



Oil painting by Burt Dinius of Wayne Hage doing typical ranch work at Pine Creek Ranch in Monitor Valley, Nev.

Justice for Hage Family

Chief judge refers BLM and U.S. Forest Service employees to the U.S. attorney for civil and criminal charges in Hage forage rights case. By Julian Stone

On June 6, 2012, the last day of the Hage Forage Rights Trial, Chief U.S. District Judge Robert C. Jones made preliminary findings of fact and conclusions of law in the U.S. District Court of Reno, Nev., in *U.S. v. Wayne N. Hage and the Estate of E. Wayne Hage (2007)*. While his findings are preliminary, subject to posttrial briefing, *RANGE* can report on what we believe will become a historic, game-changing day for the ranchers who have had their preexisting forage rights and grazing preferences eliminated or diminished by BLM and U.S. Forest Service policies. We will cover this remarkable decision with in-depth analysis in *RANGE* after Judge Jones hands down his final published decision. However, the courtroom events of June 6 are of such importance that we are compelled to give our readers a highlight of what has happened thus far.

The Hage litigation team consisted of Mark Pollot, attorney for the estate, and Wayne Hage Jr., acting as his own attorney.

Those two, along with Wayne's sister, Ramona Morrison, acting as their paralegal, were up against three government attorneys and a cadre of government officials and paralegals. The judge noted for the record that the filing of this trespass case was simply an attempt by the government to do an end run on the Hage decisions out of the Claims Court (see *Up Front*, page 4) by seeking an adverse ruling in this court.

After 21 days of trial, Judge Jones addressed a courtroom packed with bureaucrats and ranchers, explaining first that he had a very narrow area in which he could rule since he was bound by the eight previous decisions in the Hage U.S. Court of Federal Claims "takings" case. Remarkably, he spent the next three hours reading into the record the findings of fact and conclusions of law of the decisions of Chief Judge Loren C. Smith. Judge Jones added his own comments, which amounted to a legal seminar, and he adopted Smith's findings as his own.

Then Judge Jones made his own findings.

One was that beginning in the late '70s and '80s, first the Forest Service and then the BLM entered into a conspiracy to intentionally deprive the Hages of their grazing rights, permit rights, and preference rights. The judge held, "For purposes of my holding of irreparable harm, the intentional conspiracy and acts to deprive the Hages constituting irreparable harm consisted of the arrest and attempted conviction of Mr. Hage for practicing his property interest right recognized by the Court of Claims." He added, "These folks have heard from three federal courts and in spite of that they [USFS and BLM] have continued an attempt to deprive the Hages of the permit rights and their water rights."

The court referred Tom Seley, BLM field manager, and Steve Williams, U.S. Forest Service ranger, to the U.S. attorney for consideration of criminal prosecution for contempt of court, but then suggested that the U.S. attorney for the District of Nevada refer the matter to a U.S. attorney from another district since his office might be a part of the conspiracy. The court also gave written notice of civil contempt for obstruction of justice. A hearing for the civil contempt of court charges is set for August 27 before Judge Jones. The Hages will have the opportunity to establish damages resulting from the actions of Tom Seley for alleging trespass and demanding payment from ranchers who leased their cattle to Wayne N. Hage and the estate. The judge informed Mr. Seley he would need to bring his personal checkbook because he will have to pay all money back which he wrongfully demanded, plus damages caused to Wayne and the estate for the duration of the litigation.

Seley and Williams were cited on four grounds for contempt. First, they sought stockwater rights from the state engineer with the specific intent to give the Hages' water rights to recipients of their permits. Second, they solicited and granted temporary permits to others, in particular to Gary Snow, whose name was mentioned many times throughout the trial and who the judge believes is part of the conspiracy. Seley testified that he knew Snow's cattle would undoubtedly use the waters belonging to the Hages, and Gary Snow made Seley aware that he was going to file on the Hages' water

rights, which he subsequently did. Third, while the court had jurisdiction of the case, they collected thousands of dollars through intimidation for unproven trespass allegations from third parties whose cattle were under the legal possession of Wayne Hage Jr., wherein the judge stated, "I can only conclude it was part of an effort and conspiracy to deprive the Hages of their preference permit rights and, more importantly, their water rights and their ditch rights." And lastly, Tom Seley sent a solicitation to numerous Nevada ranchers last January for a 10-year permit for the Hages' Ralston allotment.

Judge Jones found the collection of trespass fines and damages from innocent third-party ranchers to be "abhorrent to the Court and I express on the record my offense of my own conscience in that conduct. That's not just simply following the law and pursuing your management right, it evidences an actual intent to destroy their water rights, to get them off the public lands." He ordered the moneys extracted by this wrongful conduct be repaid and all collection efforts to cease.

The court also suggested that there may be others higher in the chain of command who may be implicated, including the Washington, D.C., Justice Department attorneys. He also made reference to witness intimidation, the possibility of RICO or "racketeering" implications, mail and wire fraud, and just plain fraud.

On the merits of the trespass case, the court found the Hages not to be in trespass. Perhaps most importantly, it confirmed the Court of Federal Claims finding of a forage

right separate from a ditch right, and found as a matter of law that there is a forage right to be implicit in a stockwater right in the state of Nevada. The court determined the forage right to be at least a half-mile around and on either side of any water source or stream incidental to a stockwatering right.

Another very important ruling was that Judge Jones found that the Hages' grazing preferences had both constitutional procedural and substantive due process rights attached. The substantive and procedural due process rights are a recognition for the first time by a court that there is both a property and liberty interest in a grazing preference. It is a recognition of the Hages' property interests which preexisted the 1934 Taylor Grazing Act and the establishment of the Forest Reserve in 1907, as evidenced by 501 exhibits comprising their chain of title. As Judge Jones noted, the various property rights established on the range under local laws and custom and rules of the court, which were acknowledged by Congress, were the basis upon which ranchers originally obtained "grazing preferences," and those preferences are a property right that cannot be taken without procedural and substantive due process. Going forward, in order for the government to afford a substantive due

process right, there has to be a legitimate government purpose, and any proposed regulation must actually relate to and promote that legitimate government purpose.

Permanent injunctive relief was granted to both parties. Similar to the civil rights busing cases, the court is retaining jurisdiction to make sure the injunctions are followed. Wayne Hage Jr. was ordered to immediately apply for a grazing permit, and the U.S. Forest Service and BLM were ordered to immediately grant permits at the highest historical levels. He instructed the government to inform their employees that there would be civil and

criminal penalties imposed by the court for breaking his injunction. Under the injunction, before the BLM or USFS may issue trespass or impoundment notices, they must first seek approval of the court. The judge added that the government couldn't regulate the grazing allotments on behalf of environmental groups or hunting groups, limiting regulations under his substantive due process finding specifically to the public purpose as outlined in the laws of Congress.

This was an incredible win for the ranching industry and it has the potential of being a truly historic case. ■

Full coverage of this remarkable decision will be included in the next issue of RANGE.

A Boise lawyer, a cowboy, and a housewife were up against well-paid and pampered agents from the Department of Justice. It was a slap down and the right guys won.

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