

Unraveling Federal Jurisdiction within a State (11-08-11)

I have served in several branches of our military, in campaigns such as Viet Nam, Bosnia, Kosovo, and Iraq; and a career in civilian law enforcement. I believe with every fiber of my being in this great Country and everything it stands for. I fully appreciate and respect the horrific sacrifices so many Americans, and their families, have given to provide us with our Republic form of government. I currently serve as the Sheriff in Josephine County, Oregon.

If you had told me two years ago that I would be writing such a document, I would have probably walked away from you shaking my head. However, I feel compelled to share this information with Sheriffs and our various levels of government to express our disappointment of the direction our leaders have taken us. The negative affect of their, often self-serving, decisions are caustically evident in our daily lives.

This paper is a result of a clash with the federal USFS law enforcement in this County, from citizens complaining of what can only be described as harassment and violations of their rights. The first time I approached the USFS the door closed regarding any discussion. The USFS advised me to file a Freedom of Information (FOI) request. Apparently, their legal advisor instructed them not to discuss any issues with me. All of which caused me to posture for a jurisdictional confrontation. After publishing an article in the local media I was invited back to discuss the issue. Most of my questions were answered except for one: "**Where does the USFS's authority come from?**" The answer(s) were surprising.

During my subsequent investigation, everyone I encountered provided me with different answers, causing more red flags, and created an even more extensive investigation on my part. I finally settled upon a document provided by USFS describing three sources of authority. The "*Supremacy Clause*", "*Property Clause*", and a Supreme Court ruling claiming authority "*Without Limitation*", detailed in the following pages.

To set the record straight, I consider myself a dedicated "conservationist". I believe the responsibility to protect what we have resides in all of us; we, as good stewards, owe it to our future generations. I also want it known; we pledge to pursue lawful charges against those who feel the need to violate the laws established to preserve our public lands and natural resources. I look forward to working together to ensure these common goals.

To gain at least a modicum level of credibility including court decisions is necessary. I am truly striving to avoid being discarded as just another "wing-nut" (A common phrase used around here). I admit the more I researched the issue(s) the more I realized how expansive these problems are, and just how uninformed I was.

I have taken an "Oath of Office", as many others, and I figured I knew what that Oath meant. Little did I realize the true meaning of that Oath or the potential cost of supporting it. I have invested the majority of my life serving this Country and the people, in one form or another. I am too committed to my beliefs to change now; so count me in for the long haul. I work for the people who placed their confidence and trust in me to protect them from enemies either foreign or domestic, and I plan to honor that Oath.

Although issues contained within this paper are limited, they are systemic to a much larger dilemma: it does reflect in part, why we face a potentially catastrophic collapse today. We seemingly have a runaway and overbearing centralized government.

Now, take a moment to reflect back on the type of government our ancestors broke away from, and why. Consider why we established a new Republican (in form) government, and the wisdom of our forefathers' in that decision.

With that thought in mind, see what comparison you associate between the problems of today to the reasons we broke away from England in 1776 as you read through the following pages.

The ultimate goal of this document is to:

- (1) Identify true jurisdictional authority of the Federal Government
- (2) Examine and expose how the reserved powers of the States are usurped by federal agencies writing and enforcing their self-imposed codes and regulations.
- (3) Examine how the health, safety, and welfare of the Citizens within the State are undermined.
- (4) Provide a positive and equitable solution.
- (5) Coordinate with like-minded Sheriffs to take a formal stance on these issues.

BACKGROUND

Soon after declaring independence from the British Crown, the original Colonies established themselves as sovereign and separate nations. In fact, so independent were they it caused an unforeseen rift between the states in terms of interstate activity and commerce. In an attempt to link the several states, the Articles of Confederation emerged in 1777 being ratified as our first Constitution on March 1, 1781. A main reason for the five-year delay was the problem of what to do with western lands claimed by some of the states. The issue was resolved by passage of the Resolution of October 1780. "In fact, it was upon the foundation of this trust that both the union of American States and the present Constitution were formed." (Statehood - The Territorial Imperative, an Extraction page 7)

The Articles of Confederation declare: ***"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."***¹

It became abundantly clear a more cohesive and functional link between the states needed to be developed. Eleven years after the Declaration of Independence, the Constitutional Convention of 1787 convened from which emerged a legal contract between the People, states, and Federal government, called the "United States Constitution". This document became our second Constitution.

The U.S. Constitution delegates, describes and limits the powers of each of the three branches of government; they are Legislative, Executive, and Judicial.

