Written by **Joe Wolverton, II, J.D.** on May 16, 2014

To Protect a Mouse, Forest Service Cuts Off Water Access in New Mexico

Although it hasn't reached Bundy levels of attention, leaders of a rural southern New Mexico county are bravely pushing back against a federal land grab of their own.

In Otero County, New Mexico, the federal Forest Service has fenced off a 23-acre section of land, preventing a rancher's cattle from getting to a watering hole located on the tract.

Earlier this week, the county commission voted unanimously (with one commissioner absent) to empower the sheriff to open a gate, making a way for the cattle, some 200 in number, to get to the water. "We are reacting to the infringement of the U.S. Forest Service on the water rights of our land-allotment owners," Otero County Commissioner Tommie Herrell told Reuters. "People have been grazing there since 1956."

As it did in the case of Cliven Bundy, the federal forest gestapo insists that the presence of the cattle threatens the "delicate ecosystem" along the Agua Chiquita that is home to the meadow jumping mouse.

{modulepos inner_text_ad}

Given the fact that this area of the state has been suffering under extreme drought conditions for over a year, ranchers in Otero County are particularly angry at the government's ham-fisted attempt to exercise control over the site of the spring, effectively killing their cattle. "The winds are blowing; we're in a drought. Sacramento Mountains are dry. So whatever water source these animals can find, they have to be able to get to it," county commissioner Susan Flores told television station KVIA news earlier this month.

"The Forest Service has no right to appropriate water under New Mexico law," Blair Dunn, an attorney for Otero County, told New Mexico Watchdog.

As is indicative of the whole of the Obama administration and its disdain for the rule of law and state sovereignty, the Forest Service claims the fences were erected in the 1990s and the Agua Chiquita creek runs through land owned by the federal government.

"We've provided reasonable access to the water, even if there is a water right on these sites," Forest Supervisor Travis Moseley told KVIA-TV.

As for the mice that are supposedly being driven out by the thirsty herd, their presence isn't exactly

well known among locals.

“I’ve never seen one of these mice, and the Forest Service claims they caught one last year,” Commissioner Tommie Herrell told Reuters.

Forest Service spokesman Mark Chavez told Reuters that the New Mexico meadow jumping mouse was expected to be listed as an endangered species in June. That would endow that 23-acre tract with the all-important “critical habitat” designation.

Some residents of the rural county hope the feds force their will upon the ranchers. “The job of the Forest Service is to balance uses for the greatest good for the greatest number of Americans, not to provide subsidized grazing to welfare ranchers,” WildEarth Guardians posted on its Facebook page May 6. WildEarth Guardians are the self-proclaimed protectors of “the wildlife, wild places, wild rivers, and the health of the American West,” according to their website.

Despite being given the go-ahead by the county commission, as of publication time, Sheriff Benny House has not opened the gate in the Forest Service’s fence.

“Hopefully we can get something resolved on Friday,” said House, as quoted by the *Washington Times.*

A “facilitated discussion” has been scheduled to take place this Friday at the U.S. attorney’s office in Albuquerque.

“This is part of a larger issue,” the county’s attorney, Dunn, explained. “There’s a big, strong push, which comes from the White House, to push grazing and oil and gas uses off federal ground. This incident here is just another example.”

As for the Forest Service, they released a statement promising to “continue to work to ensure all parties involved understand that the fence is fully compliant with state and federal law.”

Dunn’s sense of the seriousness of the situation is accurate. The White House and its congressional co-conspirators seemed determined to seize control of the rural West, assuring themselves of monopoly control of the abundant minerals that bless the land and forcing Americans off the land and into cities where they are much more easily monitored and controlled.

Barely a month has passed since the showdown in Bunkerville, Nevada, the erstwhile grazing ground of rancher Cliven Bundy’s cattle.

The similarities in the cases are substantial, and both demonstrate the fact that the federal land control apparatus is marching under orders to invade the sovereign territory of Western states, in open and hostile defiance of the Constitution, the rule of law, principles of federalism, and Supreme Court rulings.

In the decision handed down by the Supreme Court in the case of *Escanaba Co. v. City of Chicago*, 107 U.S. 678, 689 (1883), the concept of constitutional interpretation known as the “equal footing doctrine” was established. It declares that the “equality of constitutional right and power is the condition of all the States of the Union, old and new.”

Basically, this principle requires that any state joining the union do so on equal footing with the 13 original states. As reported by the legal website Justia, “Since the admission of Tennessee in 1796, Congress has included in each State’s act of admission a clause providing that the State enters the Union ‘on an equal footing with the original States in all respects whatever.’”

The question of whether the federal government could legally and constitutionally assert ownership

over lands located within the boundaries of a state was the central issue in the Supreme Court case of *Pollard's Lessee v. Hagan*, decided in 1845. Justia provides a short, helpful summary of the events:

> *Pollard's Lessee* involved conflicting claims by the United States and Alabama of ownership of certain partially inundated lands on the shore of the Gulf of Mexico in Alabama. The enabling act for Alabama had contained both a declaration of equal footing and a reservation to the United States of these lands.
>
> Rather than an issue of mere land ownership, the Court saw the question as one concerning sovereignty and jurisdiction of the States. Inasmuch as the original States retained sovereignty and jurisdiction over the navigable waters and the soil beneath them within their boundaries, retention by the United States of either title to or jurisdiction over common lands in the new States would bring those States into the Union on less than an equal footing with the original States.

This, the court would not permit.

> Alabama is, therefore, entitled to the sovereignty and jurisdiction over all the territory within her limits, subject to the common law, to the same extent that Georgia possessed it, before she ceded it to the United States.
>
> To maintain any other doctrine, is to deny that Alabama has been admitted into the union on an equal footing with the original states, the constitution, laws, and compact, to the contrary notwithstanding….
>
> To Alabama belong the navigable waters and soils under them, in controversy in this case, subject to the rights surrendered by the Constitution to the United States; and *no compact that might be made between her and the United States could diminish or enlarge these rights.* [Emphasis added.]

The bottom line — and what should for ranchers and all other constitutionally minded Americans be the line in the sand — is that regardless of the insistence of the Forest Service or the Bureau of Land Management that millions of acres of Western land were ceded to the federal government when those states entered the union, the Constitution, common law, and relevant Supreme Court rulings forbid it.

The New American will update this story after Friday's meeting.

Joe A. Wolverton, II, J.D. is a correspondent for The New American *and travels nationwide speaking on nullification, the Second Amendment, the surveillance state, and other constitutional issues. Follow him on Twitter @TNAJoeWolverton and he can be reached at jwolverton@thenewamerican.com.*