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# Victims of the Federal Bootprint


America's farmers and ranchers, the people who grow the food that magically appears on our grocery store shelves, are under siege. Like swarms of locusts, federal regulators from the EPA, BLM, USFS, etc. are driving these hardworking producers who feed America into the ground. A relentless bombardment of threats, fines, regulatory takings, lawsuits, and other means of perpetual harassment is killing what remains of our family-owned farms. It is not only America's food supply that is imperiled by this onslaught; equally important (if not more so) is the threat that these rogue federal regulators pose to justice, to the rule of law, to the very idea of limited government, and to the freedom of each and every one of us. The profiles of the victims provided here represent only a tiny sample of the thousands of our fellow citizens who have heroically fought, or are currently fighting, against a federal leviathan that is trampling their rights and taking their property.

## John Duarte — Plow Your Field, Go to Jail

In December of 2012, John Duarte did what thousands of other farmers do: He planted wheat. Specifically, he planted wheat on 450 acres he owns in California's central valley near Red Bluff, a couple hours north of Sacramento. Little did he know that this simple act would place him in jeopardy of fines as high as $50,000 per day and a possible prison sentence. Matthew Kelley, an employee of the U.S. Army Corps of Engineers, happened to drive by and take notice of the plowing activity on Duarte's land in preparation for the planting. Kelley reported to his superiors that Duarte's plowing operations were a "big violation" of the federal Clean Water Act, in that they were, allegedly, destroying a "wetland."

The Clean Water Act authorizes the Corps of Engineers to regulate certain "discharges" to "waters of the United States." The Corps has interpreted this to mean "wetlands" and virtually every mud puddle in the country. However, the act specifically exempts "normal farming activities" from the ban on discharging dredge and fill material and from the costly and burdensome permit requirements. There are good reasons for agricultural exemptions: Requiring farmers to spend, on average, two years and $270,000 to get a federal permit to plant and harvest crops would be a prescription for national starvation. But Kelley claimed that Duarte was plowing three feet deep, which constituted not normal

plowing but "deep ripping," which, Kelley said, was a "flagrant" violation. Based on Kelley's report, the Corps issued a cease-and-desist order (CDO) to Duarte on February 23, 2013. Upon receiving the order, Duarte ceased operations on the parcel — and lost his wheat crop, a $50,000 investment, not including the profit he hoped to realize from the sale of the wheat. That's not all: The acreage has remained fallow because the Corps insists that the stop order will remain in effect until Duarte goes through the long, costly process of obtaining a permit, which, legally, he doesn't need in order to farm.

Duarte is suing the Corps for violation of his right to due process. The Fifth Amendment to the U.S. Constitution provides that "No person shall be … deprived of life, liberty, or property, without due process of law." Duarte, represented by the Pacific Legal Foundation, charges that the Army Corps violated his due process rights by ordering him to shut down operations without first holding a hearing giving him the opportunity to present his case. If the Army Corps had complied with the Constitution and provided him a hearing, Duarte says, the Army Corps would have discovered that it was in error as to the facts in the case, and likely would not have shut down the farm. The Corps moved to have Duarte's case dismissed, arguing, incredibly, that its cease-and-desist order had not deprived Duarte of property, but that Duarte had "voluntarily abstained from farming" in response to the order. Senior Judge Lawrence Karlton of the U.S. District Court for the Eastern District of California slapped down the government's attempt to dismiss the due-process challenge.

Karlton ruled that if compliance with the cease-and-desist order were voluntary and if Duarte was free to ignore such unconditional commands by the U.S. government, then the Corps' regulators should have said so.

"In essence," Karlton wrote, "the Government argues that although it (figuratively) held a gun to plaintiff's head and ordered him to stop farming, plaintiff should have relied on the unstated fact that the gun could not be fired."

Judge Karlton also criticized the Corps' unreasonable process. "Forcing plaintiffs to wait idly about while the Corps decides whether to bring an enforcement action has the effect of continuing to deprive plaintiffs of the use of their property, without end," he wrote.

