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21 **EIGHTH JUDICIAL DISTRICT COURT**  
22 **IN AND FOR CLARK COUNTY, NEVADA**

23 CLIVEN BUNDY, an Individual,  
24 Plaintiff,

25 vs.

26 STATE OF NEVADA, *ex rel*, and CLARK  
27 COUNTY, a Subdivision of the State of  
28 Nevada; DOES I-X; and ROE  
CORPORATIONS XI-XX,

Defendants,

and

CENTER FOR BIOLOGICAL DIVERSITY,  
Defendant-Intervenor.

Case No. A-18-779718-C

Dept. No.: XXIV

**ORDER GRANTING DEFENDANT-  
INTERVENOR CENTER FOR  
BIOLOGICAL DIVERSITY MOTION  
FOR JUDGMENT ON THE PLEADINGS**

On January 24, 2019, Defendant-Intervenor Center for Biological Diversity (the "Center") filed a Motion for Judgment on the Pleadings ("Motion") seeking to dismiss Plaintiff Cliven Bundy's ("Bundy") Complaint. On February 11, 2019, Defendant Clark County filed a joinder to

1 the Center’s Motion. On March 5, 2019, Bundy filed an Opposition to the Motion, and on March  
2 12, 2019, the Center filed a Reply.

3 The Center’s Motion came on for hearing on Tuesday, March 19, 2019, at 9:00 a.m., with  
4 appearances by Craig Mueller of Mueller Hinds & Assoc. Chtd. for Bundy, Chris Mixson of Wolf,  
5 Rifkin, Shapiro, Schulman & Rabkin LLP and Justin Augustine of the Center for Biological  
6 Diversity for the Center, and Chris Hanley of the Hanley Law Firm PLLC for Defendant Clark  
7 County.

### 8 **I. BUNDY’S COMPLAINT**

9 Bundy’s Complaint seeks declaratory relief for three causes of action. First, Bundy seeks a  
10 declaration of the Court that all public lands within the State of Nevada, including the federal  
11 Bunkerville grazing allotment where Bundy grazes cattle without a federal permit, are “the  
12 property of the People of Nevada and Clark County, unencumbered and free of any claim by The  
13 United States of America” on the basis that such lands were conveyed to the State of Nevada upon  
14 statehood and are no longer owned by the United States.

15 Bundy’s second cause of action seeks a declaration of the Court that the same federal  
16 public lands are owned by the State of Nevada because the State of Nevada and Clark County are  
17 obligated to and owe to Bundy “the duty to defend the interests of the 1983 Nevada Constitution  
18 and . . . N.R.S. §§ 321.596 - 321.599.”

19 Bundy’s third cause of action asserts—“for Nevada, the rights of Nevada and it’s [sic]  
20 People”—a superior claim to title and actual ownership of all of the public lands within Nevada  
21 and Clark County and therefore seeks an order of the Court quieting title to the federal public  
22 lands in the name of the State of Nevada and Clark County.

### 23 **II. THE CENTER’S MOTION**

24 The Center seeks dismissal of Bundy’s Complaint pursuant to NRCP 12(c) and 12(h)(2)  
25 for failing to state a claim upon which relief can be granted. The Center argues Bundy’s claims  
26 are barred by the doctrine of issue preclusion in light of previous adverse federal court decisions to  
27 which Bundy was a party. *Bower v. Harrah’s Laughlin, Inc.*, 125 Nev. 470, 480–83 (2009),  
28 describes the elements of issue preclusion when considering the preclusive effect of a previous

1 federal decision. Under *Bower*, when a party against whom issue preclusion is asserted in the  
2 current litigation was a party to prior federal litigation, then issue preclusion bars that party's  
3 claims in the current litigation when a) the issue in the current litigation is identical to the issue  
4 alleged in the prior litigation, b) the issue was actually litigated in the prior litigation, and c) the  
5 resolution of the issue was a critical and necessary part of the earlier judgment. *Bower*, 125 Nev.  
6 at 480.

