

Special Report

OUR FEDERAL LANDLORD

Most Americans who live east of the Rockies or in large urban areas in the West are surprised to learn that the federal government controls more than 30 percent of the landmass in the United States.

Most of that land is in the western states. Why is that?

By Michael S. Coffman, Ph.D.

PART I **Early Westward Expansion,** **1784 to 1891**

The U.S. Constitution specifically prohibits the federal government from owning large blocks of land. The reason for this has become obvious in the past 50 years. Rural residents who make their living from western federal lands today are finding that Washington is regulating them toward bankruptcy while an ill-informed population in the East is complicit by default.

The closest form of government that describes federal dominance over the lives of people is feudalism/manorialism, which is a form of government whereby only royalty can legally own land. The all-powerful landowner then rents his land to peasants with the condition of receiving a large portion of the crops or other services from the workers. The peasant toils only to barely survive.

Today royalty has been replaced by the federal government. This new king/landlord serves Washington special interests, usually environmental and international dictates, which are contrary to the economic and fiscal interests of the local land user. Often they are even contrary to environmental health.

As with almost everything else that has been twisted from the original, the Founders never intended that there should be large federal landownership. When they wrote the Constitution, feudalism and manorialism still existed in France and many of the Founding Fathers were eyewitnesses to the brutal treatment of the peasants under such a system. Today, that same brutality is crushing western landowners. In 1783, Thomas Jefferson insisted that all federal land should be sold as quickly as possible, and “shall never

after, in any case, revert to the United States.”

Following the Revolutionary War, the individual states were so fearful of an all-powerful central government that they gave no power to the federal government under the Articles of Confederation. The federal government was deeply in debt, but had no way under the Articles to repay it except by printing paper money that had no value.

To pay the debt, the states west of the Mississippi River eventually ceded their western public lands to the federal government in a trust. The trust limited its use to that of repaying the debt. The states of Kentucky, Tennessee, Mississippi and Alabama were created this way and their admission into the Union established the principle of the Equal Footing Doctrine, whereby every state

entered statehood on an equal footing with all states already existing.

The Equal Footing Doctrine was formalized with the passage of the Northwest Ordinance in 1787 that created the Northwest Territories (now Ohio, Indiana, Illinois, Michigan, Wisconsin, and a portion of Minnesota). The Northwest

Ordinance also codified the principle that land would not be held in perpetuity by the federal government. Historians consider it to be the most significant achievement under the Articles of Confederation. It set the form by which subsequent territories east of the Rocky Mountains were created and later admitted into the Union as states.

When the U.S. Constitution was also adopted in 1787, it ensured that the federal government never amassed large landholdings. The Constitution incorporates the key principle of the Northwest Ordinance by allowing only three forms of federal landownership and jurisdiction in Article I, Section 8:

“To establish post offices and post roads; To exercise exclusive legislation...over such District [of Columbia] (not exceeding ten miles square)...and to exercise like authority over all places purchased by the consent of the legislature of the State...for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings.”

That’s the extent to which the federal government can constitutionally own land. Until 1891, the U.S. policy was to put federal land into private hands as quickly as possible and to retain no federal land not authorized by the Constitution. To accomplish this policy, a series of Preemption and Homestead laws were passed in the 1800s that gave federal land to squatters and homesteaders at little or no cost. Those laws allowed the land east of the Rockies to be quickly settled and placed into private hands.

With these constitutional constraints and a hundred years of legal precedent, how did the federal government wind up with more than 50 percent of the land in many states west of the Rocky Mountains? ■

PART II **The Federal Landlord:** **The Road to Tyranny**

After rapid western expansion to the Rocky Mountains in the 19th century, the United States suddenly reversed its land disposal policy in defiance of 100 years of well-established law and constitutional limitation. It did so by stopping privatization of public land as new states were created. The resulting feudal/manorial system is now destroying a centuries’ old way of life.

Since Article I, Section 8 of the Constitution severely limits the type of land the federal government can actually own, it is obvious the hundreds of millions of acres now controlled by the federal government west of the Rocky Mountains do not qualify constitutionally. (See map.)

