

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEVADA  
SOUTHERN DIVISION

UNITED STATES OF AMERICA )

Plaintiff, )

CASE #: 2:16-cr-00046

Vs )

RYAN-C: BUNDY )

Defendant

DEFENDANT RYAN C. BUNDY’S NOTICE OF YET ANOTHER BRADY AND GIGLIO VIOLATION AND MOTION TO DISMISS AND TO JOIN THE OTHER MOTIONS TO DISMISS FOR BRADY AND GIGLIO VIOLATIONS

**Evidentiary Hearing Requested.**

This motion is timely filed.

COMES NOW, the defendant, ryan c: bundy, by special appearance, with this Notice of yet another Brady and Giglio violation; and motion to dismiss and to join the other Motions to Dismiss for Brady and Giglio Violations. This newly-discovered Brady and Giglio violation is cumulative to many others, so this motion should join and incorporate the other motions to dismiss on similar grounds already on file.

THE NEWLY DISCOVERED DOCUMENTS

On December 5, 2017, an Arizona man named Lance Krig requested all documents from the Nevada State Water Resources Board relating to Cliven Bundy’s water rights. A collection of documents was delivered in response on December 6. Among these documents were the attached letters, which were found to include 2008 correspondence from and to Mary Jo Rugwell, then the supervisor of the BLM in Southern Nevada.

Mr. Lance Krig was aware that Mary Jo Rugwell had been the prosecution's chief, lead-off witness in the U.S. v. Bundy trial in Nevada. He forwarded the documents to ryan c. bundy's legal team. Unfortunately, Mary Jo Rugwell had already testified in the trial weeks earlier, been cross-examined, and had gone home to Wyoming.

The Rugwell correspondence documents that in 2008 Rugwell—acting as head of the BLM in the District at the time—investigated and sought to eliminate or curtail Cliven Bundy's water rights on the Gold Butte public lands. Rugwell tried to have Bundy's water rights canceled simply because Bundy was not at that time a current grazing-permit holder as recognized by the BLM.

Rugwell and the BLM were unsuccessful in this endeavor, as water rights are property rights recognized and protected under both state and federal law.<sup>1</sup> Cliven Bundy's water rights predate the existence of the BLM.

The 2008 Rugwell revelations are startling in their *undeniable conflict* with Rugwell's testimony on the stand in November of this year. Rugwell testified at trial that she **(1) didn't know anything about Cliven Bundy's water rights, and (2) never investigated them.**

Moreover, Rugwell's 2017 trial testimony *went to the very heart of the criminal claims in this*

---

<sup>1</sup> See, e.g., the Mining Act of 1866, also known as the Ditch Act. That Act expressly defers to the state's local custom and usage regarding water rights and improvements on public land:

Whenever, by priority of possession, rights to the use of water for mining, agriculture, manufacturing, or other purposes, have vested and accrued, and the same are recognized and acknowledged by the local customs, laws, and the decisions of courts, the possessors and owners of such vested rights shall be maintained and protected in the same; and the right of way for the construction of ditches and canals for the purposes herein specified is acknowledged and confirmed . . . .

43 U.S.C. § 661.

*case*, inculcating the Defendants severely. Rugwell's testimony left the jury with the clear impression that (1) Cliven Bundy had no rights to use or improve the public lands in question, and that his water improvements on the public lands were an illegal trespass.

This deceptive testimony goes to the heart of virtually all of the counts of the indictment, especially those requiring proof that federal officials were acting in the lawful discharge of their duties at the time of the Defendants' alleged conduct in 2014. It is an affirmative defense to Counts 1 and 2 and all of the other specific-intent allegations that Bundy publicly called for assistance (including political and law enforcement assistance as well as militia assistance) to defend his lawful rights from unlawful destruction by federal agents. Count 11 explicitly accuses Bundy and others of "corruptly" obstructing court orders by stopping a dump truck. (Unstated in the indictment is the fact that the dump truck was unlawfully filled with torn out piping and portions of water storage tanks and troughs taken from Bundy's water improvements).

