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Bill Draft Request No.

Senate/Assembly Bill No.

AN ACT securing to Nevada the exclusive right to control and administer her water; protecting Nevada's police power from unlawful encroachment; and providing other matters properly relating thereto:

THE PEOPLE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY DO ENACT AS FOLLOWS:

Section 1. 533.503 of NRS is hereby amended thereto in the following subsections:

Sec. 1.

1. The state engineer shall issue a permit to appropriate water for the purpose of watering livestock (live stock) if:
 - (a) The applicant(s) for the permit own or otherwise possess livestock/live stock for which the permit is sought;
 - (b) The applicant(s) for the permit to the extent authorized by law, agree to provide the livestock/live stock with access to the water using procedures administered by the state engineer, of the water rights for which the permit is sought and, where applicable;
 - (c) The applicant(s) for the permit possess an adjudicated grazing allotment and;
 - (1) Have lawfully established a vested or priority interestⁱ of entitlementⁱⁱ in land or water or both in the allotmentⁱⁱⁱ, which is recognized by both the federal and state governments^{iv} by virtue of the adjudication; and
 - (2) Have a superior right over subsequent entrymen^v for stockwatering purposes on the said allotment(s) and thereby are legally entitled^{vi} to apply for a stock water permit within the allotment boundaries to the exclusion of all others^{vii}.

2. This section must not be construed to impair the vested right to the use of water for the purpose of watering livestock/live stock or to prevent any transfer of ownership of a water right for the purpose of watering livestock/live stock.^{viii}
3. By virtue of Nevada's police power to regulate water within the state, Nevada's legislature has rationally decided to assert control over Nevada's water. Nevada recognizes a threat from the federal government and has effectively acted to negate that threat.^{ix}

ⁱ Securing Your Property, Hage Seminar 2003, Workbook, pgs. 11, 13, 20.

ⁱⁱ Ibid. pg. 13

ⁱⁱⁱ Ibid., pgs. 11, 14.

^{iv} Ibid., pgs. 14, 20, 21.

^v Ibid., pg. 14, 22

^{vi} Ibid., pgs. 11, 13, 20.

Order, Hage v. US, pgs. 1&2, Feb. 5, 2003.

^{vii} Ibid., pg. 16

^{viii} From original statute 533.503.

^{ix} Ambiguity addressed.

HAGE V. U.S. DECISION DEFINITIONS

Source of definitions - Hage v. U.S., Page 11 Sections II, b.

i "This court finds that plaintiffs presented evidence at trial that showed by the preponderance of evidence that the plaintiffs and their predecessors appropriated and maintained a vested water right in the following bodies of water on the Ralston and McKinney allotments iii

vi In addition to certificates of appropriation that were entered into evidence, the plaintiffs also submitted an exhaustive chain of title which showed that the plaintiffs and their predecessors-in-interest had title to the fee lands where the following springs and creeks are located."

Where ultimate conclusions can be determined only by applying rules of law, result reached embodies "conclusion of law," not "finding of fact," as respects appellate review. Mallinger v. Webster City Oil Co., 234 N.W. 254, 256, 211 Iowa 750.

A conclusion by way of reasonable inference from the evidence is a "finding of fact" within statutory rule making trial justice's findings conclusive. Gen.Laws 1938, c. 300, art. 3, § 6. Recchia v. Walsh-Kaiser Co., 43 A. 2d 313, 314, 71 R.I. 208.

VESTED - VESTED RIGHT

i **vi** It is only a vested right which cannot be taken away except by due process of law. Merritt v. Ash Grove Lime & Portland Cement Co., 136 Neb. 52, 285 N.W. 97 (1939); Crumo v. Guver, 60 Okla. 222, 157 P. 321, 2 A.L.R. 331 (1916).

The word "property" as used in the Due Process Clause refers to vested rights, and there is not reference to mere concessions or privileges which may be bestowed or withheld at will. Senior Citizens League v. Department of Social Sec. Of Wash., 38 Wash. 2d 142, 223 P.2d 478 (1951).