7         The Center argues that the elements of issue preclusion are met here because Bundy's  
8 claims rely on an identical issue that Bundy previously litigated and lost—whether federal public  
9 land within the boundaries of Nevada belongs to the United States or to the State of Nevada. The  
10 Center points to three previous federal cases where this issue was presented by Bundy and rejected  
11 by the court: *U.S. v. Bundy*, Case No. CV-S-98-531, 1998 U.S. Dist. LEXIS 23835 (D. Nev. Nov.  
12 3, 1998) ("*Bundy I*"), *affirmed* 178 F.3d 1301 (9th Cir. 1999); *U.S. v. Bundy*, Case No. 2:12-cv-  
13 0804, 2013 U.S. Dist. LEXIS 95294 (D. Nev. July 9, 2013) ("*Bundy II*"); *U.S. v. Bundy*, Case No.  
14 2:16-cv-00046, 2016 U.S. Dist. LEXIS 182437 (D. Nev. Dec. 20, 2016) ("*Bundy III*," Magistrate  
15 Report and Recommendation), *dismissed on other grounds*, 2018 U.S. Dist. LEXIS 18998 (D.  
16 Nev. Jan. 8, 2018).

17         Additionally, the Center argues that Bundy's second cause of action fails to state a claim  
18 because it seeks to compel enforcement of Nevada statutes that were previously found by a court  
19 to be invalid and unenforceable. *See U.S. v. Nye County*, 920 F. Supp. 1108, 1114 (D. Nev. 1996).

20         Bundy opposes the Center's Motion by arguing that issue preclusion does not apply  
21 because Bundy is seeking declaratory relief for the first time *in this case*, and because new facts—  
22 the designation of Gold Butte National Monument—are present. The Center responds that  
23 Bundy's request for declaratory relief, as opposed to some other relief, is not relevant to the  
24 applicability of issue preclusion to the legal issues raised in Bundy's Complaint, and that the new  
25 facts Bundy raises are likewise inconsequential with respect to issue preclusion.

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1 **III. DISCUSSION**

2 It is painfully obvious that the claims asserted by Bundy in the instant matter rest upon a  
3 fundamentally flawed notion advanced by Bundy since 1998 regarding ownership of federal  
4 public lands in Nevada. For two decades, Bundy has made the same claims that federal public  
5 lands within Nevada belong not to the United States, but instead to the State of Nevada. Three  
6 federal court decisions—*Bundy I*, *Bundy II*, and *Bundy III*—have now considered and rejected  
7 Bundy’s repeated arguments. Despite this long history of adverse decisions in the federal courts,  
8 Bundy brings this case in state court, arguing again that federal public lands within Nevada do not  
9 belong to the United States. Bundy’s new state case, however, is barred by the doctrine of issue  
10 preclusion because Bundy was a party to those prior cases and, as the United States Supreme  
11 Court has explained, “once an issue is actually and necessarily determined by a court of competent  
12 jurisdiction, that determination is conclusive in subsequent suits based on a different cause of  
13 action involving a party to the prior litigation.” *Montana v. United States*, 440 U.S. 147, 153  
14 (1979).

15 **A. The Prior Adverse Decisions**

16 In 1998, in *Bundy I*, the United States filed a complaint seeking to stop Bundy’s ongoing  
17 illegal grazing of livestock on federal public lands. *Bundy I* at \*1. Bundy sought dismissal of the  
18 government’s case on the ground that “the federal government cannot have authority over lands  
19 ‘inside an admitted state.’” *Id.* at \*12–13. The United States District Court for the District of  
20 Nevada rejected Bundy’s theory of public lands ownership and ruled that “federal lands located  
21 within states are federal territories under federal jurisdiction,” and the “Bunkerville Allotment  
22 where Bundy is grazing his livestock falls within the definition of ‘public lands’ administered by  
23 the Secretary of the Interior through the BLM.” *Id.* at \*13. The Court further explained that “[a]n  
24 examination of the history of the lands in question further establishes federal ownership. . . . The  
25 public lands in Nevada are the property of the United States because the United States has held  
26 title to those public lands since 1848, when Mexico ceded the land to the United States.” *Id.* at  
27 \*13–14.

