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Subject:

Date: Mon, 17 Feb 2003 08:36:52 -0800

From: Don Bowman <dbowman@oasisol.com>

To: david.schuman@verizon.net

David, I wrote the following article that appeared in the July 2001 issue of the Nevada Rancher.

LEGISLATURE NOT ADDRESSING FEDERAL ACQUISITIONS

by Don Bowman

From the time of statehood until 50 some years ago, the State of Nevada gave consent for federal acquisitions of land by legislative approval. Before that time, it was evidently believed that approval by the state was required by the U. S. Constitution. There were approvals for post offices, military installations, veterans hospitals, the Lehman Caves National Monument and even Hoover Dam.

In 1947 that all stopped. Evidently, the legislature decided that it did not want the burden of giving all these individual approvals and delegated the job to the Nevada Tax Commission. In 1975 the Nevada Attorney General, Robert List issued an opinion that the United States may acquire real property without the consent of the legislature, unless it desires to acquire exclusive jurisdiction over the property acquired. In other words consent was required only if the federal government wanted police powers over the subject land. Even then the state reserved the jurisdiction over water and the right to tax some entities on the subject lands.

Las Vegas attorney, Joel Hansen disagrees with the legislature handing their job over to the executive branch, "I think the legislature has abdicated their authority. They have delegated the job to bureaucrats that do not care." Hansen said their action is an unconstitutional delegation of authority, "What interest does the Nevada Tax Commission have anyway?" He said that all these lands acquisitions are just turning the State of Nevada into more of a territory.

Hansen said the cure is for the state to assert its constitutional authority, "The United States did not own territory when the constitution was written." He said that turning more land into territorial status reduces peoples rights, "The Bill of rights does not apply to territories." Not only, that Hansen said that the State legislature is being turned into a territorial government with less and less say about what goes on within its borders. He said that when the constitution was being debated, they founders were working to prohibit the very thing that has happened to Nevada.

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ASSEMBLY NATURAL RES., AGRICULTURE & MINING
DATE: 03/05/03 ROOM: 3161 EXHIBIT N-1 of 2
SUBMITTED BY: David Schumann

Hansen said that the Nuclear Waste Dump needed to be challenged and that the legislature should say, "Let's challenge this. We don't need the waste dump and you don't get permission to put it in." He said that when the federal agencies take over management of acquired lands, the land usually reverts to the wild and turns back into brush and weeds. The attorney said that good productive irrigated ground is rendered worthless by those actions, "Its like the house down the street that doesn't water. Doesn't cut grass—it's ugly."

. Not only is the federal government acquiring more land, it is ignoring the congressional act of statehood that says, "And be it further enacted, that five percentum of the proceeds of the sales of all public lands which SHALL be sold by the United States subsequent to the admission of said state into the Union, after deducting all the expenses incident to the same, shall be paid to the said state for the purpose of making and improving public roads, constructing ditches or canals, to effect a general system of irrigation of the agricultural land within the state, as the legislature shall direct." At the time this bill was enacted, shall meant "must."

Hansen said that some work should be done before the next legislative session to rectify this long overdue misapplication of constitutional law. He said that he is going to talk to the Independent American Party about asking the Nevada Legislature to straighten out this oversight during the next session.

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