A mere subjective "expectancy" is not an interest in property protected by procedural due process. Perry v. Sindermann, 408 U.S. 593, 92 S. Ct. 2694, 33 L. Ed. 2d 570, 1 L.L.R. Cas. (BNA) 33 (1972).

ii **vi** To have a property interest in a benefit protected by procedural due process, a person must have more than an abstract need or desire for it, and he or she must have more than a unilateral expectation of it; in short, he or she must have a legitimate claim of entitlement to it. Board of Regents of State Colleges v. Roth, 408 U.S. 564, 92 S. Ct. 2701, 33 L. Ed. 2d 548, 1 I.E.R. Cas. (BNA) 23 (1972).

Licenses and permits are generally not considered property in any constitutional sense. Wiggins Ferry Co. v. East St. Louis, 107 US 365, 27 L Ed 419, 2 S Ct 257; Union Pass R. Co. v. Philadelphia, 101 US 528, 25 L Ed 912.

Accordingly, the revocation of such qualified rights does not amount to deprivation of property without due process of law. State v. Durein, 70 Kan. 1, 78 P. 152 (1904).

(In recognition of the Commerce Clause of the US Constitution, it has often been declared that a state cannot make the payment of a license [permit] tax or the securing of a license [permit] a condition to carrying on interstate commerce and cannot tax the privilege of carrying on interstate business.)

vi The substantial value of property lies in its use; if the right of use is denied, the value of the property is annihilated and ownership is rendered a barren right. City of Akron v. Chapman, 160 Ohio St. 382, 52 Ohio Op. 242, 116 N.E.2d 697, 42 A.L.R.2d 1140 (1953).

The Constitutional right to acquire, possess and protect property is not limited to any particular amount of property. Hamilton v. Williams, 145 Fla. 697, 200 So. 80 (1941).

Under the constitutional provision that private property shall not be taken or damaged for public use without just compensation, owner has absolute right to damages whenever his property is taken or damaged for public use, and it is immaterial whether the damages are ascertained before or after the injury, since such right is a "vested property right" People ex rel. O'Meara v. Smith.

Vested Property Right:

iii Allotment of lands to individual Indians in pursuance of a treaty or Act of Congress, by the terms of which it is agreed between the US Government and the Tribe, assented to by the state, that the lands thus allotted in severalty shall remain tax free for a stipulated period, creates a "vested property right" in the individual allottee which neither national nor state government may impair or invade. Board of County Com'rs of Creek County, Okl. v. Seber, C.C.A. Okl., 130 F.2d 663, 668. iv

Vested:

Under the decisions of this state, the word "vested" has a well-understood meaning. It is used to define an estate, either present or future, the title to which has become established in some person or persons and is no longer subject to any contingency. Snortum v. Snortum, 193 N.W. 304, 305, 155 Minn. 230.

Vested and Accrued Right:

v One complying with local laws for appropriation of water and constructing works for diversion thereof on vacant public lands of US acquires "vested and accrued right" within Rev. Stat. U.S., §§ 2339, 2340, 30 U.S.C.A. §§ 51, 52, which is superior to rights of subsequent entryman and carries with it right of way or easement for impounding water. Gila Water Co. v. Green, 232 P. 1016, 1017, 27 Ariz. 318.

Vested Right:

A "vested right" has been defined briefly as an immediate, fixed right of possession or future enjoyment. Young v. Jones, 54 N.E. 235, 236, 180 Ill. 216

A "vested right" is property which the law protects. Hoelt v. Supreme Lodge Knights of Honor, 45 P. 185, 186, 113 Cal. 91, 53 L.R.A. 174.

A "vested right" is absolute, complete and unconditional in itself. State ex rel. Wayne County v. Hackmann, 199 S.W. 990, 991, 272 Mo. 600.