The civil court orders from 1999 and 2013 did not authorize the destruction of water improvements. Such destruction by the BLM was unlawful, and Bundy and others had legal rights to resist and oppose officers acting so lawlessly. Moreover, it is exculpatory that Defendants' conduct in stopping the dump truck on 4/9/14 to inquire whether federal officers were destroying water-right improvements. Conviction on Count 11 requires proof that Defendants "corruptly" stopped the dump truck to obstruct court orders authorizing the impoundment of *cattle*.

Had defense counsel possessed the 2008 Rugwell letters, defendants could have (1) impeached Rugwell's claims that she didn't know much about Cliven Bundy's water rights and

had never investigated the topic, exposing her as untruthful and not credible (2) provided the jury with a much more nuanced picture of Cliven Bundy's rights on the ranges around Gold Butte and Bunkerville, and (3) shown that **Rugwell (and the BLM) recognized**—albeit begrudgingly—that Bundy owned vested property rights on the public lands in question. *United States v. Blanco*, 392 F.3d 382, 387 (9<sup>th</sup> Cir. 2004) (“Impeachment evidence is exculpatory evidence within the meaning of *Brady* [and *Giglio*]). *Brady/ Giglio* information includes “material . . . that bears on the credibility of a significant witness in the case.” *United States v. Brumel-Alvarez*, 991 F.2d 1452, 1461 (9<sup>th</sup> Cir. 1993), amending 976 F.2d 1235 (9<sup>th</sup> Cir. 1992) (quoting *United States v. Strifler*, 851 F.2d 1197, 1201 (9<sup>th</sup> Cir. 1988)).

#### RUGWELL'S TRIAL TESTIMONY IN NOVEMBER 2017

Rugwell's 2017 trial testimony stands in stark contrast with her official 2008 correspondence. At trial, her narrative was one of BLM patience in the face of Cliven Bundy's stubborn defiance. She testified with great emphasis that BLM regulatory impositions would have not negatively impact Cliven Bundy's ranch operations and that—had Cliven Bundy cooperated and paid the BLM's reasonable grazing fees—Bundy's cattle grazing would have gone uninterrupted by the BLM.

During cross-examination by Counselor Bret Whipple on November 16, Rugwell was asked who owns the water rights on Gold Butte, Rugwell unequivocally responded “I don't know.” Whipple also asked Rugwell if Mr. Bundy had range improvements on each and every spring. Rugwell indicated she didn't know anything about it.

Morgan Philpot, representing Ammon Bundy, asked Rugwell if she did any research on Cliven Bundy's water rights. Rugwell replied unequivocally, “I did not.” Philpot continued,

“Are you aware Mr. Bundy had stockwatering rights?” Rugwell answered, “I’d heard that.” “I never looked into it myself.”

On redirect, prosecutors continued the deception. AUSA Daniel Schiess asked Rugwell: “You were asked about water rights. And you have no information on who has water rights?” Rugwell replied: “No I don’t.”

#### RUGWELL’S 2008 CORRESPONDENCE IS EXCULPATORY EVIDENCE

Each and every one of the above trial statements of Rugwell is contradicted by her 2008 letter and conduct. Rugwell’s Sept. 30, 2008, letter—on official BLM letterhead—stated: “It has come to the attention of [the BLM] that Mr. Cliven Bundy . . . *has vested water rights* on BLM land without a use authorization. The Nevada Division of Water Resources . . . lists a total of 11 water rights to Mr. Bundy, all of which have a type of use listed as stockwater use” (emphasis added). Rugwell continued, stating that the lands in question had been designated “for the recovery of the desert tortoise” and “was closed to livestock grazing activities.”

The 2008 correspondence reveals that Rugwell was troubled that Cliven Bundy owned such property interests on public land and that she launched an effort to cancel or eliminate Cliven Bundy’s water rights. Rugwell’s efforts were likely among her major operations in 2008.

Not only did prosecutors withhold the evidence that Mary Jo Rugwell launched a personal investigation into Cliven Bundy’s water rights and an effort to eliminate them in 2008. Prosecutors also withheld evidence (in the same Nov. 30, 2008 letter) that the BLM considered the Gold Butte Allotment “closed to livestock grazing activities” entirely. Prosecutors knowingly allowed Rugwell to testify in trial that Bundy would be happily grazing cattle with

BLM approval today if only he had paid the low-cost fees to the BLM—while knowing that Rugwell represented in 2008 that there was no possibility for Bundy to be permitted by the BLM to graze cattle.