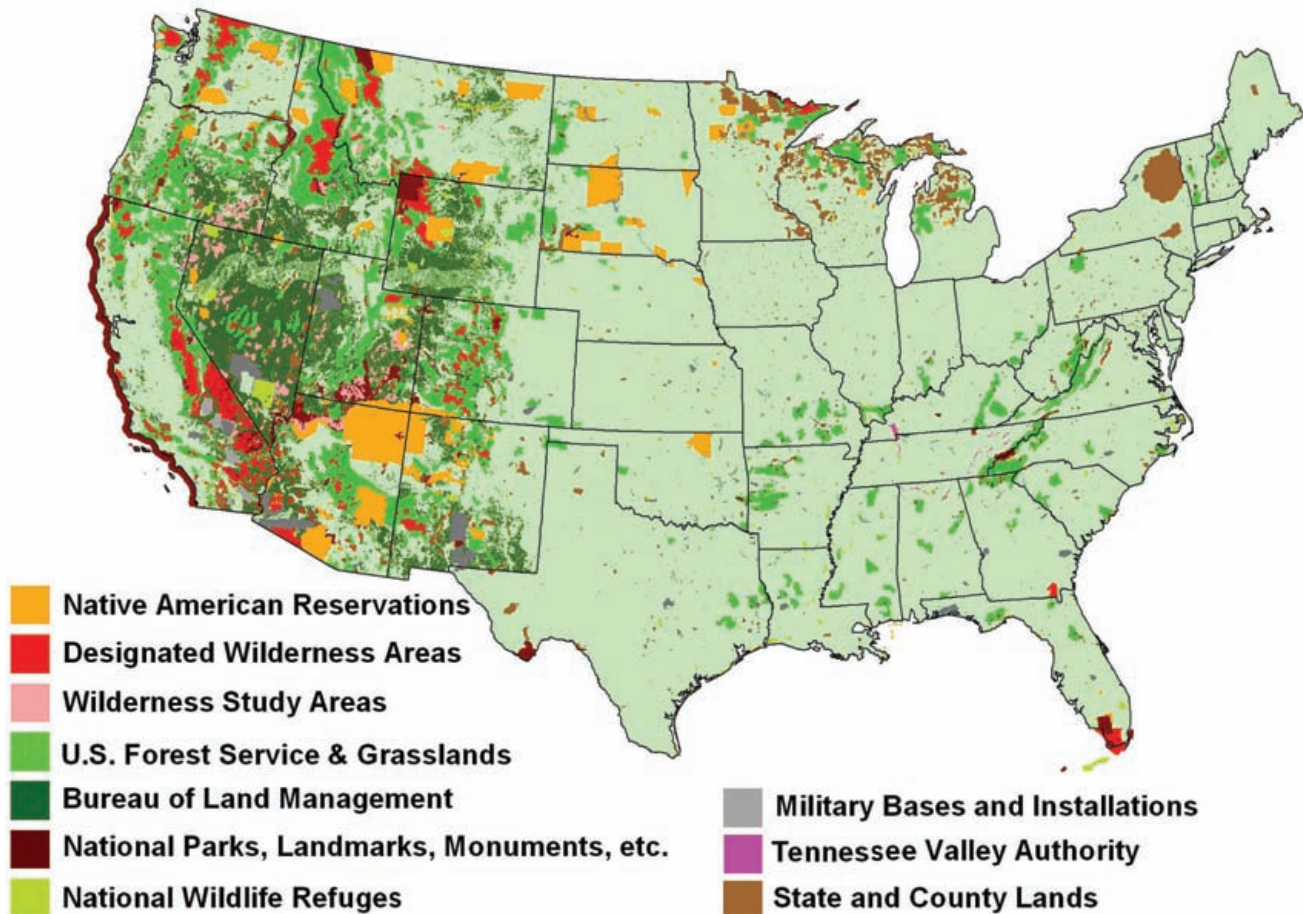
Federal laws passed until 1891 were faithful to the U.S. Constitution and the Northwest Ordinance and all federal land was quickly sold or deeded to settlers, mainly east of the Rocky Mountains. However, because the federal land west of the Rockies is arid, very little was homesteaded so it remained in the public domain.

Without any oversight, western mining and timber companies were causing harm to the resource base on public lands in the late 1800s. Progressives of the day used the exag-



Thomas Jefferson.

Federal and State Controlled Land



gerated writings of naturalists like John Muir to enrage eastern audiences to the alleged destruction and—just as they do today—an ill-informed population demanded it be stopped.