A "vested right" is a right which is fixed, unalterable, or irrevocable. Miller v. Johnstown Traction Co., 74 A.2d 508, 511, 167 Pa. Super. 22.

The word "title," when used in reference to title to real estate, implies an estate in fee. *Gillespie v. Broas*, N.Y., 23 Barb. 370, 381.

Sometimes the word "title" is used in a general sense, so as to include any title or interest; but "title" in common acceptance means the full and absolute title. When we speak of a man as having title to certain lands, the ordinary understanding is that he is the owner of the fee, and not that he is a mere lessee. *U. S. v. Hunter*, 21 F. 615, 617.

The word "title" used broadly means the right to or ownership in land. *Andrews v. New Britain Nat. Bank*, 155 A. 838, 840, 113 Conn. 467.

"Title" has respect to that which is the subject of ownership and is that which is the foundation of ownership, and with a change of title the right of property in the owner passes. *Springfield Fire & Marine Ins. Co. v. Allen*, 43 N.Y.389, 395, 3 Am.Rep. 711.

vii

Under Rev. Codes, 1905, § 4702, defining "ownership" as the right to possession and use to the exclusion of others, the term is broader than either "title" or "possession" and includes both. *Fleming v. Sherwood*, N.D., 139 N.W. 101, 103, 24 N.D. 144, 43 L.R.A., N.S., 945.

vii

A party may have a title to property, though he is not the absolute owner. If he has the actual or constructive possession of title thereto, though another person may be the owner. An instruction, in a action of trespass for taking and carrying away goods, that, in order to entitle plaintiff to a verdict, he must show a title to the property or some part of it, is, therefore, not erroneous. *Roberts v. Wentworth*, 59 Mass.(5 Cush.) 192, 193.

"Title" implies possession, either actual or constructive, but possession does not necessarily imply title - - "Possession" means actual control of property by physical occupation, while "title" is the means whereby one holds possession of his land. *Holcombe v. Trenton White City Co.*, 83 A. 618, 634, 80 N.J.Eq. 122; *Adams v. Hopkins*, 77 P. 712, 717, 144 Cal. 19; *Striker v. Mcagher*, 107 N.W. 792, 76 Neb. 610.

Every right to land is a "title," and if a person has actual or constructive possession of property or right of possession, he has a title thereto, though another person may be owner. *Shingleton v. State*, 133 S.E.2d 183, 189, 260 N.C. 451.

LAND - LANDS

BLACKS LAW DICTIONARY

"Lands" This term, the plural of "land" is said, at common law, to be a word of less extensive signification than either "tenements" or "hereditaments." But, in some of the states, it has been provided by statute that it shall include both those terms.

"Tenements" - Only applied to houses and other buildings, but in its original, proper and legal sense, it signifies everything that may be *holden* provided it be of a permanent nature.

A "fee simple title" is a merchantable title or one not subject to such reasonable doubt as would create a just apprehension and is such a title as would be regarded as merchantable so that persons of reasonable prudence and intelligence would be willing to take it and pay the fair value of the land. Bragg v Chilcote, 176 Ill.App 371

PUBLIC LAND

Public lands comprise the general public domain; unappropriated lands; the lands not held back or reserved for any special governmental or public purpose. U. S. v. Garretson, 42 4. 22, 24.

The words "public lands" are used to describe such as are subject to sale or other disposal under general laws. Southern Pac. R. Co. v. Ambler Grain & Milling Co., D.C. Cal., 57 F.2d 536, 539.

(vi) 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. Bardon v. Northern Pac. R. Co., 12 S.Ct. 856, 145 U.S. 535, 36 L.Ed. 806.

"Public lands" are lands open to sale or other disposition under general laws, lands to which no claims or right of others have attached....Northern Pac. Ry Co. v. Wismer, C.C.A.Wash., 230 F 591, 593.