The jury was left with the impression that Bundy and codefendants were zealously defiant against the reasonable, patient, and longsuffering BLM; that Bundy had no rights worth recognizing on the Gold Butte allotment; and that Rugwell didn't know much if anything about Bundy's water right claims on public lands.

THE PROSECUTION'S FAILURE TO DISCLOSE THE 2008 RUGWELL LETTERS  
IS BOTH A BRADY AND A GIGLIO VIOLATION

*Brady v. Maryland*, 373 U.S. 83, 87 (1963) requires that prosecutors fully disclose to the accused all exculpatory evidence in their possession. Subsequent Supreme Court decisions have elaborated the Brady obligations to include the duty to disclose (1) impeachment evidence, *Giglio v. United States*, 405 U.S. 150 (1972), (2) favorable evidence in the absence of a request by the accused, *United States v. Agurs*, 427 U.S. 97, 107 (1976), and (3) evidence in the possession of persons or organizations (e.g., the police). *Kyles v. Whitley*, 514 U.S. 419, 437 (1995).

PROSECUTORS WERE AWARE OF, AND HAD EASY ACCESS, TO "THE BUNDY FILE"  
WHICH CONTAINED THE EXCULPATORY INFORMATION

Prosecutors in this case certainly possessed and knew of the 2008 Rugwell letters and either held them in their own custody or knew they were in Rugwell's most important files on Bundy. Prosecutors' direct questioning of Rugwell at trial made this clear.

But the prosecution withheld the documents from the defense. Nowhere in the discovery records are the documents found.

During her trial testimony—elicited by AUSA Schiess on direct examination—Rugwell indicated that when she was hired as District Supervisor for the southern Nevada BLM, she reviewed the ‘Bundy File.’ This was in response to direct questioning from AUSU Schiess. Thus it is axiomatic that Schiess and the other prosecutors knew and were aware of the BLM’s “file” on Bundy—but did not provide ‘the Bundy file’ to the defense. Rugwell’s testimony made clear that this “file” contained “all information accumulated over the years.”

AUSA Schiess also took pains to communicate the importance of “BLM letterhead” to the jury: that letters written by Rugwell on “BLM letterhead” to Cliven Bundy informing Bundy of his options were especially noteworthy. All the while the prosecution was concealing letters by Rugwell on BLM letterhead which exhibited exculpatory facts from the defense.

Prosecutors have a duty to disclose exculpatory (or defense-favoring) evidence which is in their grasp as well as their reach. See *Milke v. Ryan*, 711 F.3d 998, 1006 (9th Cir. 2013) (information in personnel files “fit within the broad sweep of Giglio, and it was the prosecutor’s “duty to learn of any favorable evidence known to the others acting on the government’s behalf in the case, including the police.” (citing *Kyles v. Whitley*, 514 U.S. 419, 437-38 (1995)). See also *United States v. Blanco*, 392 F.3d 382, 387 (9<sup>th</sup> Cir. 2004) (“Because the prosecution is in a unique position to obtain information known to other agents of the government, it may not be excused from disclosing what it does not know but could have learned.”) (citing *Carriger v. Stewart*, 132 F.3d 463, 480 (9th Cir. 1997) (en banc).

THE INFORMATION IS BRADY MATERIAL, AS IT TENDS TO ESTABLISH THE  
DEFENDANTS’ INNOCENCE

The fact that the prosecution’s leading witness—who left an impression with the jury that she didn’t know much at all about the topic—actually led an investigation and orchestrated an attempt in 2008 to curtail or eliminate Cliven Bundy’s stockwater rights is highly material.