Although exaggerated, some of the abuse was very real and something had to be done. The government could have just deeded the land to the ranchers, timber and mining companies that were actually using the land as a Preemption Right as they had done east of the Rocky Mountains. However, giving huge areas of arid rangeland and forestland that was required for economic survival stuck in the craw of Easterners.

In addition, the early progressives argued that the Preemption and Homestead laws passed in the 18th and 19th centuries had failed to accomplish their intended purpose. (See “Federal Laws” sidebar, page 47.) Instead of being settled by long-term farmers and ranchers, most of the 160-acre homesteads were too small to be economically viable. Consequently, homesteaders were forced to sell out to speculators, who combined the homesteads into larger, more viable landholdings and then resold them at a large profit.

It is not surprising that abuse of the Homestead Act was repugnant to Easterners. Ironically, the seeming failure of the Preemption and Homestead acts would eventually provide a great blessing. The land consolidation allowed very productive farming and the Midwest became known as the Breadbasket of the World.

At the time, the program seemed to have failed. Congress revoked the Preemption laws and passed the Forest Reserve Act of 1891 that reversed a hundred years of U.S. policy and ignored the Constitution’s severe limitations to federal landownership. The Forest Reserve Act gave the president vast powers to “set apart and reserve, in any state or territory having public land bearing forest...as public reservations.” In addition to violating the constitutional limitations, it also trumped the Equal Footing Doctrine and effectively sacked the 10th Amendment.

Although the states complained bitterly, none challenged the constitutionality of the law. They couldn’t. One of the conditions set by Congress for statehood required the new state to “declare that they forever disclaim all right and title to the unappropriated public

lands lying within the [state’s] boundaries.”

If the territory wanted to become a state, it could not demand equal footing. Nor could it force the federal government to transfer the ownership rights to the public land to the state. In fact, like Utah, the states were forced to sign a proclamation acknowledging that the state was “deemed admitted by Congress into the Union...on an equal footing with the original states.” (Italics added) That was an unmitigated lie, blatant extortion, and blackmail.

The Forest Reserve Act marked a turning point in U.S. history. Until the end of the 19th century, the federal government historically did all it could to settle and develop the land and its resources (including minerals) as fast as possible. Water rights clearly belonged to the state or to the individual landowner, *not* the federal government, even on federal lands. That changed radically with the Forest Reserve Act by reversing the Preemption laws. That loss destroyed any hope that western ranchers had in gaining title to the public lands they had used for grazing. Although not obvious at first, it set up a feudal/manorial system where the federal government was

landlord over the land that local citizens depended upon for their existence.

Lack of congressional funding delayed implementation of the Forest Reserve Act for more than a decade. Congress finally passed the Transfer Act of 1905 which created the Forest Service (FS) within the U.S. Department of Agriculture. The Weeks Act of 1911 (aka the Organic Act) allowed the FS to purchase and create additional national forests in the East. The Taylor Grazing Act of 1934 created the U.S. Grazing Service in the Department of Interior. That agency was combined with the old General Land Office in 1946 to create the Bureau of Land Management (BLM). Together the FS and BLM today employ about 40,000 people who manage 446 million acres, at a cost of more than \$7 billion a year.

If it were not for the Forest Reserve Act, much, if not most, of this federally managed land and its associated management costs would now be in private or state ownership. Environmentalists accuse private owners of destroying these vast tracts of lands. That is totally unjustified. History has shown that once a resource is in educated private hands, management quality generally improves because of self-interest and the need to protect the resource for future income. The deterioration of forests and rangelands managed by the FS and BLM today (including massive fires) is a sad testament to what happens with public ownership subject to special-interest political pressure.

Modern Conflicts

Following the creation of the federal land agencies, there has been an increasingly uneasy working relationship between citizens who make a living from the public land and the federal employees who manage it. That relationship took a nosedive with the passage of the Federal Land Policy and Management Act (FLPMA) and the National Forest Management Act (NFMA) in 1976.

Both acts were pushed through Congress with enormous pressure by environmental groups. The acts demanded endless planning to achieve idealistic environmental goals that are not necessary or are based in pseudoscience. Since then, both agencies have hired college grads steeped in environmental dogma that nature knows best and man is a cancer to the earth. (See *RANGE*, "The Greening of America," Fall 2006; "The Greening of America, Part II," Winter 2007; and "The Greening of America, Part III," Spring 2007.) As a consequence, ranchers, timber

outfits and mining companies began to be singled out for deliberate destruction. (See Part III, "The Hage Saga," page 46.)

