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15 ATTORNEYS FOR THE UNITED STATES

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16 **IN THE UNITED STATES DISTRICT COURT**  
17 **DISTRICT OF NEVADA**

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18 UNITED STATES OF AMERICA,

19 Plaintiff,

No. 2:98-cv-531-LRH

20 v.

21 CLIVEN BUNDY,

22 Defendant.

**UNITED STATES' NOTICE OF  
23 SUPPLEMENTAL AUTHORITY IN  
24 SUPPORT OF MOTION TO ENFORCE  
25 INJUNCTION**

26 Based on Defendant Bundy's continuing trespass, the United States has moved to enforce  
27 the permanent injunction issued by this Court on November 3, 1998 (ECF No. 19), and modified  
28 on September 17, 1999 (ECF No. 46). See generally Motion to Enforce Injunction (ECF Nos.

1 50-52, 54). This Court’s injunction permanently enjoined Bundy from grazing livestock on the  
2 former Bunkerville Allotment (“Allotment”) and ordered him to remove his livestock from that  
3 Allotment. The United States respectfully submits this Notice of Supplemental Authority, which  
4 is the July 9, 2013 order granting the United States’ motion for summary judgment by Senior  
5 Judge Lloyd George in the related case of United States v. Cliven Bundy, No. 12-804 (D. Nev.  
6 filed May 14, 2012) (“Bundy II”).<sup>1</sup> The order is attached to this Notice (Exhibit 1) and its  
7 relevance is discussed briefly below.

8 In both this case (“Bundy I”) and Bundy II, the conduct by Bundy involves the  
9 unauthorized trespass of livestock on property owned by the United States and administered by  
10 the United States Department of the Interior. The principal difference between the cases is the  
11 location of the lands on which the cattle have trespassed. In this case the trespassed land is  
12 located in what is characterized as the former Bunkerville Allotment, which this Court found to  
13 be lands of the United States for which Bundy has no authorization to graze and within which he  
14 has been permanently enjoined from grazing. In Bundy II, the trespassed land (aka “New  
15 Trespass Lands”) is located adjacent to the former Bunkerville Allotment and was not part of the  
16 permanent injunction issued in 1998.<sup>2</sup>

17 Many of Bundy’s legal defenses before this Court are the same ones that Senior Judge  
18 George found to have no merit. Compare Defendant Bundy’s Objection to the United States’  
19 Motion to Enforce Injunction at 15-16 (“Objection”) (ECF No. 53) (argument that this Court  
20 does not have jurisdiction because the United States allegedly does not own the public lands in  
21 question) with Bundy II Order at 3 (noting that this court previously ruled that the public lands in  
22 Nevada are the property of the United States); compare Objection at 17-19, 23 (Bundy’s claim  
23 that the Disclaimer Clause of the Nevada constitution does not apply to the land ownership  
24 question) with Bundy II Order at 3 (citing to United States v. Gardner, 107 F.3d 1314, 1320 (9th  
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26 <sup>1</sup> See ECF No. 48, Notice of Related Cases.

27 <sup>2</sup> Exhibit 1 to the United States’ Motion to Enforce the Injunction before this Court depicts the  
28 location of the former Bunkerville Allotment and the “New Trespass Lands.” See ECF 50-1.

1 Cir. 1997) (to reject an identical claim advanced by Bundy); compare Objection at 22-23  
2 (Bundy's claim that the Property Clause of the United States Constitution applies only to federal  
3 lands outside the borders of States) with Bundy II Order at 3 (again rejecting Bundy's claim,  
4 citing to Gardner, 107 F.3d at 1320); compare Objection at 17-24 (Bundy's claim that the United  
5 States' exercise of ownership over federal lands violates the Equal Footing Doctrine) with Bundy  
6 II Order at 3 (holding that Bundy is incorrect, citing to Gardner, 107 F.3d at 1319); compare  
7 Objection at 24-31 (Bundy's claim that the United States' actions against him are based upon the  
8 Endangered Species Act as opposed to unauthorized trespass) with Bundy II Order at 3  
9 (acknowledging that the United States did not base its trespass claims on the Endangered Species  
10 Act).

11 Judge George's July 9 order in Bundy II correctly dispatches of the great majority of the  
12 legal defenses offered by Bundy in this case.

