



Federal Judge Rules for Property Rights, Smacks Down Abusive Feds

In an historic 104-page ruling, Chief Judge Robert C. Jones of the Federal District Court of Nevada has struck a major blow for property rights and, at the same time, has smacked down federal agencies that have been riding roughshod over Western ranchers and property owners. The long-awaited ruling, which had been expected before the end of last year, was finally issued at the end of May. The court case, *U.S. v. Hage*, has been keenly watched by legal analysts and constitutional scholars — but has been completely ignored by the major media.



As we reported last November ([“Judge Blasts Federal Conspiracy; Ranch Family Vindicated — Again!”](#)), in June 2012, Judge Jones had issued a scorching preliminary bench ruling that charged federal officials of the U.S. Forest Service (USFS) and the Bureau of Land Management (BLM) with an ongoing series of illegal actions against Nevada rancher E. Wayne Hage (shown on left) that the judge described as “abhorrent” and a literal, criminal conspiracy.

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 accused the federal bureaucrats of racketeering under the federal RICO (Racketeer Influenced and Corruption Organizations) statute, and accused them as well of extortion, mail fraud, and fraud, in an effort “to kill the business of Mr. Hage.”

The Hage family has waged a heroic decades-long legal battle against these abusive agencies, in a David vs. Goliath contest against the combined might of the U.S. Department of Justice and the BLM/USFS legal teams. Precious few individual citizens are willing to undertake such a seemingly hopeless and costly effort as to challenge the formidable power and bottomless resources of the federal government. Wayne Hage and his wife Jean did so repeatedly, winning judgements only to have them endlessly appealed by the taxpayer-funded agencies. Jean Hage died in 1996. Wayne Hage and his second wife, former U.S. Congresswoman of Idaho Helen Chenoweth Hage, both died in 2006.

The Hages’ son, Wayne N. Hage (shown next to father), and other family members have continued ranching and have continued the legal fight. Hage hailed Judge Jones’ May 24 decision as a landmark ruling for property rights, which the American Founding Fathers recognized as the bedrock of liberty and an essential security against tyrannical government.

“This decision is landmark for Western ranchers,” Hage commented from the family’s Pine Creek Ranch



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in Nevada. "I am pleased to announce for the ranchers of the Western states that it has been proven that a permit is not simply a revocable privilege, but rather there is a property interest in the permit for the purpose of the Due Process Clause, both procedural and substantive. This is important because it will safeguard rancher's rights and historical grazing practices."

Hage added, "More importantly we proved a 'forage right.' Ranchers in the state of Nevada are protected from trespass within a half-mile from a water source."

Notably, the court said, "The Government may not abuse its discretion in refusing to renew, or in revoking, a [grazing] privilege." Significantly, the family will be under permanent injunctive relief and the government shall not reduce the Hages' permits by more than 25 percent for any period of time without the courts' consent, and never permanently.

Specifically, the court found, "The Government has abused its discretion in the present case through a series of actions designed to strip the [Hage] Estate of its grazing permits, and ultimately to strip Defendants of their ability to use their water rights." He explained, "Substantive due process protects individuals from arbitrary deprivation of their liberty by government."

The court further explained, "The Government cannot withdraw them (grazing permits) or refuse to renew them vindictively or for reasons totally unrelated to the merits of the application as governed by published laws and regulations, lest the Government abuse its executive power in a way that shocks the conscience."

Because of the government's refusal to consider any grazing applications from the Hages, the court found the subsequent "chain of events is the result of the Government's arbitrary denial of E. Wayne Hage's renewal permit for 1993-2003, and the effects of this due process violation is continuing."

"Government's actions ... shock the conscience of the Court"

The court found, "In the present case, the Government's actions over the past two decades shock the conscience of the Court." This finding, coupled with the court's finding that agents of the BLM and the USFS engaged in a conspiracy to deprive the Hage family of their vested property rights, opens the door to potential lawsuits against the individual agents personally for their unconstitutional actions.

The ruling chronicles the drama of the 21-day trial in Reno, Nevada, last spring between rancher Wayne N. Hage who, unable to afford an attorney, represented himself, and Mark Pollot, the estate's attorney, who were defending their case against two federal agencies represented by a cadre of attorneys and staff from the Justice Department.

The court noted the government's motive for their pursuit of the present trespass case. "In 2007, ... the Government brought the present civil trespass action against Hage and the Estate" because the USFS and BLM were "unsatisfied with the outcome" in the ongoing related 1991 Constitutional Fifth Amendment takings case of *Hage v. U.S.* before the U.S. Court of Federal Claims (CFC).

However, during the pendency of the trespass case, the agencies pursued remedies outside the jurisdiction of the court, leading to a referral to the U.S. attorney for obstruction of justice and findings of contempt of court. Specifically, the BLM invited others, including Gary Snow of Fallon, to apply for grazing permits on allotments where the Hages previously had permits; the BLM testified they knew Snow's cattle would use Hage waters; the BLM and USFS both applied to the State of Nevada for stock watering rights over Hage waters, even though neither agency owns cattle, for the "purpose of



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obtaining rights for third parties other than Hage in order to interfere with Hage's rights"; and they attempted to intimidate witnesses in the trespass case by issuing trespass notices and demands for payments against persons who had cattle pastured at Pine Creek Ranch, despite having been notified that Hage was responsible for these cattle.

Judge Jones reasoned the trespass notices and demands for payment were meant "to pressure other parties not to do business with the Hages, and even to discourage or punish testimony in the present case." The court noted such demands for payment were even issued to "witnesses soon after they testified in this case."

Tonopah BLM manager, Tom Seley, and Forest Ranger Steve Williams were both found to be in contempt of court, and were referred to the U.S. attorney for possible prosecution for criminal obstruction of justice. Noting that Seley and Williams knew of ongoing litigation between the parties in this court and the CFC, they "took actions to interfere with the defense of the present trespass action by intimidating witnesses." A written order is pending from the separate August 2012 contempt hearing.

A permanent injunction was granted to prevent the government from denying the Hages' continuation of their grazing permits and from imposing trespass charges against them every time the Hages' cattle incidentally stray onto BLM/USFS land in the vast open range area. The court noted, "There is great probability that the Government will continue to cite Defendants and potentially impound Defendant's cattle in the future in derogation of their water rights and those statutory privileges of which the Government has arbitrarily and vindictively stripped them."

The court will require Hage to apply for a permit, but will also require the government to grant it. The government is enjoined from issuing trespass or impound notices to Hage or anyone leasing cattle to him; the government must request permission from the court to issue such notices.

The court added, "The government's normal discretion is restricted under the present injunction, an injunction required in this extreme case because of the conspiracy noted and the history of violations of the Hages' due process rights in their permits and vested property rights in the use of water, and the obvious continuing animus against Hage by the government officials charged with administering his permits."

Although Hage noted defending this case created a tremendous personal hardship, "I hold the successful defense of my family's rights, particularly for the beneficiaries of the Estates, the most important part of this decision and worth all the time and work that went into this case. No longer are we subject to the arbitrary and vindictive rule of man—we now have the protection of the rule of law."

The related *Hage v. U.S.* takings case has been appealed by the Hages to the U.S. Supreme Court on the narrow issue of whether or not a permit is required for normal maintenance of a historic 1866 Mining Act ditch right-of-way. That case is slated for a June 18 conference in the U.S. Supreme Court to determine if the court will grant the Hages' appeal. A similar right-of-way case from the City of Tombstone, Arizona, is also on appeal to the USSC.

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