Since the early 1970s, there has been a well-orchestrated plan to implement "ecospiritual" management of the environment through coordination between federal land-based agencies like the FS and BLM, U.N. agencies, and environmental groups (aka NGOs or nongovernment organizations).



Bill Clinton stopped real production in Utah.

The plan was conceived by these groups behind the closed doors of the IUCN (International Union for the Conservation of Nature), a U.N.-affiliated organization dedicated to the religious concept of sustainable development.

The IUCN also created the U.N.'s Agenda 21, a 40-chapter plan to massively transform the world by implementing sustainable development (see "Agenda 21 Goes Country" page 25). If successful, it will affect every action of every human on this planet.

The animosity between the federal agents and ranchers, miners and timber companies increased exponentially when President Clinton's Council on Sustainable Development implemented the core tenets of Agenda 21. Its publication, "Sustainable America," and its nine subdocuments essentially changed the mission statements of our federal agencies from assisting citizens in using natural resources to protecting those resources from citizens.

This is not idle speculation. A 1994 BLM internal working document on "ecosystem management" brazenly declared this contempt of humanity: "All ecosystem management activities should consider human beings as a biological resource." The reduction of humanity to the level of a "biological resource" carries over into the majority of

federal and nearly all U.N. land-management programs. It has become so pervasive that old-school personnel within the agencies having a traditional conservation/multiple-use ethic found their work environment becoming so hostile that many took early retirement in disgust.

This shift in agency purpose had a dramatic impact on both agency personnel and the private federal land users. Although it was initially subtle, the agencies began developing policies to maximize environmental protection by minimizing resource use. The EPA circulated an astonishing internal working document on March 9, 1993, that laid out an eight-year ecosystem management plan to conform U.S. environmental regulations with those of the United Nations. The EPA document included: "Natural resource and environmental agencies...should...develop a joint strategy to help the United States fulfill its existing *international* obligations [e.g., Convention on Biological Diversity, Agenda 21]...the executive branch should direct federal agencies to evaluate national policies...in light of *international* policies and obligations, and to amend national policies to achieve *international* objectives." (Italics added)

It is shocking that federal high-ranking bureaucrats arrogantly believe they have the power to "amend national policies," something that the Constitution specifically gives to Congress. It is equally disturbing that these bureaucrats believe their priority is to implement the international agenda rather than serve the people of the United States. Also included in this amazing EPA game plan is a perceived mandate to fulfill the "obligations" of the Convention on Biological Diversity, which President Clinton signed quickly but had not yet been sent to the U.S. Senate for ratification. Ironically, the following year the biodiversity treaty would be defeated on the Senate floor by this author and three others.

The feudal/manorial relationship always resulted in tension and conflict between the federal agencies and resource users. With the passage of FLPMA and NFMA, resource users felt they had become the "enemy," and with the implementation of Sustainable America they found themselves literally in a war for their survival. The agencies implemented more and more restrictive regulations making it increasingly difficult to eke out a living.

To be fair, the federal agencies were also under enormous pressure. Environmental radicals have used FLPMA and NFMA as

weapons to force the agencies to destroy the lives of the families who have lived and worked on the land for more than a hundred years. It is a modern-day range war. Patrick Dorinson, writing for Fox News, expresses it well: “This range war isn’t about water rights or ranchers against homesteaders or big ranchers versus small ranchers like the Johnson County War in Wyoming in 1892. It is between ranchers who have worked the land raising cattle and sheep for over a century and environmental outlaws whose stated goal is driving them off the very land they need to survive and prosper. And this time the weapon of choice is not a Colt .45 or a Winchester rifle, but something much more deadly and destructive—the lawsuit.”

The Equal Access to Justice Act of 1970 (EAJA) made it very easy and cheap for an average citizen to file an environmental lawsuit. Critics call such lawsuits “postcard lawsuits” because, for the cost of a stamp, the suit can literally fit on a postcard. While such suits are cheap for the filer, they are not for the government or for permit holders using federal lands. Hundreds of thousands of dollars, even millions of dollars, are needed to defend against the lawsuits.