Rugwell left an impression on the jury that Cliven Bundy had no defense to claims that he was trespassing on public lands—a central lynchpin of the Government’s indictment and prosecution of the Defendants. All the while, Rugwell (and the prosecutors) well knew that under well-settled, binding federal law Cliven Bundy had the right of access to his water rights and to maintain the water improvements. Even to the extent that the law is unsettled regarding the precise scope of these rights, the Rugwell trial presentation sent a deceptive impression to the jury.<sup>2</sup>

#### CONCLUSION

In *Brady*, the Supreme Court held “that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or punishment, irrespective of the good faith or bad faith of the prosecution.” 373 U.S. at 87. Subsequent Supreme Court decisions have held that the government has a constitutionally mandated, affirmative duty to disclose exculpatory evidence to the defendant to help ensure the defendant’s right to a fair trial under the Fifth and Fourteenth Amendments’ Due Process Clauses. See *United States v. Bagley*, 473 U.S. 667, 675 (1985) (“The *Brady* rule is based on the

---

<sup>2</sup> See also 18 U.S.C. §1519, which provides that “Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under title 11, or in relation to or contemplation of any such matter or case, shall be fined under this title, imprisoned not more than 20 years, or both.”



requirement of due process. Its purpose is not to displace the adversary system as the primary means by which truth is uncovered, but to ensure that a miscarriage of justice does not occur.”). The standard of “materiality” for undisclosed evidence that would constitute a Brady violation has evolved over time from “if the omitted evidence creates a reasonable doubt that did not otherwise exist,” *Agurs*, 427 U.S. 97 at 112, to “if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different,” *Bagley*, 473 U.S. at 682, to “whether in [the undisclosed evidence’s] absence [the defendant] received a fair trial, understood as a trial resulting in a verdict worthy of confidence,” *Kyles*, 514 U.S. at 434, to the current standard, “when prejudice to the accused ensues . . . [and where] the nondisclosure [is] so serious that there is a reasonable probability that the suppressed evidence would have produced a different verdict.” *Strickler v. Greene*, 527 U.S. 263, 281 (1999).

By any of these standards, the government’s failure to disclose the 2008 Rugwell correspondence in discovery constitutes a *Brady* and *Giglio* violation. And now that Rugwell has left the stand and gone home to Wyoming, the prosecution has sought and obtained a ruling prohibiting discussion of water rights entirely (Filing #2885), *perhaps to further the coverup of the Rugwell trial deception*. Prejudice to the defense could not be more acute. Were this case to continue, the proceedings would be fundamentally unfair.

ACCORDINGLY, this trial, and this case, must be summarily dismissed, with prejudice.

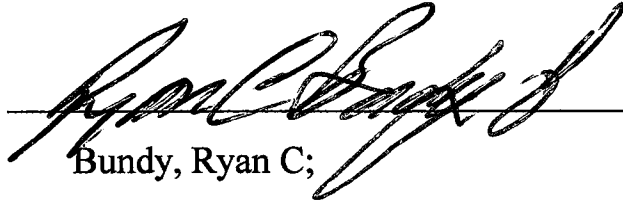
**Certification: The following is timely filed.**

Autographed without prejudice, and without recourse,

Ryan C Bundy as Principal, by Special Appearance,

Notice to agents is notice to principal, Notice to principal is notice to agent.

Proceeding by Sui Juris. UCC 1-308

A handwritten signature in black ink, appearing to read "Ryan C. Bundy", is written over a horizontal line.

Bundy, Ryan C;

1335 S. GOLD BUTTE Rd.

Bunkerville, Nev. (near  
89007)

# **EXHIBIT**

**A**

**DECLARATION OF LANCE KRIG**

**This is a sworn declaration and I, Lance Krig, of White Hills, Arizona do hereby swear and attest, under oath and penalties of perjury that the facts in this declaration are true and within my personal knowledge.**

- 1. I am above the age of 18 and competent to make this Declaration.**
- 2. In the fall of 2017 I traveled to Las Vegas to observe the federal trial in United States v. Bundy, 2:cr-00046.**
- 3. During the week of December 5, the trial was "dark," meaning it was in a break period. On December 5, 2017 I requested, by phone, all documents from the State of Nevada - Division of Water Resources pertaining to Cliven Bundy's water rights. A true and correct copy of Invoice #7301 is attached hereto and incorporated herein.**
- 4. The State agency in Reno overnighted the documents to the agency's Las Vegas office, and I picked them up the next day, on December 6, 2017.**
- 5. The documents included certain 2008 correspondence between BLM officer Mary Jo Rugwell and State of Nevada Division of Water Resources authorities.**
- 6. The Rugwell correspondence was an accidental find in this material, as I did not request it nor anticipate finding it among the water right documents.**
- 7. I knew that Mary Jo Rugwell was the prosecution's first witness in the Bundy trial because I saw her testify in the trial.**
- 8. Around December 9, 2017 I forwarded the documents to Mayson Fletcher, standby counsel for Ryan Bundy.**

**Executed under penalty of perjury this 14<sup>th</sup> day of December, 2017;**

Signed

A handwritten signature in black ink, appearing to be "Lance Krig", written over a horizontal line. The signature is somewhat stylized and overlaps the line.