*Article 1, §1 declares; "All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."*²

In other words, all lawmaking power is "vested" to Congress. The Executive and Judicial branches were to have NO lawmaking power. The word "vested" is very important. There are NO ceded or surrendered powers granted in the Constitution. Vested powers are temporary and exist only so long as one wears the vest. The "vested powers" in the Constitution are "few and defined." For example, to vest means to "clothe with power." A sheriff is literally "clothed with power" while he wears his uniform during his term in office.

Subsequent sections of the Constitution delegate a "few and defined" enumerated responsibilities to the agents of our central government. The Framers intended that those were the only powers delegated. Many people were concerned about the possible

¹ Article 2, Articles of Confederation

² United States Constitution Article 1 § 1

federal usurpation of power under the proposed Constitution. A condition of ratification for many states was a “Bill of Rights,” which became the first ten Amendments. The Preamble to the Bill of Rights explains that “in order to prevent misconstruction or abuse of (the Constitution’s) powers, that further declaratory and restrictive clauses should be added.”

The 10th Amendment of the Bill of Rights reaffirmed that any power not **explicitly** delegated to the central government are **explicitly withheld** from the central government.

“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.”³

The principal purpose was not the distribution of power between the central government and the states but rather a reservation to the States, or people of all powers not explicitly delegated.

POWER OVER LAND

The Constitution explicitly identifies geographic concerns as well as imposing limits on Congress’ authority and jurisdiction; “to exercise **exclusive** Legislation in all cases whatsoever, over such District (not exceeding ten miles square) as may, by Cession of particular States, and the Acceptance of congress, become the Seat of the Government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings”.⁴

*“The Court established a principle that federal jurisdiction extends only over the areas wherein it possesses the power of **exclusive** legislation, and this is a principle incorporated into all subsequent decisions regarding the extent of federal jurisdiction. To hold otherwise would destroy the purpose, intent and meaning of the entire U.S. Constitution”.*⁵

The State of Oregon consented to the federal government’s the acquisition of land for federal buildings and granted exclusive jurisdiction for needful public buildings ⁶ ; the same applied to Fort Stevens ⁷, and Oregon City canal ⁸. However, the State only granted **concurrent** jurisdiction over land acquired for national forests. *“The State of Oregon retains a concurrent jurisdiction with the United States in and over lands so acquired; So that civil processes in all cases, and such criminal processes as may issue under the authority of this state against any person charged with the commission of any crime without or within such jurisdiction, may be executed thereon in like manner as if this consent had not been granted.”*¹⁰

Concurrent jurisdiction does not reference perceived federal police powers but rather addresses the state’s ability to file the case in either state or federal court. See 28 U.S.C. § 3231, 18 U.S.C. §§13, 7.

³ 10th Amendment, Bill of Rights

⁴ United States Constitution, Article 1 § 8 c.17

⁵ United States v. Bevens 16 U.S. (3Wheat.) 366 (1818)

⁶ Oregon Revised Statute 272.030

⁷ Oregon Revised Statute 272.033

⁸ Oregon Revised Statute 272.036

¹⁰ Oregon Revised Statute 272.040 (2)

In a dispute over federal jurisdiction of title to real property, the court held; *"We think a proper examination of this subject will show that the United States never held any municipal sovereignty, jurisdiction, or right of soil in and to the territory, of which Alabama or any of the new States were formed,"* *"Because, the United States have no constitutional capacity to exercise municipal jurisdiction, sovereignty, or eminent domain, within the limits of a State or elsewhere, except in the cases in which it is expressly granted,"* *"Alabama is therefore entitled to the sovereignty and jurisdiction over all the territory within her limits, subject to the common law,"*¹¹

The Constitution further vests Congress with the power, *"To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof."*¹²

Nowhere in these Articles is Congress granted a general legislative power. Accordingly, the Tenth Amendment reserved those powers to the States. This Article does not delegate a new and independent specific power but rather a provision for making effective the powers theretofore mentioned. In our system, *"freedom is enhanced by the creation of two governments, not one."* *Alden v. Maine*, 527 U.S. 706, 758 (1999). The Framers concluded that allocation of powers between the National Government and the States enhances freedom, by protecting the integrity of the governments themselves, and by protecting the people, from whom all governmental powers are derived.

"State sovereignty is not just an end in itself: rather, federalism secures to citizens the liberties that derive from the diffusion of sovereign power." *New York v. United States*, 505 U.S. 144, 181(1992) (quoting *Coleman v. Thompson*, 501 U.S. 722, 759(1991) (Blackmun, J., dissenting)). The federal structure allows local policies "more sensitive to the diverse needs of a heterogeneous society." Permits "innovation and experimentation," enables greater citizen "involvement in democratic processes," and makes government "more responsive by putting the States in competition for a mobile citizenry." *Gregory v. Ashcroft*, 501 U.S. 452, 458(1991). Federalism secures the freedom of the individual.