Karlton also made this stinging rebuke to the Corps' reasoning: "If the Corps, instead of issuing the [cease-and-desist order], had burned plaintiffs' nursery to the ground in an effort to protect the waters of the U.S., plaintiffs surely would have suffered an injury, even though the Corps still would not have imposed any legal 'obligation' or 'liability' on plaintiffs."

However, rather than backing off and admitting they blundered, the Army Corps is doubling down; they've countersued Duarte and are threatening huge fines and penalties.

"The Corps and EPA aren't trying to micromanage farmers. They're trying to stop farmers," Duarte said in a recent video about the case produced by the American Farm Bureau. "They're trying to turn our farm land into habitat preservation. They're simply trying to chase us off of our land."

John Duarte is in a better position than millions of other farmers and property owners who are standing in the Corps/EPA "Waters of the United States" (WOTUS) cross hairs. As president of Duarte Nursery, he has additional income to fall back on, unlike many other farmers who would be driven into bankruptcy by a similar Army Corps CDO that stopped their farming operations. Duarte Nursey, a multi-million-dollar family business started by his parents, is a national leader in viticulture science and is famous for its grapevines and avocado, pistachio, walnut, almond, citrus, and prune root stock.

Moreover, he is well known, well connected, and well respected in the agricultural world, and has done a good job of taking his fight to the court of public opinion, as well as the legal courts. Even the "progressive" *Los Angeles Times* has come down in favor of Duarte, with a January 15, 2016 article that found the Corps' arguments so ludicrous that "the government will almost certainly find itself on the losing side."

## Linda Evridge — Oops! Sorry We Incinerated Your Ranch

On April 3, 2013, the U.S. Forest Service ignited a prescribed burn along the North Dakota-South Dakota border in the Grand River National Grasslands. The stated reason for the burn was to destroy 130 acres of dead crested wheat. Due to the dangerously dry, windy conditions, farmers and ranchers in the area had repeatedly warned against and protested against burns in the area. Disregarding this sound advice (as well as weather service fire-danger alerts), the Forest Service lit the fires anyway. Predictably, the flames quickly raged out of control, taking out not a mere 130 acres but 17 square miles (nearly 11,000 acres), 11 square miles of which are privately owned ranch/farm land. It's known as the Pautre Fire, and it has left smoldering embers that continue to ignite passion among ranchers and farmers nationwide.

At a public meeting in Hettinger, North Dakota, on April 6, 2013, Grand River District Ranger Paul Hancock apologized to an understandably angry gathering of around 100 farmers and ranchers and assured them that the Forest Service would expedite the compensation process to see that they recovered the costs of their crops, livestock, fences, hay bales, buildings, and other losses from the ill-advised fire. "The Forest Service is extremely regretful that the fire escaped the containment area," Hancock told the victims.

Some of the fire victims lost as much as 90 percent of their forage, and many were in the middle of calving season. How would they be compensated for those losses, as well as their losses of sweat equity and the value of time lost while grass regrows and fences are replaced? "What are we going to do with the displaced livestock?" asked one victim. "How are we going to move some of these cattle around?" asked another.

Ranch owner Linda Evridge lost land and timber to the fire. "I will never live to see those trees regrown in my lifetime," she told Hancock. "I've spent 39 years of my life on this ranch. It's more than just dirt and grass. How are you going to compensate the trees gone, the erosion that will happen because they are no longer there?"

"My land and everybody's land in here was beautiful," Evridge said. "The people in this room know this land better than you do. Do you think you should have called and talked to the people in this room before you burned anything?" she demanded of Hancock.

"I wish I had all of the answers, but we will work with everyone to figure out how we can best help," the Forest Service ranger told the crowd.

It's nearly three years later, and the victims are still waiting for that help and compensation. But, in the meantime, the government has changed its tune: In July of 2015, the Forest Service's parent agency, the U.S. Department of Agriculture, denied all financial claims for the Pautre Fire, which by that time had amounted to over $50 million. Based on the assurances of Ranger Hancock and the support of U.S. Senator John Thune (R-S.D.), many of the fire victims, no doubt, hoped that their compensation soon

would be forthcoming. In an April 8, 2013 letter to Forest Service Chief Tom Tidwell, Senator Thune noted that the Forest Service had acknowledged to the *Rapid City Journal*: "We did light it and it did get away. And we plan to pay for damages."