Since most of these cases are heard in the West in the 9th District Court of Appeals, the court usually finds for the environmentalists. When that happens, environmental law firms like the Sierra Club Legal Defense Fund are awarded millions of dollars to cover the cost of their attorney fees. Recent studies by Cheyenne, Wyo., attorney Karen Budd-Falen found that the western regions of the U.S. Forest Service alone paid out over \$1 billion in EAJA funds between 2003 and 2005 to environmental attorneys. These environmental organizations get paid by taxpayers for destroying the lives and livelihoods of rural citizens.

The combat-like treatment of resource users was not all that was happening. In 1996, President Clinton invoked the Antiquities Act of 1906 to set aside 1.6 million acres of land in Utah as the Grand Staircase-Escalante National Monument. The act called for “the protection of objects of historic and scientific interest.” It has been used by 14 out of 17 presidents since 1906 to create national monuments.

There is no authority in the Antiquities Act to set aside 1.6 million acres when no historic or scientific value exists. While Clinton’s action appears to be illegal, Utah did not challenge it, so it stands. It was so successful

that Clinton used the same trick to create three more national monuments just before he left office in 2000, containing another million acres in California and Arizona. Again, neither state challenged it.

President Obama is now considering three or more national monuments using the Antiquities Act containing over 13 million acres in 11 western states. He also directed the BLM in December 2010 to review 200 million acres of its land for inclusion into what is called “wildlands.” (See “Where the Wild Lands Are” by Dave Skinner, Summer 2011.) The problem with national monuments and wildlands is that it is a backdoor way to lock up federal lands from use. Clinton’s designation of the Grand Staircase-Escalante National Monument locked up the



The spotted-owl controversy in the 1990s caused the eventual closing of hundreds of sawmills and the loss of tens of thousands of jobs.

largest clean coal deposit in the world. Its development would have provided all the low-cost clean coal we need for generations and hundreds of permanent jobs.

Instead, the world is now forced to go to Indonesia, the second largest clean coal deposit in the world. Owned by the Riady family’s Lippo Group, the entire debacle was highly suspicious when it was revealed that James Riady contributed millions of dollars to the Clinton campaign in 1992 and 1996.

Although grazing is allowed on BLM-controlled national monuments, it provides another layer of restrictions to users. When under national parks, grazing and mining are denied. The same denial applies for any BLM

land that is eventually designated as wildlands. This is critical, since huge portions of the largest oil and gas shale deposits in the world can also be locked up. Many critics believe that is exactly what President Obama wants to do in order to force Americans to use alternative fuels like wind and solar—even though alternative fuels are proving to be huge failures around the world. As foreign oil supplies become more unstable and unreliable, the designations could create major national security problems.

What It Means To You

Lest you think this is not an issue that affects you because you don’t live in the West, understand that much of the beef and lamb you eat originates on these rangelands. Many of the two-by-fours you buy at the lumberyard also originate in western forests. The minerals used to make many of your everyday home products come from the West. Locked up oil shale denies us decades’ worth of cheap natural gas and gasoline, as well as myriad products made from oil. Every environmental regulation on the books increases the cost of these products. Some of these regulations are absolutely necessary; tragically, most are feel-good regulations that advance an ideology and do very little to actually protect the environment. Some actually harm the environment in the name of protecting it.

The spotted owl controversy in the 1990s caused the eventual closing of hundreds of sawmills and the loss of tens of thousands of jobs. Entire communities became ghost towns. After the damage was done, it was determined that the spotted owl was declining not because of timber harvesting, but because the barred owl was more competitive for the habitat and food the spotted owl required. The damage was done, however, and lives and communities were destroyed.

After two sucker fish were declared endangered, 200,000 acres of lush farmland near Klamath Falls, Ore., were suddenly without irrigation water, turning the fertile land into a dust bowl. Land value was slashed from over \$1,000 an acre to less than \$50. Many farmers had to sell for pennies on the dollar. Most alarming, the farmers had deeded water rights from President Roosevelt from 1940. Yet the sucker fish got the water. What the federal government giveth, the federal government taketh away. The National Academy of Sciences later found that the recovery plan for the sucker fish was based on false science. The controversy still rages.

These are but a few examples of hun-

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dreds, maybe thousands, of abuses perpetrated by the federal government. If the Endangered Species Act can trump a deeded property right, no American is safe. In the next few years, the Obama administration has announced it will accelerate the review of more than 250 species that are backlogged.