"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. ... The constitutional authority of 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 States." *New York v. United States*, 505 U.S. 144, 182.

MISSION CREEP

A term often used in military circles called "mission creep" seems to be a repetitive phenomenon that occurs within most organizations as well as governments, throughout history. Over the many years, our system of government seemingly has fallen victim to this dilemma.

This methodology is often engaged to usurp limiting or prohibitive factors or to fill voids where deemed necessary; as seen with the advent of, and continued efforts by the United States Forest Service, Bureau of Land Management, Environmental Protection Agency, Department of Environmental Quality, Fish and Game, and many other federal regulatory organizations.

According to enumerated powers of Congress expressed in Article 1, and subsequent paragraphs, the only exceptions enabling Congress' power over an individual State is often referred to as the **Interstate Commerce Clause**, which states: *"To regulate commerce with foreign nations, and among the several states, and with the Indian tribes."*¹³ In careful reading of the

¹¹ *Pollard v. Hagan*, 44 U.S. (3 How.) 212 (1845)

¹² United States Constitution, Article 1 § 8 c.18

¹³ United States Constitution, Article 1 § 8 c.3

paragraphs contained in Article 1, the only other exception is the federal governments' authority to coin money, declare war, raise revenue, and punish certain felonies such as counterfeiting, piracy, espionage.

The largest volume of questionable actions towards the Constitution emanate from the Commerce Clause. In many cases, the issues assume the form of a recommendation, guideline, or federal regulation of which the States are persuaded into compliance under a perceived loss of federal funding.

The United States Department of Agriculture and Department of Interior, specifically the United States Forest Service and Bureau of Land Management identifies their source of authority to: *"The Congress shall have power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State."*¹⁴

October 21, 1976, Congress passed the Federal Land Policy and Management Act (FLPMA). In holding to the same constitutional principles, the Act states in Section 701 (g) (6) of the Session Laws of 1976 in the Savings Provisions: *"Nothing in this Act shall be construed...as a limitation upon the police power of the respective States, or as derogating the authority of a local police officer in the performance of his duties, or as depriving any State or political subdivision thereof of any right it may have to exercise civil and criminal jurisdiction on the national resource lands..."*

The 10th Amendment, which was seemingly adopted with a precognitive consideration that our central government would eventually overstep their authority; by disclosing the widespread fear that the central government might, under pressure of a supposed general welfare, attempt to exercise powers which had not been delegated. With equal determination, the Constitutional framers intended that no such assumption should ever find justification; and if in the future, it were determined such additional powers seemed necessary - only the people should delegate them, in the proper manner prescribed for amending those acts.

The second claim of federal jurisdiction purportedly emanates from an interpretation describing United States Forest Service power as "**without limitation**" referencing the Supremacy Clause. (referenced in *Kleppe v. New Mexico*)¹⁵ This concept seemingly includes the entire list of alphabet soup agencies considered the Executive Branch, without regard to the Constitution. I believe there are thirty-two federal law enforcement agencies in existence today; of those, seventeen carry weapons with power of arrest.

In *Kleppe v. New Mexico* it was held: "As applied to this case, the Act is a constitutional exercise of congressional power under the Property Clause of the Constitution, which provides that the clause must be given an expansive reading, for "(t)he power over the public lands thus entrusted to Congress is without limitations," (see also *United States v. San Francisco*, 310 U.S. 16, 310 U.S. 29)

No level of government, or political sub-division, should have "unlimited powers"; it violates the very foundation and intent of our Constitution.

The United States Constitution was signed September 17, 1787; this document stood on its' own for well over 100 years; with a clear understanding of content and meaning. The public lands (out West) were considered by many as the "problem lands". However, the approved procedure, since the passage of the Resolutions of October 1780, was that the central government held the lands in trust. Upon a state being admitted to the Union, the federal government had the trust authority and obligation to dispose of the lands for expansion, exploration, occupancy, and production by settlers.(note: What Congress did with the money had no bearing on the trust obligation to dispose of the land.