# State of Nevada - Division of Water Resources

901 S. Stewart Street  
 2nd Floor  
 Carson City, NV 89701

LANCE KRIT

**COPY**

Invoice #	7301
Amount Paid	Amount Due \$78.20

Copy Type
C/O

Please return top portion with remittance to ensure proper credit.

## Invoice

Date	Item	Description	Amount
12/5/2017	COPIES	COPIES OF DOCUMENTS	42.20
	OZALID	FOR EACH COPY OF ANY DRAWING OR MAP, (\$6.00 EA)	30.00
	COST TO CERTIFY	FOR CERTIFYING COPIES OF DOCUMENTS RECORDS OR MAPS	6.00
		REF: V08974 THROUGH V08984	
		SC	
<b>Total</b>			<b>\$78.20</b>



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Las Vegas Field Office  
 4701 North Torrey Pines Dr  
 Las Vegas NV 89130  
 www.nv.blm.gov



In Reply Refer to:  
 7250 (NV-052)

SEP 30 2008

2008 OCT -6 11:43

Tracy Taylor  
 Nevada State Engineer  
 Division of Water Resources  
 901 South Stewart Street  
 Suite 2002  
 Carson City, NV 89701

Dear Mr. Taylor,

It has come to the attention of the Bureau of Land Management (BLM) that Mr. Cliven Bundy of Bunkerville, Nevada has vested water rights on BLM land without a use authorization. The Nevada Division of Water Resources Water Rights Database lists a total of 11 water rights to Mr. Bundy, all of which have a type of use listed as stockwater use. Nine of these water rights exist on BLM land in the Gold Butte Area of Critical Environmental Concern (ACEC); the other two are located on privately owned in-holdings within or near the Gold Butte ACEC. A list of the water rights of concern is below:

Water Right Number	Source	Land Ownership
V08974	Government Spring	BLM
V08976	Great Eastern Mine	BLM
V08978	Juanita Spring	Private
V08979	Dud Spring	BLM
V08980	Key West South Well	Private
V08981	Nickel Creek	BLM
V08984	North Key West Spring	BLM
V08977	Red Rock Springs	BLM
V08982	Seeps Springs	BLM
V08983	Hartman Tank	BLM

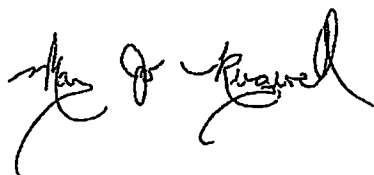
The BLM is asking the State Engineer to review the status of the water rights owned by Mr. Bundy on BLM land and determine whether or not they are still valid based on the lack of authorization to graze livestock on the public range. (NRS 533.040 and NRS 533.503)

In 1993 Mr. Bundy was sent the first Trespass Notice and Order to remove livestock for continued grazing of livestock within the Bunkerville Allotment without a grazing authorization. Due to the lack of acknowledgment on the part of Mr. Bundy to remediate the situation, in 1994,

his grazing authorization for the Bunkerville Allotment was cancelled. In 1998, the Record of Decision for the Las Vegas Resource Management Plan (RMP) and Final Environmental Impact Statement, designated the Bunkerville Allotment as part of the Gold Butte ACEC for the recovery of the desert tortoise. With this designation, the Gold Butte ACEC was closed to livestock grazing activities.

We appreciate your attention to this matter. If you have any questions regarding this matter, please contact the project manager Sarah Peterson, BLM Hydrologist and Acting Assistant Field Manger for Recreation and Renewable Resources, at 702-515-5154.

Sincerely,

A handwritten signature in black ink, appearing to read "Mary Jo Rugwell". The signature is fluid and cursive, with the first name "Mary" and last name "Rugwell" clearly distinguishable.

