

PUBLIC LANDS BELONG TO THE STATES, NOT THE FEDERAL GOVERNMENT

by David R. Hinkson

United States Department of Interior Board of Land Appeals

DOUGLAS E. NOLAND)

Appellant)

vs.)

Bureau of Land Management)

Respondent)

CO 92-1B 3833

CMC-202302

NOTICE OF APPEAL

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Please take notice that DOUGLAS E. NOLAND, hereby appeals to the Bureau of Land Management, United States Department of the Interior, from the whole decision of RICHARD TATE, District Manager dated November 22, 1993. Such decision was served on appellant on November 30, 1993. A copy of which is attached hereto as exhibit "A".

This appeal is taken on the grounds that:

ARGUMENT A

**THE UNITED STATES GOVERNMENT DOES NOT HAVE THE RIGHT TO OWN
OR
CONTROL PUBLIC LANDS WITHIN A SOVEREIGN STATE**

The United States Government has no jurisdiction over the Mining Claims in question. Under the equal footing doctrine, Colorado entered into the Union on equal footing. When Colorado entered into the Union on equal footing, the U.S. Government had no legal right to required Colorado to sign said enabling act, in which Colorado agreed to disclaim the unappropriated lands. Texas which was part of the same original territory as Colorado, never surrender any of her lands, prior to Statehood. Nowhere in the United States Constitution was the United States Government given the authority or right to claim or maintain jurisdiction over any territory not specifically addressed in the United States Constitution.

In **Utah Division of State Lands v. U.S., 482 US 193, (1987)** on Page 169 the Supreme Court stated as follows:

"When the 13 Colonies became independent from Great Britain, they claimed title to the lands under navigable waters within their boundaries as the sovereign successors to the English Crown. *Id.*, at **15, 38 L Ed 331, 14 S Ct 548.**

Because all subsequently admitted States enter the Union on an "equal footing" with the original 13 States, they too hold title to the land under navigable waters within their boundaries upon entry into the Union. **Pollard's Lessee v Hagan, 3 How 212, 11 L Ed 565 (1845).**"

The court further stated on Page 170:

"Thus, under the Constitution, the Federal Government could defeat a prospective State's title to land under navigable waters by a pre-statehood conveyance of the land to a private party for a public purpose appropriate to the Territory."

The court further stated on Page 177:

"...we find it inconceivable that Congress intended to defeat the future States' title to all such land in the western United States. Such an action would be wholly at odds with Congress' policy of holding this land for the ultimate benefit of the future States. In sum, Congress did not definitely declare or otherwise make very plain either its intention to reserve the bed of Utah Lake or to defeat Utah's title to the bed under the equal footing doctrine. Accordingly, we hold that the bed of Utah Lake passed to Utah upon that State's entry into statehood on January 4, 1896. The judgment of the Court of Appeals is reversed.

A State obtains title to the land underlying a navigable water upon its admission to the Union unless Congress' intention to convey the land to a third party during the territorial period "was definitely declared or otherwise made very plain, or was rendered in clear and especial words, or unless the claim confirmed in terms embraces the land under the waters of the stream."

The United States Government never declared or reserved any public lands in the Acts of Statehood for Colorado or other western states. The U.S. Government further failed to claim any of the unappropriated lands of Colorado, in any prestatehood Congressional Act. And the Property Clause of the United States Constitution Article 1 ' 8, clause 17, did not authorize reservation of large blocks of Land in created states. "The federal government, under U.S. Constitution article 1 ' 8, clause 17, can exercise exclusive jurisdiction over land in a state only where the land is acquired for one of the purposes mentioned, which included needful forts, dockyards and defense purposes. It is obvious that the reason the United States Government never addressed unappropriated lands in the acts of statehood is because, because it would have been unconstitutional and illegal. The U.S. Government attempted to illegally acquire lands by ratification of state Consent. If the power to keep or claim public lands was not specifically given by the United States Constitution, then this power can not be exercised or ratified by the Consent of the States.

In **New York v. United States 120 L Ed 2d 120 (1992) on page 154** the court address the ratification or Consent of authority which is not specifically granted in the United States Constitution, the court stated as follows:

"Where Congress exceeds its authority relative to the States, therefore, the departure from the constitutional plan cannot be ratified by the "consent" of state officials. An analogy to the separation of powers among the Branches of the Federal Government clarifies this point. The Constitution's division of power among the three Branches is violated where one Branch invades the territory of another, whether or not the encroached-upon Branch approves the encroachment.

In **Buckley v. Valeo, 424 US 1, 118-137, 46 L Ed 2d 659, 96 S Ct 612 (1976)**, for instance, the Court held that the Congress had infringed the President's appointment power, despite the fact that the President himself had manifested his consent to the statute that caused the infringement by signing it into law. See **National League of Cities v Usery, 426 US, at 842, n 12, 49 L Ed 2d 245, 96 S Ct 2465**.... Congress cannot be expanded by the "consent" of the governmental unit whose domain is thereby narrowed, whether that unit is the Executive Branch or the States."

The United States has never lawfully claimed the unappropriated lands of Colorado, and for the State of Colorado to grant these lands in the "Enabling Act" would be "void and inoperative". Therefore the United States Government lacks Jurisdiction and ownership over the public lands in question, and must promptly surrender all public lands to the real and legal owners of the Sovereign States. In **New York v. United States 120 L Ed 2d 120 (1992) on page 137** the Supreme Court further stated:

"...If a power is delegated to Congress in the Constitution, the Tenth Amendment expressly disclaims any reservation of that power to the States; if a power is an attribute of state sovereignty reserved by the Tenth Amendment, it is necessarily a power the Constitution has not conferred on Congress. See **United States v Oregon, 366 US 643, 649, 6 L Ed 552, 66 S Ct 438 (1946)**; **Oklahoma ex rel. Phillips v Guy F. Atkinson Co., 313 US 508, 534, 85 L Ed 1487, 61 S Ct 1050 (1941)**. It is in this sense that the Tenth Amendment "states but a truism that all is retained which has not been surrendered." **United States v Darby, 312 US 100, 124, 85 L Ed 609, 61 S Ct 451, 132 ALR 1430 (1941)**. As justice Story put it, " this amendment is a mere affirmation of what, upon any just reasoning, is a necessary rule of interpreting the constitution. Being an instrument of limited and enumerated powers, it follows irresistibly, that what is not conferred, is withheld, and belongs to the state authorities.... Congress exercises its conferred powers subject to the limitations contained in the Constitution."

State officials thus cannot consent to the enlargement of the powers of Congress beyond those enumerated in the United States Constitution, as was found in the states enabling acts. Further the United States Government has never had jurisdiction, to tax or regulate the private lands found within the boarder of the Sovereign State of Colorado. Therefore, the United States Government cannot legally own or control the public lands in the western states or the State of Colorado. The Federal Government only has the right to Control land as described in Article 1 '8 Clause 17 of the United States Constitution, which allows for "needful forts magazines and dockyards". Therefor the remaining public lands not held in accordance with Article 1 '8 Clause 17 of the United States Constitution, hereinafter belong to the State of Colorado.