¹⁴ U.S. Constitution, Article IV § 3 c.2 (AKA Property Clause)

¹⁵ *Kleppe v. New Mexico*, 426 U.S. 529, 542-543 (1976)

Slowly, over the years many of these “public lands” held in trust seemingly became more desirable to retain, rather than for disposal. Newly formed federal regulatory agencies worked their way into existence, each taking an increasingly expanding role (enter “mission creep”). By 1976 complete and total disregard for the trust obligation to dispose of public land was made clear in the Federal Lands Policy and Management Act (FLPMA), which states: “...**that it is the policy of the United States that the public lands be retained in Federal ownership.**”

A study conducted (1956-1957) referred to as the Eisenhower Document examined the federal authority within a State. It was determined local law enforcement overlooked duties within the lands held in trust by the federal government and the federal agencies were not engaged in such actions. What emerged from this study were four levels of jurisdiction. They are (1) **exclusive**, (2) **concurrent**, (3) **partial**, and (4) **proprietary**. Most lands fit into the proprietary level of jurisdiction, unless specifically stated otherwise. “**The Federal Government has only a proprietary interest without the right to exercise legislative jurisdiction in the Clause 17 sense, in vast areas of land which it owns...(page 2)**” (referring to Article 1 § 8, cl.17)

Instead of reading the Constitution in the manner of which it was designed – “**pari materia**” (all together), it becomes easier to distort or usurp the original meaning of the U.S. Constitution by reading it as disconnected pieces. “*The courts have stated repeatedly that laws relating to the same subject (such as land disposal laws) must be read in pari materia (all together). In other words, Federal Land Plan Management Act (FLPMA) or any other land disposal act cannot be read as if it stands alone....*”¹⁶ Thereby, allowing these federal regulatory entities to come up with their own agenda driven rules, which not surprisingly often reflects the special interest groups’ agendas.

Regarding a court ruling, “*Representatives of the USFS failed to defend their position from a legal standpoint, submitting no legal analysis that justified their position. Instead, they simply “ruled” that they did not recognize the validity of the County’s assertion to the road.*”¹⁷

Examples of the continuation of “mission creep” are demonstrated in road closures of Revised Statutes 2477 (RS2477) roads, which only meet the qualifications of consideration for “Wild Lands” designation if they are 5,000 acres, or more, and “**road less**”. These road and trail closures by “decommissioning” or destruction have been occurring for years.

In 1964, the U.S.G.S. redefined categories of roads to meet with their new agenda...road closures for qualifying as Wild Lands, or wilderness.

The Bureau of Land Management under the U.S. Department of Interior issued a letter dated June 1, 2011 from Mr. Salazar (Secretary of Interior) stating the BLM will not designate any lands a Wild Lands; but directs Deputy David Hays to develop management of public lands with “Wilderness” characteristics and to solicit members of Congress, state and local officials, tribes and federal land managers to identify BLM lands that may be appropriate candidates for Congressional protection under the “Wilderness Act”. Same plan just a different name (**the shell game**).

The USFS recently sent out a communication dated July 15, 2011 titled *Federal Register publication of Final Proposed Rules 262,261 and 212* purportedly to clarify and expand their authority.

September 21, 2011, The Western States Sheriffs Association responded with a position paper to this USFS publication by writing – “*the membership of the Western States Sheriffs Association has reviewed the proposed rule changes and believes they exhibit the following: (1) an absolute disregard for the sovereignty of the individual States, (2) a disregard for the authority of the Office of Sheriff, and (3) A continued inability of the Forest Service to understand the mission and function of its Law*

¹⁶ Congressional Record, October 23, 2000 E1883, Hon. Jim Gibbons of Nevada in the House of Representatives.

¹⁷ Congressional Record, October 23, 2000 E1884, Hon Jim Gibbons of Nevada in the House of Representatives.

Enforcement component.” Additionally, “This effort is viewed as an unnecessary and unauthorized expansion of federal police powers. The ultimate legal and constitutional authority for the protection of the public and the land within an individual county is vested in the Office of Sheriff. The Roles and responsibilities for the Office of Sheriff are well enumerated within the laws of each State, and the Sheriff possesses the authority to extend enforcement powers as appropriate.

“This expansion of powers is also viewed as usurpation on the authority of Office of Sheriff.”

“It is the position of this committee that the membership of the Western States Sheriffs Association utilizes all appropriate methods and resources to oppose this effort.”

To suggest our central government has not expanded their grip on our country, we need only to examine, in depth, the list of legislations governing the USFS alone; Forest Service Organic Administration Act 1897, Multiple Use-Sustained Yield Act of 1960, National Forest Management Act of 1976, Cooperative Forestry Assistance Act of 1978, Food, Conservation, and Energy Act of 2008, Foreign Operation Appropriations Act of 1978, National Environmental Policy Act 1970, Endangered Species Act 1973. Other laws with an impact on the Forest Service include Forest and Rangeland Renewable Resources Planning Act of 1974, Clean Water Act 1948-1996, Clean Air Act 1955, Land and Water Conservation Fund Act 1965, Wild and Scenic Rivers Act 1968, Federal Advisory 1911, and Secure Rural Schools and Community Self-Determination Act 2000.