Mary Jo Rugwell  
Field Manager

cc: Sarah Peterson, BLM, Hydrologist  
Everett Bartz, BLM, Range Specialist  
Gayle Marrs-Smith, BLM, Gold Butte Project Manager

JIM GIBBONS  
Governor

STATE OF NEVADA



ALLEN BIAGGI  
Director

TRACY TAYLOR, P.E.  
State Engineer

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES  
DIVISION OF WATER RESOURCES

901 South Stewart Street, Suite 2002

Carson City, Nevada 89701-5250

(775) 684-2800 • Fax (775) 684-2811

(800) 992-0900

(In Nevada Only)

<http://water.nv.gov>

October 10, 2008

Mary Jo Rugwell, Field Manager  
Las Vegas Field Office  
United States Department of the Interior  
Bureau of Land Management  
4701 North Torrey Pines Drive  
Las Vegas, Nevada 89130

Re: Proof of Appropriation Nos. V08974, V08976 through V08984.

Ms. Rugwell:

I am in receipt of your letter, dated September 30, 2008, regarding the status of Proof of Appropriation Nos. V08974, V08976, V08977, V08978, V08979, V08980, V08981, V08982, V08983 and V08984. These claims were filed on October 23, 1997, by Keith Nay and Cliven D. Bundy claiming prestatutory, prior to 1905, stock water use from Government Spring, Great Eastern Mine, Red Rock Springs, Juanita Spring, Dud Spring, Key West South Well, Nickel Creek, Seeps Springs, Hartman Tank and North Key West Spring, respectively. In your letter you request a review of the status of the aforementioned claims.

No decision regarding the validity of these claims has been made by the Office of the State Engineer. In order to determine if an applicant is an authorized range user on public land the person or any other entity would have to submit an Application to Appropriate the Public Waters of the State of Nevada. Under the statutory process this office has the ability to determine if the applicant has the ability to place the water to beneficial use. It is our policy to send letters to all federal agencies regarding the applicant's right to graze their livestock on public lands administered by your agency. NRS 533.503 states:

1. The State Engineer shall not issue a permit to appropriate water for the purpose of watering livestock unless:



Mary Jo Rugwell, Field Manager  
October 10, 2008  
Re: V08974, V08974 through V08984  
Page 2 of 2

(a) The applicant for the permit is legally entitled to place the livestock on the lands for which the permit is sought, and:

(1) Owns, leases or otherwise possesses a legal or proprietary interest in the livestock on or to be placed on the lands for which the permit is sought; or

(2) Has received from a person described in subparagraph (1), authorization to have physical custody of the livestock on or to be placed on the lands for which the permit is sought, and authorization to care for, control and maintain such livestock.

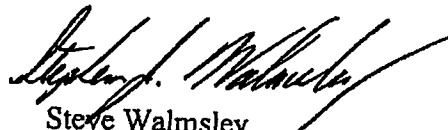
Again, this requirement is part of the statutory permitting process and does not pertain to Proofs.

These Proofs of Appropriation, also referred to as "Claims", state that water from these sources was placed to beneficial use "prior to 1890" for watering of 75 head of livestock, combination of cattle and horses. It is the policy of the State Engineer's Office that any claim of vested right stands on its own merits until such time as the rights are challenged and eventually adjudicated under NRS Chapter 533, §533.090 through 533.320, inclusive. The filing of a claim does not confirm ownership of the water, its source or the land on which it resides.

The adjudication process is normally began via a petition to the State Engineer by one or more of the claimants on a specific water source, stream system, groundwater source or a hydrographic basin. The State Engineer may conduct the minimum of a field investigation and research of our records to determine if an adjudication is warranted. In the scenario set forth in your letter, there does not appear to be any other entity competing for the use of water from these springs. It is stated that Mr. Bundy was found to be in trespass in 1993 and "his grazing authorization for the Bunkerville Allotment was cancelled" at a later date. Even though Mr. Bundy's grazing permit has been cancelled, there is no other evidence that proves that a vested right to the use of these sources has or has not been established by historical use prior to 1905.

In summation this office does not have the statutory ability to reject any of the Bundy claims based on the current disposition of his grazing permit.