28 Fourteen years later in 2012, in *Bundy II*, the United States filed another action against

1 Bundy over Bundy’s unlawful grazing of livestock on federal land. *Bundy II* at \*1. Bundy again  
2 defended his unlawful conduct based on his theory that the federal court lacked jurisdiction  
3 because the United States does not own the federal public lands in question. *Bundy II* at \*4. The  
4 federal district court again rejected Bundy’s argument on the same basis as *Bundy I*—the federal  
5 public lands in Nevada are the property of the United States, as they have been since 1848 when  
6 Mexico ceded the land to the United States. *Bundy II* at \*4–5.

7 In 2016, in *Bundy III*, Bundy sought to dismiss a criminal indictment against him for lack  
8 of federal jurisdiction, again on the same ground that the federal government does not have any  
9 ownership interest in land within the State of Nevada. *Bundy III* at \*8–9. Magistrate Judge Leen  
10 rejected Bundy’s arguments, explaining that:

11 For more than two decades, Mr. Bundy has argued that the federal government  
12 does not have an ownership interest in any land in Nevada. However, this  
13 argument has been soundly and consistently rejected by every court to consider the  
14 issue. [\*\*\*] [T]his court is bound by, and required to apply, controlling Supreme  
15 Court and Ninth Circuit precedent.

16 *Bundy III* at \*23. In ruling against Bundy, Magistrate Judge Leen cited to *U.S. v. Gardner*,  
17 107 F.3d 1314 (9th Cir. 1997), which “definitively resolved the question of ownership regarding  
18 the federal public lands within Nevada.” *Bundy III* at \*24. In addition, Magistrate Judge Leen  
19 pointed out “that the State of Nevada has agreed with judicial interpretations regarding federal  
20 public lands within its borders.” *Bundy III* at \*27. Magistrate Judge Leen’s rejection was  
21 accepted in Chief Judge Navarro’s subsequent adoption of Magistrate Judge Leen’s Report and  
22 Recommendation. *Bundy III*, Order Accepting and Adopting Report and Recommendation, 2017  
23 U.S. Dist. LEXIS 7525, at \*1 (D. Nev. Jan. 18, 2017).

24 *Bundy I*, *Bundy II*, and *Bundy III* all cite to *U.S. v. Gardner*, 107 F.3d 1314 (9th Cir. 1997),  
25 a case Bundy was not a party to. This Ninth Circuit decision rejected the argument that grazing  
26 livestock on federal public lands in Nevada without a permit does not constitute trespass because  
27 the federal government does not have title to the land on which the grazing took place. *Gardner*,  
28 107 F.3d at 1317. The Ninth Circuit explained that “Courts in the United States have uniformly  
found that title to the land first passed to the United States through the Treaty [of Guadalupe  
Hidalgo in 1848].” *Id.* “Thus, as the United States has held title to the unappropriated public

1 lands in Nevada since Mexico ceded the land to the United States in 1848, the land is the property  
2 of the United States.” *Id.*

3 **B. Bundy’s Defenses to Issue Preclusion Lack Merit**

4 Despite these adverse federal decisions against him, Bundy argues that issue preclusion  
5 does not apply here because this is the first time he seeks the specific relief of declaratory relief  
6 with regard to the ownership of the lands at issue. This argument, however, has no merit because  
7 Bundy’s specific claims for relief are not relevant to the applicability of issue preclusion. *See*  
8 *Taylor v. Sturgell*, 553 U.S. at 892 (“Issue preclusion . . . bars ‘successive litigation of an issue of  
9 fact or law actually litigated and resolved in a valid court determination essential to the prior  
10 judgment,’ even if the issue recurs in the context of a different claim.”); *B&B Hardware, Inc. v.*  
11 *Hargis Indus.*, 135 S. Ct. 1293, 1303 (2015) (“[T]he general rule is that ‘[w]hen an issue of fact or  
12 law is actually litigated and determined by a valid and final judgment, and the determination is  
13 essential to the judgment, the determination is conclusive in a subsequent action . . . , whether on the  
14 same or a different claim.”).