13 Respectfully submitted July 26, 2013,

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15 Acting Assistant Attorney General

16 /s/ Terry M. Petrie  
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**CERTIFICATE OF SERVICE**

I hereby certify that, on July 26, 2013, I caused the “United States’ Notice of Supplemental Authority in Support of Motion to Enforce Injunction” to be served by Federal Express on the following:

Cliven D. Bundy  
3315 Gold Butte Road  
Bunkerville, NV 89007

/s/ Terry M. Petrie  
TERRY M. PETRIE

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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,  
Plaintiff,  
v.  
CLIVEN BUNDY,  
Defendant.

Case No. 2:12-cv-0804-LDG-GWF

This matter comes before the court on the plaintiff United States' Motion for Summary Judgment (#18, Opposition #28, Reply #30) and defendant Cliven Bundy's Motion to Dismiss (#28, Opposition #30).

**I. BACKGROUND**

The United States filed a complaint on May 14, 2012, for injunctive relief to prevent Bundy's alleged unauthorized and unlawful grazing of livestock on property owned by the United States and administered by the Secretary of the Interior, Bureau of Land Management and National Park Service, and for trespass damages.

In an order dated November 3, 1998, this court permanently enjoined Bundy from grazing his livestock within a different area, the Bunkerville Allotment, and ordered Bundy to remove his livestock from the Allotment before November 30, 1998. *U.S. v. Bundy*, No. CV-S-98-531-JBR (RJJ) (D. Nev. Nov. 4, 1998). The court also ordered that the United States was

1 entitled to trespass damages from Bundy for livestock left on the Bunkerville Allotment after  
2 such date.

3 In its complaint, the United States alleges that, not only has Bundy failed to comply with  
4 the court's orders that he remove his cattle from the Bunkerville Allotment and pay the financial  
5 penalties, but that Bundy's cattle have moved beyond the boundaries of the Bunkerville  
6 Allotment and are now trespassing on a broad swath of additional federal land (the "New  
7 Trespass Lands"), including public lands within the Gold Butte area that are administered by  
8 the BLM, and National Park System land within the Overton Arm and Gold Butte areas of the  
9 Lake Mead National Recreation Area. The United States seeks an order enjoining Bundy's  
10 unauthorized grazing on the New Trespass Lands.

11 II. SUMMARY JUDGMENT

12 Summary judgment may be granted when, viewed in the light most favorable to the  
13 non-moving party, *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986);  
14 *Intel Corp. v. Hartford Acc. And Indem. Co.*, 952 F.2d 1551, 1558 (9th Cir. 1991), "the  
15 pleadings, depositions, answers to interrogatories, and admissions on file, together with the  
16 affidavits, if any, show that there is not genuine issue as to any material facts and that the  
17 moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c); *Celotex Corp. v*  
18 *Catrett*, 477 U.S. 317, 323 (1986). Summary judgment should be entered "against a party  
19 who fails to make a showing sufficient to establish the existence of an element to that party's  
20 case, and on which that party will bear the burden of proof at trial." *Celotex*, 477 U.S. at 322.  
21 Summary judgment should not be granted if a reasonable jury could return a verdict for the  
22 non-moving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

23 The moving party bears the initial burden of showing the absence of a genuine issue  
24 of material fact. *Celotex*, 477 U.S. at 323. The burden then shifts to the non-moving party to  
25 set forth specific facts demonstrating a genuine factual issue for trial. *Matsushita*, 475 U.S. at  
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1 588-87; Fed. R. Civ. P. 56(e). The non-moving party may not rest upon the mere allegations  
2 or denials of his or her pleadings, but he or she must produce specific facts, by affidavit or  
3 other evidentiary materials provided by Rule 56(e), showing there is a genuine issue for  
4 trial. *Anderson*, 477 U.S. at 256; Fed. R. Civ. P. 56(e). The evidence of the non-moving party  
5 is to be believed, and all justifiable inferences are to be drawn in the non-moving party's  
6 favor. *Anderson*, 477 U.S. at 255; Fed. R. Civ. P. 56(e).

7 Bundy principally opposes the United States' motion for summary judgment on the  
8 ground that this court lacks jurisdiction because the United States does not own the public  
9 lands in question. As this court previously ruled in *United States v. Bundy*, Case No. CV-S-  
10 98-531-JBR (RJJ) (D. Nev. Nov. 4, 1998), "the public lands in Nevada are the property of the  
11 United States because the United States has held title to those public lands since 1848, when  
12 Mexico ceded the land to the United States." CV-S-98-531 at 8 (citing *United States v. Gardner*,  
13 107 F.3d 1314, 1318 (9th Cir. 1997)). Moreover, Bundy is incorrect in claiming that the  
14 Disclaimer Clause of the Nevada Constitution carries no legal force, *see Gardner*, 107 F.3d at  
15 1320; that the Property Clause of the United States Constitution applies only to federal lands  
16 outside the borders of states, *see id.* at 1320; that the United States' exercise of ownership  
17 over federal lands violates the Equal Footing Doctrine, *see id.* at 1319; that the United States  
18 is basing its authority to sanction Bundy for his unauthorized use of federal lands on the  
19 Endangered Species Act as opposed to trespass, *see Compl.* at ¶¶ 1,3, 26-39; and that  
20 Nevada's "Open Range" statute excuses Bundy's trespass. *See e.g., Gardner*, 107 F.3d at 1320  
21 (under Supremacy Clause state statute in conflict with federal law requiring permit to graze  
22 would be trumped).