Sincerely,

  
Steve Walmsley  
Staff Engineer

SW/ag

Cc: Sarah Peterson (Same Address)  
Keith Nay and Cliven D. Bundy

BRIAN SANDOVAL  
Governor

STATE OF NEVADA



LEO DROZDOFF  
Director

JASON KING, P.E.  
State Engineer

DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES  
DIVISION OF WATER RESOURCES

901 South Stewart Street, Suite 2002

Carson City, Nevada 89701-8250

(775) 684-2800 • Fax (775) 684-2811

<http://water.nv.gov>

October 1, 2014

Michael M. McGreer  
533 Rolling Hills Drive  
Mesquite, Nevada 89027

Re: Request to Investigate an Alleged Violation; AV 111; Alleged Unauthorized Stockwater Use Under Claims of Vested Right V08974 through V08984

Dear Mr. McGreer,

This letter is in response to your Request to Investigate an Alleged Violation (RIAV) received by this office on September 26, 2014, alleging that Cliven Bundy of Bunkerville, Nevada, has used and continues to use water in violation of the terms or conditions of Claims of Vested Right V08974 through V08984 and in violation of Nevada Revised Statute (NRS) § 533.503.

As was explained in the September 2, 2014 letter from this office, Proofs of Appropriation were filed with this office for Claims of Vested Right V08974 through V08984, by Keith Nay and Cliven D. Bundy. These proofs state that water was placed to beneficial use prior to 1890 for watering cattle and horses, and claim pre-statutory stock water use from several surface and underground sources in Virgin River Valley and Gold Butte Area Hydrographic Basins. The State Engineer has made no decision regarding the validity of the claims as this decision must be made through the adjudication process defined in NRS §§ 533.090 through 533.320. As explained in the September 2, 2014 letter, although these claims have not been adjudicated, the State Engineer has the responsibility under NRS § 533.085 to protect pre-statutory vested water rights, even absent a final decree in a statutory adjudication.

Your RIAV also alleges that Mr. Bundy is in violation of NRS § 533.503 because Mr. Bundy is not legally entitled to place livestock on the lands for which a permit is being sought. While NRS § 533.503 defines restrictions incumbent on the State Engineer in the issuance of a permit or certificate to appropriate water for watering livestock, this statute does not apply in the case of a claim of vested right. In fact NRS § 533.503 (3) states specifically:

*This section must not be construed to impair the vested right of any person to the use of water for the purpose of watering livestock or to prevent any transfer of ownership of a water right for the purpose of watering livestock.*

Michael M. McGreer

Request to Investigate an Alleged Violation; AV 111; Alleged Unauthorized Stockwater Use Under  
Claims of Vested Right V08974 through V08984

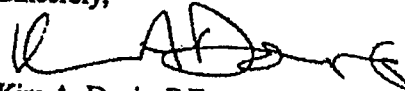
October 1, 2014

Page 2

The issue that you raise in your RIAV concerning the status of Mr. Bundy's claims of vested right had also been raised with this office, by Mary Jo Rugwell, Field Manager of the U.S. Bureau of Land Management, in a letter to the State Engineer dated September 30, 2008. I am including a copy of both Ms. Rugwell's request and an October 10, 2008 response letter from this office for your information. Our response letter provides additional explanation regarding the differences between the statutory permitting process and the adjudication process for pre-statutory rights. As was concluded in the response letter, this office does not have the statutory ability to reject any of Mr. Bundy's claims based on the disposition of his grazing permit.

Thank you for your awareness and concern for the water resources of the Virgin River Valley and Gold Butte Area Hydrographic Basins. If you have any questions, please do not hesitate to contact me directly at (775) 684-2884.

Sincerely,



Kim A. Davis, P.E.  
Water Planning Engineer

KAD/sw

Enclosures

cc: Southern Nevada Branch Office, via E-mail  
Jason King, P.E. via E-mail  
Eric Schadeck, via E-mail  
John Guillory, via E-mail

BRIAN SANDOVAL  
Governor

STATE OF NEVADA

LEO DROZDOFF  
Director

JASON KING, P.E.  
State Engineer



DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES  
**DIVISION OF WATER RESOURCES**

901 South Stewart Street, Suite 2002  
Carson City, Nevada 89701-5250  
(775) 684-2800 • Fax (775) 684-2811  
<http://water.nv.gov>

March 17, 2016

Michael M McGreer  
533 Rolling Hills Dr.  
Mesquite, Nevada 89027

Re: Proof of Appropriation Nos. V-08974 through V-08984.