It is no wonder everyone is confused with various federal entities writing their own rules and regulations, which serve only to confuse the public and often contradict each other. These many federal agencies often fail to follow their own rules and regulations; examples being mining laws, clean water, timber harvest, grazing, travel management acts such as FLPMA, and so on. This manner of business has turned into a 900-pound gorilla and needs to be addressed at the highest levels.

POLICE POWERS

Getting back to the original issue of the federal government bodies engaging in “**police powers**” within the States – one of the more important cases, *“the court ruled that forest reserves were not federal enclaves subject to the doctrine of exclusive legislative jurisdiction of the United States. **Local peace officers were to exercise civil and criminal process over these lands.** Forest Service rangers were not law enforcement officers unless designated as such by state authority. The USFS had no general grant of law enforcement authority within a sovereign State.”*¹⁹

Road closures, for example, are critical to our public health welfare, and safety. As the chief law enforcement authority, saddled with those responsibilities, I must assert my lawful authority to use any road deemed essential in this regard to conduct law enforcement operations including crime prevention, crime response, fire suppression, emergency medical response, assistance to federal agents, search and rescue operations, drug cartel and illicit drug eradication, and related operations. The closure of roads and harassment by federal agents upon miners has prompted my actions.

LEGAL FOUNDATION FOR POLICE POWER

Recently, there has been a movement by the Supreme Court in rendering decisions relative to the clear meaning and intent of our Constitution. A recent Court reviewed many of the clear attempts on the part of Congress to usurp authority it did not have. The Court stated *“But law in the sense in which courts speak of it today does not exist without some definite authority behind it. The common law so far as it is enforced in a State, whether called common law or not, is not the common law generally but the law of that State existing by the authority of that State without regard to what it may have been in England or anywhere else....’The authority and only authority is the State, and if that be so, the voice adopted by the State as its’ own (whether it be of its Legislature or of its Supreme Court) should utter the last word.’ Thus the doctrine of Swift v. Tyson is, as Mr. Justice Holmes*

¹⁹ Congressional Record, October 23, 2000 E1886, Hon Jim Gibbons of Nevada in the House of Representatives.

said, “an unconstitutional assumption of powers by the Courts of the United States which no lapse of time or respectable array of opinion should make us hesitate to correct.’ In disapproving that doctrine, we do not hold [304 U.S. 64, 80] unconstitutional section 34 of the Federal Judiciary Act of 1789 or any other act of Congress. We merely declare that in applying the doctrine this Court and the lower courts have invaded rights which in our opinion are reserved by the Constitution to the several states.”

In a concurring opinion, Justice Thomas stated; “the exchanges during the ratification campaign reveal the relatively limited reach of the Commerce Clause and of federal power generally. The Founding Fathers confirmed that most areas of life (even many matters that would have substantial effects on commerce) would remain outside the reach of the Federal Government. Such affairs would continue to be under the exclusive control of the States.”

“We have said that Congress may regulate not only ‘Commerce...among the several states,’ U.S. Const., Art. I, 8, cl.3, but also anything that has a ‘substantial effect’ on such commerce. This test, if taken to its logical extreme, would give congress a “police power’ over all aspects of American life. Unfortunately, we have never come to grips with this implication of our substantial effects formula. Although we have supposedly applied the substantial effects test for the past 60 years, we always have rejected readings of the Commerce Clause and the scope of federal power that would permit Congress to exercise a “**police power**”; our cases are quite clear that there are real limits to federal power...Indeed, on the crucial point, the majority and Justice Breyer agree in principle: the Federal Government has nothing approaching a police power.”

“The Constitution mandates this uncertainty by withholding from Congress a plenary “**police power**” that would authorize enactment of every type of legislation.”²⁰

In another case, the Court claimed the federal government had no jurisdiction over crimes committed within the 50 States.²¹

“In the United States of America, there are two separate and distinct jurisdictions, such being the jurisdiction of the states within their own state boundaries, and the other being federal jurisdiction (central government), which is limited to the District of Columbia, the U.S. territories, and federal enclaves within the states, under Article 1, Section 8, Clause 17.” “The article which describes the judicial power of the United States is not intended for the cession of territory or of general jurisdiction... Congress has power to exercise exclusive jurisdiction over this district, and over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings.”²²

“Special provision is made in the Constitution for the cession of jurisdiction from the States over places where the federal government shall establish forts or other military works. And it is only in these places, or in the territories of the United States, where it can exercise a general jurisdiction.”²³