"The most urgent need," wrote Senator Thune, "is for timely payment from the Forest Service for private property losses due to this fire, because the ranchers who suffered losses in this fire had already experienced devastating pasture and feed losses due to the 2012 drought. Burned up and destroyed pasture acres, hay and alfalfa stacks and bales, fences, buildings and vehicles can all be easily and immediately quantified and their loss values accurately assessed, which means there should be no delay by the Forest Service in providing payments to the impacted producers for their losses due to the Forest Service-started Pautre Fire."

Senator Thune also blasted the government's prescribed burn practices. "Local ranchers warned Forest Service personnel that ongoing severe drought conditions, potential for high winds, and higher-than-normal temperatures all meant that starting a prescribed burn on April 3 would be a very risky undertaking. The Forest Service personnel inexcusably disregarded these warnings and went ahead with the prescribed burn." "With the strike of a match," the senator noted, "the livelihoods and the future of ranchers who suffered losses in the Pautre Fire were changed, and a doubtful outlook for 2013 became even more uncertain due to lost pastures, hay, and fences. I fully expect the Forest Service to take every available action to provide quick, fair, and certain reimbursement to these ranchers. I respectfully request that full reimbursement be made no later than 30 days from the date of loss, while allowing additional time for producers to apply for losses beyond this period as necessary."

However, as we reported above, the government is now refusing to pay anything. The Pautre Fire victims have been forced to hire attorneys to try to recover damages. Three lawsuits with a total of 25 plaintiffs have been filed thus far.

In a letter to Senator Thune last June, Agriculture Secretary Tom Vilsack stated: "While we deeply regret the losses suffered by those affected by the Pautre Fire, a careful and thorough review of the claims disclosed no liability on the part of the U.S. Government." However, one of the lawsuits includes the text of a Rangeland Fire Danger Statement for the prescribed-burn area issued by the weather service more than seven hours before the fire started. "Fires will spread rapidly and show erratic behavior," the statement said. "Outdoor burning is not recommended."

The South Dakota Stockgrowers Association, in a statement issued on January 5, 2016, undoubtedly spoke for a great many Americans in noting the dangerous double standard applied to Oregon ranchers Dwight and Steve Hammond, as compared to the Forest Service personnel. Stockgrowers President Bill Kluck denounced the "egregiously unbalanced response of federal land management agencies" and said, "There is a big double standard being applied in these government land agencies. We cannot support the use of terrorism laws against a family ranch while forest service staff are just allowed to go about their day."

The Stockgrowers noted that the Hammonds have been sentenced to five years in federal prison after a prescribed burn on their private property burned less than 140 acres of federal property. The family is required to pay $400,000 in damages and was prosecuted under the Antiterrorism and Effective Death Penalty Act of 1996. "The kind of unchecked decisionmaking authority and lack of accountability from federal land management agencies as seen in the Pautre Fire, can and will be applied to other

situations and likely at expense of the independent livestock producers and private property owners," Kluck stated. "SD Stockgrowers Association supports full compensation to the ranchers who were harmed by the Pautre Fire, and believe that liability should be applied to the U.S. Forest Service the way the Hammonds were held liable for setting that fire."

## Andy Johnson — Dig a Pond, $20 Million Fine

Andy Johnson (shown) didn't destroy a wetland, he created one. More precisely, like many other farmers he created a stock pond to provide water for his horses, cattle, and other livestock on his small farm near Bridger, Wyoming. Johnson, a 32-year-old welder and father of four young girls, created his stock pond in 2012 by building a dam across an intermittent stream on his property. Before doing so, he obtained the necessary state and local permits. Congress expressly exempted stock ponds from Clean Water Act (CWA) jurisdiction. However, never ones to be impeded by the rule of law, EPA bureaucrats issued a "compliance order" demanding that Johnson return his property, under federal oversight, to its condition before the stock pond was created. In addition, the EPA began fining him at the rate of $37,500 per day. According to the EPA, he has already racked up fines of $20 million.

