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Testimony of David Schumann before the

Senate Committee on Natural Resources

Re: S.B. 76 on March 31, 2003

This bill is at least partially based on false premises: That the Federal Government cannot be discriminated against. Of course it can. As a recent escapee from California, I did not half to seek the approval of the Legislature to buy land in Nevada. I simply did it. The United States Constitution discriminates against the Federal government in Art. 1 Sect. 8 Clause 17 which lists various powers of Congress:

> **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 which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards and other needful Buildings**

If any state tried to enforce such a requirement on a citizen, it would promptly be hauled into court and lose.

The second false premise is betrayed by the use of the word public in connection with grazing lands. Adjudicated allotments are NOT "public lands." In the opinion handed down Feb. 5, 2003, Judge Loren Smith of the United States Court of Federal Claims ruled:

> **Even looking past the factual disputes that exist surrounding the cancellation of the grazing permits, the Court is not of the opinion that the lack of a grazing permit that prevents access to federal lands can eliminate Plaintiffs' (Wayne Hage) vested water rights and ditch rights that pre-date the creation of the permit system.**

The Committee needs to review the findings of fact and rulings produced in the Case of E. Wayne Hage and The Estate of Jean N. Hage v. The United States (Court of Federal Claims 91-1470L). The fact is that adjudicated allotments are FEE LANDS. The owners of those allotments have a FEE interest in the grazing allotments which is inheritable and saleable. The IRS levies inheritance taxes on those adjudicated allotments

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and thus the U.S. Government is estopped from evicting the owner of the allotment for not agreeing to a grazing permit.

In addition to being based on false premises, SB 76 is also based on the vain hope that the Federal resource agencies will act in a rational manner once granted ownership of Nevada water rights. The BLM and USFS both have track records which otherwise.

Court of Federal Claims judge Lawrence S. Margolis "ruled that the Forest Service action was 'arbitrary, capricious, and without rational basis.' He also found that the officials knew their findings were faulty when they ordered the sale canceled." This was a result of the U.S.F.S. canceling lumber sales in the interest of protecting the spotted owl. In layman's English, the actions of the U.S.F.S. were insane. Other Federal Hoaxes include the planting of Lynx hairs in a forest the Fish and Wildlife Service wanted to name a "habitat" for Lynx and thus exclude humans. In the area of Idaho just north of Elko, the Fish and Wildlife service was caught "salting" an area with dead horses in order to entice Grizzly Bears to enter the area they are interested in turning into a Grizzly Bear "corridor" between Alaska and Mexico. BLM actions in limiting grazing are DIRECTLY responsible for an increase in range fires. Well grazed land does NOT catch fire easily.

Both the USFS and the BLM routinely violate USC Title 43 Section 1733 (c)(1) when they confiscate cattle. This section of FLPMA directs the Secretary (Interior or Agriculture) to contract with local law enforcement agencies when enforcement action is necessary. If the agencies did that, ranchers would receive due process. Instead the agencies wrote "regulations" which give them authority to conduct law enforcement actions within the borders of states. Federal agencies have NO municipal authority within the boundaries of States.

Allowing agencies with such a poor record of unlawful behavior and less than honest behavior to become joint owners of water rights on grazing allotments is simply not prudent. California recently lost 30% of its rights to water from the Colorado. The highest and best use for Nevada water in the eyes of the Feds is to ship it to L.A. Once the Feds have the water, Nevada can forget about regulating what they do with it. It will go to L.A. in the interest of making money for the Dept. of the Interior and the Dept. of Agriculture.

Please review Art. 1, Sect.8, Clause 17 of the U.S. Constitution. This is one of the enumerated powers which the STATES, assembled in Congress,

allowed the Federal Government. It is a strictly limited power, no mention of owning land for grazing or water rights is mentioned. Just in case future generations of Americans misunderstood the limited powers that had been granted the Federal Government, the STATES then enacted Amendment 10, which states:

> **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.**

The Constitution doesn't give the Federal Government the authority to even BUY grazing rights or water rights from the States. The Federal Government may buy land for Air Force bases (forts) or Post Offices (other needful buildings) but NOT grazing land or water rights. If the Founders had intended the Federal Government to have such land, they would have included "farming" along with Forts and Arsenals.

The Supreme Court defined "public land" in *Bardon v. Northern Pacific Railroad Co.* (12 S. Ct. 856, 145 U.S. 535, 538):

> **"It is well settled that all land to which any claims or rights of others have attached does not fall within the designation of public land."**

Please review the case of *Fort Leavenworth Railroad Company v. Percival G. Lowe (114 U.S. 525 1885)* for a discussion by the Supreme Court on the type of authority the U.S. has on the land it occupies in Nevada. The Supreme Court very clearly and concisely limits Federal authority to that of a mere proprietor. The fact that the agencies have written CFRs granting themselves additional power does not make those CFRs the law of the land.

I have attached copies of the Feb. 5 Hage Order, FLPMA and relevant news articles about the Federal Hoaxes for your review. I also ask that you review *Pollard v. Hagan,* 44 U.S. 212 (1845) which is available from *Findlaw at http://laws.findlaw.com/us/44/212.html.* The Supreme Court has ruled that the Federal government has no municipal authority (police powers) within admitted states. Congress recognized that in writing FLPMA. The agencies weren't content to be limited and so, in their regulations gave themselves police powers. They simply can't be trusted to act lawfully. The agencies have an agenda. I have attached copies of "Report to the Interagency Grizzly Bear Working Group on Wildlife Linkage Habitat, Prepared by: Bill Ruediger, Endangered Species Program Leader USDA Forest Service, Northern Region, Missoula, MT. February 1, 2001" This report will hopefully open your eyes to the agenda which is the imposition of the Wildlands

Project, an offshoot of the U.N. Biodiversity Treaty which the U.S. Senate never ratified. The Grizzly Bear corridor headed for Elko county is part and parcel of that agenda.

Thank you for your time.