Reflected in United States v Alphonzo Lopez, April 26, 1991 Case #93-1265: “Under our federal system, the “States possess primary authority for defining and enforcing the criminal law” Brecht v Abrahamson, 507 U.S., 1993 (Slip op., at 14) quoting Engle v Isaac, 456 U.S. 107, 128 (1982); see also Screws v United States, 325 U.S. 91, 109 (1945): “Our National government is one of delegated powers alone. Under our federal system the administration of criminal justice rests with the States except as Congress, acting within the scope of those delegated powers, has created offenses against the United States. When Congress criminalizes conduct already denounced as criminal by the States, it effects a “change in the sensitive relation between federal

²⁰ United States v. Lopez, 115 S.Ct. 1624 (1995)

²¹ United States v. Morrison, 169 F.3d 820 (1999)

²² United States v. Bevens, 16 (3 Wheat.) 336 (1818)

²³ New Orleans v. United States, 35 U.S. (10 Pet.) 662, 737 (1836)

and state criminal jurisdiction; *United States v Enmons*, 410 U.S. 396, 411-412 (1973) (Quoting *United States v Bass*, 404 U.S. 336, 349 (1971)).

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

Most recently, a case related to “federal jurisdiction” and the right to challenge a federal statute was ruled on by the Supreme Court on June 16, 2011. In *Bond v. United States*, No. 09-1227, the Supreme Court, in a 9-0 decision, ruled that *Bond* had “standing to challenge a federal statute on grounds that the measure interferes with the powers reserved to States”, pg. 3-14. “Anything in repugnance to the Constitution is invalid or unlawful”. *Bond, supra*.

This case opens the door to challenge 18 USC § 3231, part of the enactment of Title 18, which states: *“The district courts of the United States shall have original jurisdiction, exclusive of the courts of the States, of all offenses against the laws of the United States. Nothing in this title shall be held to take away or impair the jurisdiction of the courts of the several States under the laws thereof.”*²⁴

Without the validity of 18 USC § 3231 a federal court must revert the powers of the federal courts back to the states. The ruling provides standing for anyone to challenge 18 USC § 3231 and any crime that could have been tried by the state.

The reason this statement is true is deduced from the recognition of who the true sovereign of our country are. From the crown of Great Britain, the sovereignty of their country passed to the people of it; and it was then not an uncommon opinion, that the unappropriated lands, which belonged to the crown, passed not to the people of the Colony or States within whose limits they were situated, but to the whole people. *Chisholm v. State of Georgia*, 2 Dall. 419, 470(1793). The new states which joined the Union were to take charge of their land on an “equal footing” with the original 13. How can that be “equal” when the greatest asset of the people of a state is withheld by the federal government and endorsed by state actors who have no “power” delegated to them for that purpose? The people must reassert their sovereign power and take back what they have entrusted to the government and place further and more defined restriction on the powers that remain vested.

USES OF PUBLIC LAND

The rights of the people as guaranteed by the Constitution are violated by regulations such as, the *“Executive Order creating Humboldt National Forest, Where the Road resides and relevant Congressional acts contain a savings clause protecting preexisting rights. The Presidential Executive Order which created the Humboldt National Forest contained a savings clause, protecting all existing rights and excluding all land more valuable for agriculture and mining.”*²⁵

“Public Lands” are “lands open to sale or other dispositions under general laws, lands to which no claim or rights of others have attached” ‘The United States Supreme Court has stated: “It is well settled that all land to which any claim or rights of others has attached does not fall within the designation of public lands.” ‘FLPMA defines “public lands” to mean “any land and interest in

²⁴ *Bond v. United States*, No. 09-1227

²⁵ Congressional Record October 23, 2000 E1885 Hon. Jim Gibbons of Nevada in the House of Representatives

land owned by the United States with the several states and administered by the Secretary of the Interior through the Bureau of Land Management.”²⁶

“**Public land**” that is disposed by claims under the act of 1872 becomes “**Public Domain**”. “*The locators of all mining locations made on any mineral vein, lode, or ledge, situated on the public domain, their heirs and assigns, were no adverse claim existed on the 10th day of May 1872 so long as they comply with the laws of the United States, and with State, territorial, and local regulations not in conflict with the laws of the United States governing their possessory title, shall have the exclusive right of possession and enjoyment of all the surface included within the lines of their locations.*”²⁷

The mechanics of what happens to the “public land” once found to be mineral in character is expressly evidenced in the Organic Act of 1897, that “any public lands embraced within the limits of any forest reservation which...” “...*shall be found better adapted for mining or for agricultural purposes than for forest usage, may be restored to the public domain.*” By private settlement under various land disposal laws of the United States, such as the Mining Law of 1872, “public land” is restored to the public domain.

