans and decedents of Spanish explorers, and;*

Whereas, there were no roads or highways as we know them today, but there were single track ways, pathways, and trails connecting two points, and;

Whereas, since that time, miners, ranchers, sportsmen, and other members of the public have established numerous roads and similar public travel corridors by usage across public lands, and;

Whereas, in recent years, local and state governments and others have been constructing and maintaining roads and highways by mechanical means across public lands, and;

Whereas, these ways, pathways, trails, roads, highways, and similar public travel corridors have a public purpose such as, but not limited to, mining, ranching, recreation, water, timber, utilities, wood gathering, hunting, fishing, sight seeing, camping, to name a few, and;

Whereas, the title to the public lands passed to the State of Nevada under the equal footing doctrine upon Nevada's admission into the Union in 1864, and;

Whereas, the Act of Congress of July 26, 1866, (RS2477), is evidence that Congress executed the Quitclaim of any right, title or interest in any road, right of way, ditches, etc, Now;

Therefore, be it Resolved that the Board of Nye County Commissioners hereby declares, on the 7th day of December, 1993, that:

Excluding all roads across private lands, and excluding all state highways in Nye County 160, 361, 372, 374, 375, 376, 377,

378, 379, and 844, and excluding all Federal Highways - US 6 and US 95;

Page 2/93-49

All ways, pathways, trails, roads, county highways, and similar public travel corridors across public lands in Nye County, Nevada, whether established and maintained by usage or mechanical means, whether passable by foot, beast of burden, carts or wagons, or motorized vehicles of each and every sort, whether currently passable or impassable, that was established in the past, present, or may be established in the future, on public lands in Nye County, are hereby declared Nye County Public Roads;

All rights of way to all ways, pathways, trails, roads, county highways and similar public travel corridors across public lands that are declared Nye County Public Roads are the property of Nye County as trustee for public users thereof, and will consist of the same width as required in other Nye County ordinances; Nye County hereby ratifies historic practices in the County that public roads have been maintained either by usage or mechanical means and the County will continue this practice in the future.

The County's decision to not mechanically maintain any way, pathway, trail, road, county highway or similar public travel corridor across public lands shall not terminate, or affect in any way, such roads status as a Nye County Public Road;

No action may be brought against Nye County, its officers, or employees for damage suffered by a person solely as a result of the unmaintained condition of a Nye County Public Road on Public Lands in Nye County, NRS 405.193(2);

Abandonment or road closure of any Nye County Public Road across Public Lands must follow procedure in accordance with Nevada Revised Statutes and only after public hearings, NRS 405.195;

That a copy of this Resolution be forwarded to all interested parties and this Resolution shall be followed by an ordinance.

Cameron McRae, Chairman

Nye County Board of Commissioners

Richard Carver, Vice Chairman

Dave Hannigan, Member

Ira Copass, Member

Joe Maslach, Member

ATTEST: Arte Robb, Clerk

cc: The Honorable Harry Reid, U.S. Senator

The Honorable Richard Bryan, U.S. Senator

The Honorable Barbara Vucanovich, U.S. Representative

The Honorable James Bilbray, U.S. Representative

The Honorable Frankie Sue Del Papa, Nevada Attorney General

All Nevada Legislators

Mr. Dean Rhoads, Chrmn, NV Committee on Public Lands

Mr. John Marvel, Vice-Chrmn, NV Committee on Public Lands

Mr. Roy Neighbors, NV Committee on Public Lands

Mr. Mike McGinnis, NV Committee on Public Lands

Mr. Mark James, NV Committee on Public Lands

Mr. Jack Regan, NV Committee on Public Lands

Ms. Karen Hayes, NV Committee on Public Lands
Mr. John Crossley, Director, Legislative Council Bureau
Mr. Pete Morrow, NV Department of Natural Resources
Mr. Tom Ballow, Nevada Department of Agriculture
Mr. Russ Fields, Nevada Department of Minerals
Mr. Willie Molini, Nevada Department of Wildlife
Ms. Pamela Wilcox, Nevada Division of State Lands
Mr. James Currivan, BLM, Battle Mountain District Manager
Mr. Billy R. Templeton, BLM, Nevada State Director
Mr. James Elliott, BLM, Carson City District Manager
Mr. Kenneth Walker, BLM, Ely District Manager
Mr. Rodney Harris, BLM, Elko District Manager
Mr. Ben Collins, BLM, Las Vegas District Manager
Mr. Theodore Angle, BLM, Tonopah Resource Area Manager
Mr. Wayne King, BLM, Shoshone Resource Area Manager
Mr. James Phillips, BLM, Lahontan Resource Area Manager
Mr. John Mattheissen, BLM, Walker Resource Area Manager
Mr. Runore Wycoff, BLM, Stateline Resource Area Manager
Mr. Gerald Smith, BLM, Schell Resource Area Manager
Mr. Gene Drais, BLM, Egan Resource Area Manager
Mr. R.M. "Jim" Nelson, Supervisor, Toiyabe National Forest
Mr. John Inman, Supervisor, Humboldt National Forest
Mr. David Grider, USFS, Tonopah District Ranger
Mr. Dayle Flanigan, USFS, Austin District Ranger
Mr. Guy Pence, USFS, Carson District Manager
Mr. Jim Tallerico, USFS, Las Vegas District Ranger
Mr. Jerry L. Green, USFS, Ely District Ranger
Mr. John S. Turner, Director, U.S. Fish & Wildlife Service
Mr. David Harlow, Nevada, US Fish & Wildlife Service
All Nevada County Commissioners
All Nevada County District Attorneys
Nevada Farm Bureau
Nevada Cattlemans Association
Nevada Sheep Growers Association
Nevada Mining Association
Nevada Miners & Prospectors Association
Nevada Association of Cities
Nevada League of Cities
C.A.R.E.E.