The federal government has long been chipping away at water rights historically belonging to private landowners or the individual states using methods other than the ESA. New regulations are pending that will give all water rights to the federal government, right up to the rain that gutters on your house collect.

On April 27, 2011, the EPA and U.S. Army Corps of Engineers (ACE) released draft guidance for the federal Clean Water Act. If implemented, analysts are concerned that the new regulations will basically allow the EPA and ACE to control any stream, pond, or even puddle they determine “has a physical, chemical or biological connection” to any larger body of water, which includes privately owned water sources.

These new regulations are still being developed but will give these agencies a free pass to arbitrarily develop and establish their own rules. Congressman Paul Gosar (R-AZ) angrily denounced the new rules: “Under this new guidance, a bureaucrat at the EPA will be able to dictate radical new rules. This is just another example of the [EPA’s] attempt to circumvent Congress and develop rules and regulations that far exceed the authority granted to the agency under existing law.” Despite 170 members of Congress opposing the new regulations, there is no indication the EPA or ACE will back down.

There is a feeding frenzy to lock up not only federal lands in the West, but all land use on private land according to the dictates of radical environmentalists and ideologues populating our federal agencies. If the EPA and ACE implement these new rules, along with the EPA’s new greenhouse-gas rules (fortunately postponed on May 18, 2011), there is a real danger that our economy will be strangled even more.

The power being grabbed by these bloated bureaucracies must be stopped or rolled back. Way back. The best way of doing that is by voting candidates into office who have exhibited a working understanding of constitutional principles. This nation cannot afford to reelect the progressives who have given us the disastrous policies that have created the \$14.7 trillion mess America is in today. ■

PART III **The Hage Saga:** **Attempted federal destruction** **of one Nevada ranch family**

Wayne and Jean Hage, along with their five children, purchased the Pine Creek Ranch in northern Nye County of central Nevada in 1978. The ranch consists of 7,000 acres of private fee patented land and some 1,100 square miles of U.S. Forest Service (FS) and Bureau of Land Management (BLM) mountain range allotments used for seasonal grazing. Based on records dating back to the Act of 1866, the Hages own the water, ditches and all improvements made on their federal allotment. The agencies have traditionally controlled Hage’s grazing through grazing permits.

In the 12 years following the purchase, the Hage family faced relentless harassment from the federal agencies. The harassment was encouraged by several major environmental groups. Daughter Margaret Hage Byfield recounts the harassment: “The federal agents fenced off a major spring from our cattle and piped our water into their ranger station without our permission. In 1979, over

a single missing staple. We were also charged with trespass citations where they claimed our cattle were in locations not permitted. They dropped these charges once they realized we had eyewitnesses watch Forest Service employees *move our cattle into these areas*, and then within hours notify us of the alleged offense.” (Italics added)

This kind of systematic harassment represents the consequence of employing federal employees who honestly believe that humans like the Hages are a cancer on the earth. They harass the ranchers to create extreme frustration and tension until they are out of business. Ranchers and miners report this kind of harassment by federal employees all over the West, and it is not exaggerated.

The Hages filed three administrative appeals during this period and won each case. “The problem was,” says Byfield, “none of these cases stopped them from finding new ways to harass us. By 1991 they had cancelled, suspended and burdened the grazing permits to the point that we could no longer economically use our allotments, and, therefore, our ranch.”

Even when the Hages realized they were out of business in 1991, the federal gestapo



The Hage family at the ranch in Monitor Valley in 1978, before the federal pressures and pain. From left, Margaret, Wayne, young Wayne, Jean, Laura, Ruth and Ramona.

a period of 105 days, we received 70 visits and 40 certified letters from the Forest Service citing us with various violations, most of which did not exist or were created by the Forest Service itself. I remember how one of these accused us of not maintaining our drift fences on Table Mountain. After two days riding the fence [horseback], one of our hands found the Forest Service flag marking

did not let up. That’s when the story goes from outrageous to the twilight zone. As the family was rounding up the last of their cattle for sale, “the Forest Service brought in about 30 armed riders and gathered every cow they could find, which only amounted to 104 after two earlier roundups. Half the riders were armed with semiautomatic rifles and wearing bulletproof vests. Clearly unskilled at han-

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dling wild cattle, they ran a bull and cow to death. They contained the cattle on our private meadows and when finished handed my father a bill for their confiscation expense.”