The federal agencies have management authority only over “**public land**”, not privately settled public domain. The act of location restores the land to public domain and the mining law provides the locator of such segregation “*shall have the exclusive right of possession and enjoyment of all the surface included within the lines of their locations*”²⁸

Federal mining claims are “private property”²⁹

“*but so long as he complies with the provisions of the mining laws his possessory right, for all practical purposes of ownership, is as good as though secured by patent.*”³⁰

“*All mining claims, whether quartz or placer, are real estate. The owner of the possessory right thereto has a legal estate therein with the meaning of ORS 105.005*”³¹

Setting the required boundaries of a mining claim literally sets a boundary describing land separate and distinct from agency authority placing the land under the exclusive authority and jurisdiction of the locator. This interest is also stated as case law and Forest Service Manual details.³²

By clear and identical language, Congress has stated in the Organic Act of June 4, 1897, the Eastern Forests (Week’s) Act of 1911, and the Taylor Grazing Act of 1934, that there was no intention to retain federal jurisdiction over private interests within national forests. The courts have consistently upheld the ruling in *Kansas v. Colorado* since 1907.

²⁶ Congressional Record October 23, 2000 E1885-E1886 Jim Gibbons of Nevada

²⁷ 30 USC § 26

²⁸ R.S. § 2332 derived from act May 10, 1872 ch. 152, § 3, 17 Stat. 91

²⁹ *Freese v. United States*, 639 F.2d 754, 757, 226 Ct.Cl. 252 cert. denied, 454 U.S. 827, 102 S.Ct. 119, 70 L.Ed.2d 103 (1981); *Oil Shale Corp. v. Morton*, 370 F. Supp. 108, 124 (D.Colo. 1973)

³⁰ *Wilbur v. U.S. ex rel. Krushnic*, 1930, 50 S.Ct. 103, 280 U.S. 306, 74 L.Ed. 445

³¹ Oregon Revised Statute 517.080 Mining claims as realty.

³² Forest Service Manual 2813 – rights and obligations of claimants

No section of the FLPMA and, therefore, no Forest Service authority may impair or amend locator's rights under the act of 1872. ³³ *Further that, "no provision of this section or any other section of this Act (FLPMA) shall in any way amend the Mining Law of 1872 or impair the rights of any locators or claims under that Act, including, but not limited to, rights of ingress and egress"*

One final point, *"where rights secured by the constitution are involved, there can be no legislation or rule-making that would abrogate them"* ³⁴

CONCLUSION

In summation, the Supreme Court has declared the federal government has no authority or jurisdiction over individuals or issues not involving interstate commerce or issues not involving federal territory. Neither Congress, nor the President, can pass laws that govern life or activities within the boundaries of the several States. "Police" powers are not explicitly granted to the central (federal) government and thereby fall within the purview of the 10th Amendment Clause of the Bill of Rights.

As time has passed, Presidents have issued "Executive Orders" (mission creep?) with full intention and expectation they become law. Most recently, President Obama has publicly boasted about "**circumventing**" Congress to push his agendas to completion. Our Constitution clearly states "**All legislative Powers** herein granted shall be **vested in a Congress** of the United States, which shall consist of a Senate and House of Representatives."³⁵

In my humble opinion, this goes to the **heart** of the problems we face today. Not only has the President ignored the Constitution, but also passed along law making authority to the many federal agencies created over the years. Most of these agencies are writing "Regulations" (without legal authority to do so) and further, enforcing them as law.

The points addressed in this document are not all that require redress, but rather presented to identify violations and disjointed (often overbearing) management of our public lands. The lack of federal "Coordination" and the inaccurate scientific studies to mention two, must also be addressed, as the federal agencies seem to blatantly ignore.

At the beginning of this document, reference was made proposing a possible solution. To that end, I would suggest we begin with a point made in the Congressional Record referred to several times from Hon. Jim Gibbons of Nevada, to wit:

*"Forest reserves were not federal enclaves subject to the doctrine of exclusive legislative jurisdiction of the United States. Local peace officers were to exercise civil and criminal process over these lands. Forest Service rangers were not law enforcement officers unless designated as such by state authority."*³⁶

A reasonable and fiscally sound solution is at our fingertips. In fact, it has been under our noses for some time. The rationale follows:

Chief Justice Marshall stated, "From this and other declarations, it is clear that the Constitution is not to be construed technically and narrowly, as an indictment, or even as a grant presumably against the interest of the grantor, and passing only that which is

³³ 43 USC 1732 (b)