Having various meanings under different statutes and circumstances, the term "public lands" generally refers to government lands that are open to public sale or other disposition under general laws and that are not held back or reserved for a governmental or public purpose. The phrase "public lands" is synonymous with "public domain." Kindred v Union P.R.Co., 225 US 582, 56 L ed 1216, 32 S Ct 780; Humboldt County v United States (CA 9 Nev) 684 F 2d 1276; Columbia Basin Land Protection Assoc. v Schlesinger (CA 9 Wash)

Title to lands in territory that is ceded to the United States passes to the federal government, which takes proprietary title only to the lands that the ceding government held in the proprietary capacity. United States v Gardner (DC Nev) 803 F Supp 1394, (CA 9 Nev)

Property rights that vested prior to the cession of the land will be protected, . . . because a treaty of cession usually protects complete title in real property existing at the time of cession by a foreign government and such title generally need not be presented for confirmation. Carino v Insular Government of Philippine Islands, 212 US 449, 54 L Ed 594, 29 S Ct 334; United States v Coronado Beach Co., 255 US 472, 65 L Ed 736, 41 S Ct 378; Tyler v Maguire, 34 US 253, 17 Wall 253, 21 L Ed 576.

STATE JURISDICTION

(iv) The Courts of a state must determine the validity of title to land within the state, even if the title emanates from the United States or if the controversy involves the construction of federal statutes; Garland v Wynn, 61 US 6, 20 How 6, 15 L Ed 301

State courts can determine between individuals the priority or validity of conflicting titles under different grants from the same antecedent source. California Powder Works v Davis, 151 US 389, 38 L Ed, 14 S Ct 350.

iv

A patent to public land issued by a state is subject to attack only by the state or by one who holds an interest prior to that of the person to whom the patent was issued. Singleton v Terrell (Tex App Texarkana) 727 SW 2d 688.

A private citizen has no enforceable right in public lands (as opposed to patented or fee lands) Nevada ex rel. Nevada State Bd of Agriculture v United States (DC Nev) 512 F Supp 166, 11 ELR 20794, affd (CA 9 Nev) 699 F2d 486

The general rule that the United States and states cannot be sued without consenting to the suit applies to actions relating to public lands; Carr v United States 98 US 433, 98 Otto 433, 25 L Ed 209

The United States has been held not to be an indispensable party when the only issue is the right of possession of persons claiming surface rights and the United States has no present right of possession. Summerville v Scotts Bluff County, 182 Neb 311, 154 NW 2d 517.

Because Congress has plenary power to regulate and dispose of federal public lands under the United States Constitution's Property Clause, it is not for the courts to determine how that trust is to be administered. Once Congress has acted with regard to the administration and disposition of public lands, both courts and the executive agencies must follow strictly the plain meaning of the statute. Nevada State Bd. Of Agriculture v United States (DC Nev) 512 F Supp 166, 11 ELR 20794, affd (CA9 Nev) 699 F2d 486; Kidd v United States Dep't of Interior Bureau of Land Management (CA9 Idaho) 756 F2d 1410.

SOVEREIGN IMMUNITY

Autonomous facts
Doctrine of "sovereign immunity" supports the conclusion that no sovereign may be sued in its own courts without its consent, but it affords no support for a claim of immunity in another sovereign's courts. McDonnell v. State of Ill., 725 A.2d 126, 319 N. J. Super, 324, certification granted 736 A.2d 527, 161 N.J. 334, -- States 191.1.

MISCELLANEOUS DEFINITIONS

"SEARCHING YOUR TITLE"

"Estate in Land" refers to interest which person has in land, and "title to land" refers to evidence of his right, extent of his interest, or means whereby he is able to assert, maintain, or continue his possession. Howard v Mitchell, 105 S.W.2d 128, 133, 268 Ky. 429 *Words and Phrases*

"Land patent" - A muniment of title issued by a government or state for the conveyance of some portion of the public domain. *Black Law Dictionary*