Wayne Hage was out of business, but not intimidated. He filed for a taking of his water and private property rights in the U.S. Court of Federal Claims in Washington, D.C., on Sept. 26, 1991. This was the first time a federal agency had been taken to that court on the grazing and water right issue. Before this, injured property owners had gone to federal district court, which only decides if the federal agents were following the administrative law rather than constitutional civil liberty issues. Suddenly the tables were turned.

“Hage v. United States is about more than

just property rights,” says Byfield. “It is also about government accountability. The land-management agencies have gone virtually untouched even though they violate laws daily. The employees know that before a landowner can file any substantive action against the agency, they will most likely be transferred to another area and never be affected by the outcome. However, one of the advantages of filing in the Claims Court is the ability to depose, under oath, the individuals involved in the action. And as we found in our case, once this happens it becomes a feeding frenzy as bureaucrats scurry for cover pointing at someone lower on the food chain, which for once was not us.”

The ability to depose witnesses under

oath proved the FS singled out Wayne Hage as an example to intimidate other ranchers. During his deposition, Jim Nelson, Toiyabe National Forest supervisor, surprised everyone by admitting that Wayne Hage was targeted because he had written “Storm Over Rangelands.” That book provides strong historical and legal evidence that ranchers have “valid private property rights...in federal lands.” Since its publication in 1989, judges and lawyers have used arguments from the book in court cases. The Forest Service decided Hage needed to be taught a lesson.

As with all people who challenge federal power, Hage was demonized and punished. The government filed countersuits and leveled felony charges against him for cleaning

FEDERAL LAWS

Federal Laws Encouraging Rapid Western Migration and Privatization of Land, 1784-1891

Virginia’s Cession of Western Lands to the United States, 1783. Set the example for all states to cede land in western holdings to the federal government for immediate sale to pay war debts and deed land to officers and soldiers of the Revolutionary War in payment for their services. Also established the Equal Footing Doctrine whereby new states will have equal rights as the old ones.

Northwest Ordinance of 1787. Created the Northwest Territories north of the Ohio River and east of the Mississippi River. Codified the Equal Footing Doctrine and required that federal land should be sold as quickly as possible to pay war debts. Provided the basis for settling what became the states surrounding the lake states. It provided a legal foundation for all future states east of the Rocky Mountains to enter the Union.

Preemption Acts of 1830 and 1841. Allowed squatters on federal land preemption rights to buy the land very cheaply. The 1841 act limited the purchase to 160 acres. Provided the basis for settling the Kansas and Nebraska territories. Repealed in 1891.

Homestead Act of 1862. Federal government deeded 160 acres of free land to homesteaders west of the Mississippi. Very popular and created a land rush.

Act of 1866. Extremely important law, giving preemptive rights to water and min-

erals to ranchers and miners actively grazing or mining on federal land. Led to “split estates” whereby the rancher or miner owned the water or minerals on federal land being actively grazed or mined. Water and mineral rights were kept by the federal government on land that was inactive in 1866. This act is still in effect today.

Laws Reversing Former U.S. Policy to Privatize Federal Public Land & Allowing the Federal Government to Keep Western Lands, 1891-2011

Forest Reserve Act of 1891. Ended the Preemption Act of 1841, thus denying ranchers and miners any hope of ever owning the federal land they were using. Allowed the president to declare forests and some grasslands as reserves. Allowed vast landholdings by the federal government (see map) and denied states any rights to the land in opposition to the U.S. Constitution and Equal Footing Doctrine. The radical change in purpose is the basis of the abuse by the federal government on land and lease holders today.

Transfer Act of 1905. Created the U.S. Forest Service (FS) within the Department of Agriculture which manages 190 million acres of federal forest and grasslands today.

Weeks Act of 1911. Also called the Organic Act. Allowed the U.S. Forest Service to purchase and create new national forests in eastern states.

Enlarged Homestead Act of 1909. Enlarged the acreage of a homestead to 320 acres because 160 acres proved too little for the arid West. The two homestead acts were instrumental in settling the land between the Rocky Mountains and Mississippi River.

Stock-Raising Homestead Act of 1916. Increased the acreage to 640 acres to encourage more ranching homesteads west of the Rockies. Not extensively used because 640 acres were still not enough to economically raise livestock.