Fortunately, the California-based Pacific Legal Foundation (PLF) has come to the Johnson family's assistance. "We are challenging an outrageous example of EPA overreach against a private citizen who has done nothing wrong," said PLF Staff Attorney Jonathan Wood, in filing a lawsuit against the EPA on Johnson's behalf. "Andy Johnson constructed a pond for his livestock by damming a stream on his private property with no connection to any navigable water. Under the plain terms of the Clean Water Act, he was entirely within his rights, and didn't need federal bureaucrats' permission."

"But EPA regulators have decided they know better than the law," Wood charges. "By trying to seize control of Andy Johnson's land — and threatening him with financial ruin — they are imposing their will where they have no authority. Ironically, EPA is attempting to destroy a scenic environmental asset that provides habitat for fish and wildlife, and cleans water that passes through it, all in the name of enforcing the Clean Water Act."

Not only is Johnson in compliance with the law (while the EPA's actions violate the law), but the EPA cites no evidence that he has in any way damaged the environment. Indeed, it appears that his pond has *improved* it.

"In addition to providing water for his livestock, the pond has been an environmental boon," according to Ray Kagel, a former Army Corps of Engineers enforcement officer and environmental consultant. "It created wetlands where there had previously been none. It provides habitat for fish and wildlife, including migratory waterfowl, passerine birds, a bald eagle, and moose. And it improves water quality by providing a place for sediment and other suspended solids to settle," says Kagel.

"According to tests by an independent lab, the water flowing out of Andy's pond is three times cleaner than the water entering his pond," Kagel notes. "And the suspended solids in the nearest navigable waterway — the Green River — are 41 times greater than in Andy's pond, which means that Andy's pond is significantly cleaner than the downstream river that's allegedly affected."

## Ocie & Carey Mills, Persecuted, Incarcerated Patriots

In 1989, Ocie Clayton Mills, then age 54, and his 31-year-old son Carey were sentenced to the federal

penitentiary, each for a term of 21 months, and fined $5,000. Their crime? The EPA and Army Corps of Engineers wrongly claimed that they had violated the federal Clean Water Act by cleaning out an existing drainage ditch and placing fill sand on part of their half-acre parcel of land in Santa Rosa County, Florida, where the Mills family had intended to build their dream home. Ocie Mills, a hardworking, law-abiding entrepreneur, fervent Christian, and Korean War veteran, had complied with state and local permit processes, and his building plans presented no danger to the environment or "waters of the United States." Mills, who had no money for an attorney, represented himself, sure that the court would rule in his favor once it had considered the evidence. The federal prosecution came after him with a battery of three high-powered attorneys. The federal judge sided with the feds, refusing the admission of evidence crucial to the Mills' defense, and Ocie and Carey Mills went to prison. When they were released from prison at the end of 1990, they found they had still more ordeals to suffer. They were threatened with more fines and prison unless, within 90 days, they returned the property to its prior condition. They complied with the order, but found the feds were implacable, claiming that Mills must remove still more "fill dirt."

This time around, a more sensible judge ruled in favor of the Mills family. In his ruling in *United States v. Ocie Mills and Carey C. Mills*, Judge Roger Vinson of the U.S. District Court for the Northern District of Florida wrote:

After having heard all of the evidence and having personally inspected Lot 20, I find that the elevation of Lot 20 is now at, or in some instances, below, the elevation as it existed in December of 1985. The Government's contention that ten more inches of soil need to be removed from Lot 20 would result in turning Lot 20 into a pond, an undesirable condition. The lot is now totally denuded and ugly, in stark contrast to the beautiful lot that existed prior to 1986. Although there are detectable amounts of clay remaining on the lot, I find that the defendants have met the requirements of the site restoration plan insofar as it applies to the elevation.

The ditch lying between Lots 20 and 19 is now a stagnant pond. It needs to be further filled, and allowed to function as a natural drain into East Bay.... In sum, however, I find that both defendants have substantially complied with the site restoration plan which was required as a condition of their supervised release. The petition for a finding of a violation of their supervised release condition is, therefore, DENIED.