15 Bundy also asserts that alleged new facts preclude the application of issue preclusion in  
16 this case, pointing to former President Barack Obama’s December 28, 2016 Executive Order  
17 designating Gold Butte National Monument under the Antiquities Act of 1905. This defense fails  
18 for the same reason that Bundy’s other claims fail—Bundy’s legal claim that Gold Butte National  
19 Monument was designated on public land that belongs to the State of Nevada, not to the United  
20 States, is foreclosed by prior adverse federal court decisions to which Bundy was a party. That  
21 identical issue was asked and answered in *Bundy I*, *Bundy II*, and *Bundy III*.

22 It is simply delusional to maintain that all public land within the boundaries of Nevada  
23 belongs to the State of Nevada. Because this issue has been raised and lost by Bundy in previous  
24 litigation, issue preclusion acts as a complete bar to Bundy’s first and third causes of action.

25 **C. Bundy’s Second Claim for Relief Fails to State a Claim**

26 Bundy’s second cause of action fails to state a claim upon which relief can be granted  
27 because the statutes it seeks to enforce—NRS 321.596–321.599—are preempted by federal law  
28 and have been ruled invalid and unenforceable. The Nevada legislature lacks authority to

1 unilaterally revoke federal ownership of public lands in Nevada. In *U.S. v. Nye County*, a federal  
2 district court addressed the validity of NRS 321.596–321.599, concluding that “the statutory claim  
3 is unsupported, unconstitutional, and fails as a matter of law.” 920 F. Supp. at 1114. Moreover,  
4 the State of Nevada has repudiated these statutes—as discussed in *Nye County*, “while Nevada has  
5 statutorily claimed the public lands within Nye County, it now concedes that this claim is  
6 constitutionally untenable.” *Id.* Because NRS 321.596–321.599 have been deemed  
7 unconstitutional and untenable, and have been renounced by the State of Nevada, Bundy cannot  
8 compel this Court to enforce them, and notably, Bundy’s Opposition Brief does not even attempt  
9 to defend them.

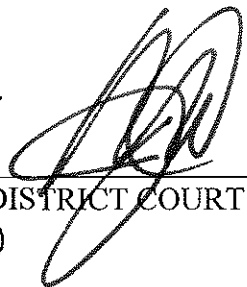
10 After review and consideration of the record, the papers on file herein, oral presentations  
11 of counsel, and with good cause appearing therefore:

12 **IT IS HEREBY ORDERED** that the Center’s Motion for Judgment on the  
13 Pleadings is **GRANTED** and judgment shall be entered in favor of Defendant-Intervenor Center  
14 for Biological Diversity and Defendant Clark County, and against Plaintiff Cliven Bundy, as to all  
15 claims and causes of action asserted in Plaintiff’s Complaint;


16 **IT IS HEREBY FURTHER ORDERED** that Plaintiff’s request for an extension  
17 of time to oppose the Center’s Motion for Judgment on the Pleadings is **DENIED**; and

18 **IT IS HEREBY FURTHER ORDERED** that Defendant Clark County’s Motion  
19 to Dismiss is **DENIED** as moot because Plaintiff’s claims against Clark County are fully resolved  
20 in Clark County’s favor by Clark County’s joinder in the Center for Biological Diversity’s  
21 successful Motion for Judgment on the Pleadings.

22  
23 DATED this 1 day of April, 2019.

24   
25 \_\_\_\_\_  
26 DISTRICT COURT JUDGE  
27 (MS)  
28

1 Respectfully submitted,  
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