23 Nor is there a legitimate dispute that Bundy has grazed his cattle on the New  
24 Trespass Lands without federal authorization. The United States has submitted Bundy's  
25 deposition excerpts indicating that Bundy has grazed livestock on the New Trespass Lands  
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1 and further evidence of the trespass of Bundy's cattle in those areas. Notwithstanding  
2 Bundy's contentions that the observed cattle bearing his brand may not in fact be his own,  
3 such a denial does not controvert Nevada law regarding prima facie evidence of ownership  
4 of branded cattle. In sum, in this most recent effort to oppose the United States' legal  
5 process, Bundy has produced no valid law or specific facts raising a genuine issue of fact  
6 regarding federal ownership or management of public lands in Nevada, or that his cattle  
7 have not trespassed on the New Trespass Lands.

### 8 III. INJUNCTIVE RELIEF

9 The United States has established irreparable harm not only through the continuing  
10 nature of Bundy's trespass, *City of Walla Walla v. Walla Walla Water Co.*, 172 U.S. 1, 12  
11 (1898); *Newfound Mgmt. Corp. v. Lewis*, 131 F.3d 108, 115 (3rd Cir. 1997), but because  
12 Bundy's cattle have caused and continue to cause damage to natural and cultural resources  
13 and pose a threat to public safety. The United States has also demonstrated that the equities  
14 and the public interest strongly favor an injunction. The public interest is best served by  
15 having the federal lands managed without the presence of trespassing cattle on lands that  
16 are closed to grazing. The public interest is also best served by removal of trespassing cattle  
17 that cause harm to natural and cultural resources or pose a threat to the health and safety of  
18 members of the public who use the federal lands for recreation. The court finds that the  
19 public interest is negatively affected by Bundy's continuing trespass.

20 Moreover, the United States is entitled to injunctive relief as a matter of law once  
21 trespass on federal lands is proven. See *United States v. Noguiera*, 403 F.2d 816, 825 (9th Cir.  
22 1968). The same result followed in *Gardner* where this court held that the United States was  
23 entitled to injunctive relief to prevent a continuing trespass. 107 F.3d at 1403. Finally, the  
24 public interest is served by the enforcement of Congress' mandate for management of the  
25 public rangelands, and by having federal laws and regulations applied to all citizens equally.  
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IV. CONCLUSION

IT IS HEREBY ORDERED that the United States' Motion for Summary Judgment (#18) is GRANTED.

IT IS FURTHER ORDERED that defendant Cliven Bundy's Motion to Dismiss (#28) is DENIED as moot.

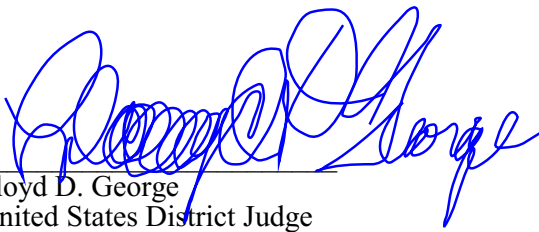
IT IS FURTHER ORDERED that Bundy is permanently enjoined from trespassing on the New Trespass Lands.

IT IS FURTHER ORDERED that the United States is entitled to protect the New Trespass Lands against this trespass, and all future trespasses by Bundy.

IT IS FURTHER ORDERED that Bundy shall remove his livestock from the New Trespass Lands within 45 days of the date hereof, and that the United States is entitled to seize and remove to impound any of Bundy's cattle that remain in trespass after 45 days of the date hereof.

IT IS FURTHER ORDERED that the United States is entitled to seize and remove to impound any of Bundy's cattle for any future trespasses, provided the United States has provided notice to Bundy under the governing regulations of the United States Department of the Interior.

DATED this 9<sup>th</sup> day of July, 2013.

  
Lloyd D. George  
United States District Judge