³⁴ Miranda v. Arizona, 384 U.S. 436 p. 491

³⁵ Article 1 § 1, Constitution of the United States

³⁶ Congressional Record October 23, 2000 E1886 Hon. Jim Gibbons of Nevada in the House of Representatives, and U.S. Supreme Court May 19, 1907 Kansas v. Colorado

clearly included within its language, but as creating a system of government whose provisions are designed to make effective and operative all the governmental powers granted. Yet, while so construed, it still is true that no independent and unmentioned power passes to the national government or can rightfully be exercised by the Congress".³⁷

In the case cited above (*Kansas v. Colorado*), "The court ruled that forest reserves were not federal enclaves subject to the doctrine of exclusive legislative jurisdiction of the United States. Local peace officers were to exercise civil and criminal process over these lands. Forest Service rangers were not law enforcement officers unless designated as such by state authority. The USFS had no general grant of law enforcement authority within a sovereign State."³⁸

And most recently, in the case of *U.S. v. Bond* dealing with a 10th Amendment challenge it was held, "Under our federal system, the administration of criminal justice rests with the States except as Congress, acting within the scope of (its) delegated powers, has created offenses against the United States" *Screws v. United States*, 325 U.S. 91, 109, 65 S.Ct. 1031, 89 L.Ed. 1494 (1945). Bond contends that, by permitting prosecution of "localized" offenses "without regard to the federalism boundaries enshrined in the Constitution," § 229 "signals a massive and unjustifiable expansion of federal law enforcement into (the) state-regulated domain." Bond's Br. At 10-11, 16. Specifically, she argues that because the statute "brings citizens into the federal criminal area for conduct not properly the subject of federal prosecutors," *id.* At 11, and because it "significantly restrike(s) the delicate balance between the federal and state governments," it violates "the unique system of federalism" protected by the Tenth Amendment to the Constitution. *Id.*

Justice Ginsburg, with whom Justice Breyer joins, concurring wrote, "Bond, like any other defendant, has a personal right not to be convicted under a constitutionally invalid law." Further, "Due process...is a guarantee that a man should be tried and convicted only in accordance with valid laws of the land." "An offence created by (an unconstitutional law," the Court has held, "is not a crime." *Ex parte Siebold*, 100 U.S. 371, 376 (1880).³⁹

The Seventh Circuit Court stated most clearly the rationale for permitting private parties, notwithstanding *Tennessee Electric*, to raise Tenth Amendment concerns absent the involvement of a state. Deciding that a state police officer had standing independently to maintain a Tenth Amendment claim against a federal gun regulation, the Court emphasized that "standing barriers have been substantially lowered in the decades since the Supreme Court decided (*Tennessee Electric*)." *Gillespie*, 185 F.3d at 700. It further explained that *New York v. United States*, 505 U.S. 144, 181-82, 112 S.Ct. 2408, 120 L.Ed.2d 120 (1992), cabined the holding of *Tennessee Electric* by establishing that, "in making Tenth Amendment claims, (an individual) actually is asserting his own rights." *Gillespie*, 185 F.3d at 703. The Court based this explanation on the Supreme Court's statement in *New York* that "the Constitution divides authority between federal and state governments for the protection of individuals." 505 U.S. at 181, 112 S.Ct. 2408, which convinced the Seventh Circuit panel that "the Tenth Amendment, although nominally protecting state sovereignty, ultimately secures the rights of individuals." *Gillespie*, 185 F.3d at 703.

The real solution is to encourage Congress to comply with, and enforce the Constitution with the intent and guidance as written. The PEOPLE vested the authority in Congress to accomplish this task. Put law enforcement back where it belongs, within the several States.

In these tough economic times local law enforcement services would most certainly provide a cost savings benefit to the federal government (ultimately the tax payer), safeguard our forests and natural resources, and ensures the protection of the people (and their rights) by those with a real stake in the safety, health, and welfare of the communities they serve. Federal, State, and local laws reflect the same issues.

³⁷ *Kansas v. Colorado*, 206 U.S. 46 (1907)

³⁸ Congressional Record – extensions of Remarks October 23, 2000 pg E1886 Hon. Jim Gibbons of Nevada

³⁹ *Bond v. United States* 564 U.S. 09-1227 (June 16, 2011)

It is my hope; this letter will serve as an awakening to the public and for elected officials to exercise the proper conduct to stop this runaway government. It is also my hope that Sheriffs throughout the United States will join to bring our Republic form of government back to the people. Currently there is a memorandum of understanding (MOU) in the developmental stage by several Western State Sheriffs for consideration.

Respectfully,

Sheriff Gil Gilbertson

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