Dear Mr. McGreer:

I offer the following response to the questions raised in your letter of February 21, 2016. Yes, there was a phone call with VVWD in regard to the issue. I was asked whether the State Engineer's office is pursuing the adjudication of the water sources subject to the above mentioned vested claims. I responded that we are not currently conducting an adjudication of Mr. Bundy's vested claims, and furthermore, our office is moving away from conducting source specific adjudications in favor of more comprehensive, basin-wide, surface and groundwater adjudications. There are numerous advantages to this strategy, including but not limited to, the application of the McCarran Amendment and efficient use of limited resources. Currently, there are approximately 48 pending adjudications, including petitions for adjudication, at various stages of completion. These adjudications were prioritized and the top 16 are considered active adjudications with the full resources of our adjudication section being applied. Adjudications are a complex area of water law, extremely litigious, and can take years, sometimes decades, to complete. I believe I also communicated that even if we did decide to perform a source specific adjudication, Mr. Bundy's claims would not be our top priority.

Finally, I'm not sure what point you're trying to make with your last question. Feel free to call or email me with clarification. I can be reached at 775 684-2861 and my email address is [jking@water.nv.gov](mailto:jking@water.nv.gov).

Sincerely,

  
Jason King, P.E.  
State Engineer

21, February 2016

Department of Conservation and Natural Resources  
Division of Water Resources  
901 South Stewart Street, Suite 2002  
Carson City, Nevada 89071-520

Re: An alleged decision by the State Water Engineer on vested water rights.

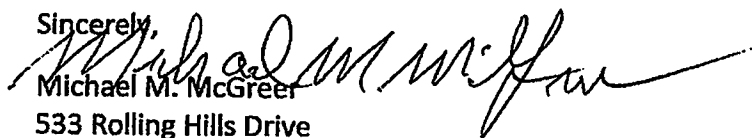
In September 2008, Mary Jo Rugwell Filed Manager, Bureau of Land Management (BLM) sent a letter to Tracy Taylor, Nevada State Engineer, Division of Water Resources. She asked the State Engineer to review the status of 11 water rights vested to Cliven Bundy, Bunkerville, NV. to water illegally grazing cattle. In response, Steve Walmsley, Staff Engineer said that "It is the policy of the Stat Engineer's Office that any claim of vested rights stands on its own merits until such rights are challenged and adjudicated under NRS 533, 533.090 through 533.320. He also said that "in the scenario outlined in your letter, there does not appear to be any other entity competing or the use of water from these springs.

In the summer of 2014, I filed a similar complaint with the State Engineers office. Kim Davis, P.E. Water Planning Engineer, responded. She referred to the Rugwell decision. She added that no decision regarding the Bundy claims has been made by the Office of the State Engineer. She said that such a determination must be made through the adjudication process by one or more of the claimants on a specific water source.

The Virgin Valley Water Board (VVWB), Mesquite, Nevada., of which I am a customer, also holds permits to some of the springs vested to Bundy. On February 16, 2016, I formally asked the VVWB to adjudicate Bundy's claims. I was told that their "staff" had contacted the State Engineer and he was not interested in adjudicating Bundy's claims. I would like to know:

1. Has any member of the Virgin Valley Water District Staff, a Virgin Valley Water Board Member or a member of the Bingham and Snow legal firm contacted the State Engineer regarding the adjudication of Bundy's vested rights, and
2. Is it the position of the State Water Engineer not to adjudicate Bundy's vested rights, and
3. Is it a normal practice to render policy decision through phone or personal contacts?

Sincerely,

  
Michael M. McGreer  
533 Rolling Hills Drive  
Mesquite, Nev. 89027  
[mmcgreer@msn.com](mailto:mmcgreer@msn.com)  
702 346 7573

RECEIVED  
2016 FEB 24 AM 10:21  
STATE ENGINEERS OFFICE