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Federal Misconduct Corralled by Federal Judge

In a 104-page decision, the U.S. District Court in Reno, Nevada ruled in favor of Nevada ranchers, finding that United States Forest Service and the Bureau of Land Management had, over a period of more than two decades, engaged in a conspiracy against the Hage family of Central Nevada. The ruling chronicles the drama of 21-day trial in Reno last spring between a 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 agencies of the federal government represented by the Department of Justice.

Terming the situation "extreme", the court issued an injunction requiring the Hages to apply for the permits taken from them and long denied them and mandating that the Forest Service and Bureau of Land Management to grant the permit. The court's order significantly restricts the agencies' discretion over permit management decisions and the court indicated it would keep jurisdiction over the case indefinitely to ensure that the court's orders are followed.

Wayne N. Hage, son of the late E. Wayne Hage, who had represented himself before the Nevada Court, commented from Pine Creek Ranch. "This decision restores my family's grazing permits which the Court found were arbitrarily denied my parents in 1993. But more importantly, the court has ruled they can never take our grazing permits again simply because they want to. Those permits were acquired based upon our historic grazing preferences and property rights to the use of stock water dating back to the 1860's."

Although the events that resulted in the decision began more than 20 years ago, the case before Judge Robert C. Jones, Chief Judge of the Court, began when the United States filed a civil complaint against Wayne N. Hage and the Estate of E. Wayne Hage, a well-known and respected property rights advocate. It claimed massive, multiple trespasses on allegedly federal lands. The Estate, however, had filed a counter-claim against the United States, alleging that officials of the Forest Service and the BLM were engaged in a pattern and practice of misconduct intended to deprive the Hage family of its property and other constitutional rights and to disrupt their perfectly legal business relationship and asking the court to intervene. It was this claim that resulted in the findings of conspiracy.

The decision issued by Judge was historic in more ways than one. Not only did it recognize that agency officials engaged in a conspiracy to defeat the constitutional rights of citizens whose rights they obliged to protect, conduct stretching over two decades so bad it that it "shocks the conscience of the court," it also recognized that there is in fact a property right in grazing permits entitled to significant protection under the Constitution's Fifth Amendment due process clause.

The Court minced no words in addressing the governmental conspiracy. "The Government has abused its discretion in the present case through a series of actions designed to strip the Estate of its grazing permits, and ultimately to strip Defendants of their ability to use their water rights, for reasons unrelated to the appropriate use of the range or ensuring that historical grazing use is respected." He explained, "Substantive due process protects individuals from arbitrary deprivation of their liberty by government."

This case is not the only one between the Hages and the United States. In 2010, the United States Court of Federal Claims issued a judgment against the United States for a taking of property under the Fifth Amendment's takings clause. That court, whose decision was appealed by the United States and is currently before the Supreme Court, also noted a pattern of hostility and harassment toward the Hages. The Claims Court case provided motivation for the government's filing of the case before the Nevada federal court.

Attorney Mark L. Pollot, who represented the Estate before the Nevada Court and who represents the Hages before the Supreme Court in the related case, noted that the government's misconduct continued

even while the case was before the Nevada Court. “As Judge Jones pointed out in his decision, the court found that at least two agency officers were cited for contempt and found liable. They were also referred to the United States Attorney for further investigation.” Among the actions leading to the contempt finding were inviting other parties to apply for the Hages’ rights, interference with Hage-owned water rights, and the issuance of trespass notices and demands for payment from various ranchers doing business with Wayne N. Hage despite being told that the cattle involved were in Hage’s legal custody and control. None of these were innocent actions and the government official’s actions with respect to the various ranchers were meant, as the decision points out, “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.”

As a result, Tonopah BLM Manager, Tom Seley and Forest Ranger, Steve Williams were both found to be contempt of court at a subsequent three-day hearing Noting that Seley and Williams knew of ongoing litigation between the parties in this court and the Claims Court, they “took actions to interfere with the defense of the present trespass action by intimidating witnesses.” A written order is pending from the contempt hearing.

Further defining the scope of the Hage property interests the Court found a half-mile forage right around and adjacent to Hage water rights, as a defense against trespass. The Court did find trespass in two minor cases in which Hage permitted cattle to wander onto USFS and BLM lands more than a half mile from Hage water sources. Damages for the minor trespass in the amount of \$165.88 were awarded to the government.

However, the Court refused to award punitive damages for trespass under state law, because there “is not ‘clear and convincing’ evidence of ‘oppression, fraud, or malice, express or implied’ on behalf of Defendants. Defendants clearly had a good faith belief in their right to use the land as they did and had no intention to disregard the right of others. This does not prevent a trespass claim, but it does prevent punitive damages.”

Finding a “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 issued permanent injunctions that require Hage to apply for a permit and the Government to grant it, and hedge the government about with restrictions on their abilities to take adverse actions against the Hages. “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.”

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U.S. v. Hage Decision available upon request to rhmorrison@sbcglobal.net.

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