Taylor Grazing Act of 1934. Created the U.S. Grazing Service in the Department of the Interior. That agency was combined with the old General Land Office in 1946 to create the Bureau of Land Management. It also manages the FS (created in 1905) and established the structure for the tyrannical feudal/manorial forms of governance.

Federal Land Policy and Management Act and the National Forest Management Act, both in 1976. Created under heavy pressure from environmentalists, these altruistic environmental laws changed the relationship between federal agencies and landowners/miners to one of much greater conflict.

Sustainable Communities, Early to Mid-1990s. Not a law passed by Congress, but a radical shift in U.S. policy to adapt environmental regulations and management to the “eco-spiritual sustainable” policies of the U.N.’s Agenda 21. This shift is devastating resource users and communities which depend on federal land to survive in the West. ■

out debris in his own ditches. The suits and charges were made in Federal District Court to sidestep the Claims Court. The government won on some charges, but those were later reversed by the 9th Circuit Court on appeal. The death in 1996 of Wayne's wife Jean from a stroke dulled the victory, however. Doctors attributed an earlier stroke and heart attack to the stress created by the harassment.

The federal government continued filing summary judgment motions and failed each time. The trial on the Hage property rights finally came before the Claims Court in October 1998. Ten years after they had initially filed the suit, the court finally issued its preliminary decisions on Jan. 29, 2002—in favor of the Hages. The court found in *Hage v. United States* that property rights owned by Hage were preexisting to the permit system by the Act of 1866, and “the court is not of the opinion that lack of a grazing permit that prevents access to federal lands can eliminate Plaintiff's vested water rights and ditch rights.”

The Hages owned the water rights and all their improvements. This precedent is significant. Even though the government eliminates a landowner's grazing permit, it cannot prevent the landowner from pursuing a takings claim for the property the government has kept them from accessing.

“This is a tremendous victory for American landowners, and a staggering defeat for the environmentalists' agenda,” says Byfield. “These organizations have understood for a long time that control of the water in the West brings with it control of the land. They have recognized that to enforce their agenda, and eliminate ranching and the natural-resource industries on the federal lands, they would have to win control of the water. The government has been their tool in trying to gain this control. And now they have lost this pivotal battle.”

This is a serious blow to the Forest Service and BLM. They cannot control, let alone destroy, ranchers if they don't control the water rights. It would be eight more years before the Claims Court would award damages to the Hages. Jean Hage's death didn't even stop the feds from continuing their hellish attack on the family, using the same tactics as they had in the past. Tragically, Wayne also died of cancer before the Circuit Court rendered a decision on damages. Even so, the case continued.

On Aug. 2, 2010, 18 years after it started, Claims Court Judge Loren Smith awarded the

Hage estate \$14,240,853.92 and ruled that the federal agencies must pay all legal fees. Unfortunately, it is still not over. On Oct. 1, 2010, the federal government appealed the decision. “The government had too much at stake to let the Court of Claims decision stand,” says Byfield. “The government has to win at any cost and will likely take it to the Supreme Court.”

How many families would put up with this agony for more than 18 years (likely 25 years before it is truly over)? Not many. How many could afford it? Very few. That's what these agencies depend on. They have all the time in the world and dozens of attorneys with access to unlimited taxpayer dollars to try any tactic to take private property away from owners. The Hages provided the determination. Hundreds of donors provided the funding. Wayne would be proud of the result so far.

The root problem is still not addressed, however. The federal government has no constitutional right to own this land. It retained these public lands by using blackmail and ignoring a hundred years of established law. It is time to give the land back to the states as promised when they entered the Union. Utah is the first state so far to attempt this. Other states must be encouraged to do the same. ■

Dr. Coffman is president of Environmental Perspectives Incorporated (epi-us.com) and CEO of Sovereignty International (sovereignty.net) in Bangor, Maine. He has had more than 30 years of university teaching, research and consulting experience in forestry and environmental sciences. He produced the highly praised DVD, “Global Warming or Global Governance” (warmingdvd.com). His newest book, “Rescuing a Broken America” (rescuingamericabook.com), is receiving wide acclaim. He can be reached at 207-945-9878 or mcoffman@epi-us.com. RANGE stories mentioned can be found in “Back Issues” on our website at www.rangemagazine.com.