Moreover, the judge determined that the property was "probably never a wetland for purposes of the Clean Water Act" in the first place. The court found that the soil samples taken by the feds had been taken from a drainage ditch! In his written opinion, Judge Vinson said that the *Mills* case "presents the disturbing implications of the expansive jurisdiction which has been assumed by the United States Army Corps of Engineers under the Clean Water Act in a reversal of terms that is worthy of *Alice In Wonderland*."

"The regulatory hydra, which emerged from the Clean Water Act," he continued, "mandates in this case that a landowner who places clean fill dirt on a plot of subdivided dry land may be imprisoned for the statutory felony offense of discharging pollutants into the navigable waters of the United States."

Unchastened by the court's rebuke, the Army Corps issued still another cease-and-desist order, starting the harassment process all over again. "It totally destroyed us financially since it put both breadwinners in jail," Ocie Mills told this writer in a 1993 interview with The New American. "And all the while, of

course, the government was able to use our tax dollars against us." The family was continuously on the verge of losing their home. "Our banker has been very good and understanding of our situation and worked out an arrangement for us just to pay the interest," Mills said. "We've been just a step ahead of foreclosure, hanging on by the skin of our teeth, you might say." Thankfully, many sympathetic property-rights advocates chipped in to help them keep their heads above water — just barely.

Several years after the initial trial in the *Mills* case, a member of the jury, Quenton Wise, came forward to publicly charge that the jury foreman, whose son worked for a state agency allied with the Army Corps, had engaged in egregiously prejudicial conduct. A hearing was ordered on the alleged jury misconduct, but the government lawyers outgunned and outmaneuvered the Mills family again, denying them vindication.

Ocie Mills remained active in property rights and constitutionalist issues for most of the remainder of his life. He died in January, 2013 at age 78, still unbowed, unbroken, and — considering all he had been through — remarkably buoyant and free of bitterness.

## Wayne Hage — Court Condemns Fedgov Conspiracy Against Hage Family

Among the many cases of individuals standing like David before Goliath Fedgov agencies, the decades-long heroic battle by the Hage family is a legendary epic. The Nevada ranching family tenaciously clung to their land and their rights under a campaign of intimidating harassment that a federal court ruled amounted to criminal conspiracy. In an historic ruling in June 2012, Chief Judge Robert C. Jones of the Federal District Court of Nevada delivered a stinging blow to federal agencies that had been maliciously violating the rights of ranchers for years.

Judge Jones declared that agents of the federal Bureau of Land Management (BLM) and the federal Forest Service (FS) had been engaged in a decades-long criminal "conspiracy" against the family of Wayne and Jean Hage and their ranching operation. Among other things, Judge Jones accused the federal bureaucrats of racketeering under the federal RICO (Racketeer Influenced and Corruption Organizations) statute, and accused them as well of fraud, mail fraud, extortion, and other crimes, in an effort "to kill the business of Mr. Hage." In fact, declared Jones, the government's actions were so malicious and "abhorrent" as to "shock the conscience of the Court."

Judge Jones said he found that "the government and the agents of the government in that locale, sometime in the '70s and '80s, entered into a conspiracy, a literal, intentional conspiracy, to deprive the Hages of not only their permit grazing rights, for whatever reason, but also to deprive them of their vested property rights under the takings clause, and I find that that's a sufficient basis to hold that there is irreparable harm if I don't … restrain the government from continuing in that conduct."

In fact, Judge Jones found the agency offences so onerous that he not only granted an injunction against the agencies, but actually referred area BLM and Forest Service managers to the Justice Department for prosecution. By this time, Mr. and Mrs. Hage had both died. Jean Hage passed away in 1996, and her husband Wayne died a decade later, in 2006, years before Judge Jones' vindicating ruling. Their family and friends are certain the stress of the constant harassment led to an early death for each of them. Their children continue to run the ranch and continue the fight. Naturally, the DOJ did not pursue any prosecution of the offending agents or agencies, as called for by Judge Jones — but it has continued

to aid the offending agencies in their harassment of the Hage family. The Hage case, as with so many similar cases, shows the culpability of Congress in failing to rein in and penalize (or better yet, abolish) the federal agencies and their agents that regularly abuse the rights of American citizens with their unconstitutional regulatory powers.

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