

# FEDERAL JUDGE ACCUSES FEDERAL LAND MANAGERS OF ATTEMPTING TO BANKRUPT RANCH



## Agents' behavior "shocks the conscience"

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by [Thomas Mitchell](#)

In a scathing 104-page opinion a Nevada federal judge lambasted the Bureau of Land Management and the Forest Service for behavior that “shocks the conscience” of the court, accusing federal officials of attempting to bankrupt the Hage family ranch by entering into “a literal, intentional conspiracy to deprive the Hages not only of their permits but also of their vested water rights.”

The Hage family, which owns the Pine Creek Ranch near Tonopah, has been waging a court battle with the federal agencies for 22 years.

A couple of weeks ago Nevada Federal District Court Judge Robert Jones handed down an opinion in *U.S. v. Estate of Wayne E. Hage* ([U.S. v. Hage](#)). The judge did find that Hage cattle had in fact trespassed on federal land and ordered Wayne N. Hage — son of the late E. Wayne Hage who died in 2006 and Jean Hage who died in 1996 — to pay \$165.88 in damages.

During the course of the trial, according to Jones, the government invited others to apply for grazing permits on allotments held by the Hages, applied with the Nevada State Engineer for its own watering rights in an effort to interfere with the Hages’ rights, and issued trespass notices and demands for payment to witnesses soon after they testified in this case.

The judge ordered Hage to apply for a permit and for the federal agencies to grant it. He also enjoined the government from issuing trespass or impound notices to Hage.

Jones pointed out the ridiculousness of some of the federal agency’s actions and testimony, noting that one Forest Service ranger testified in his deposition that “despite the right to use water, there was no right to access it, so someone with water rights but no permit from the USFS (Forest Service) would have to lower a cow out of the air to use the water, for example, if there were no permit to access it.”

In 1978, E. Wayne Hage bought the Pine Creek Ranch — which included 7,000 acres of private land and grazing permits for 752,000 acres of federal public land, as well as water rights.

There was trouble with the federal land managers [from the start](#). In 1979, the Forest Service gave the Nevada Department of Wildlife permission to release nonindigenous elk onto to one of the Hage ranch grazing allotments. The family objected that the elk would drink water and eat forage needed by their cattle. Additionally, hunting season overlapped with grazing season, making it difficult to move the cattle. Their concerns were ignored.

Elk hunters torn down fences and scattered cattle. The Forest Service fenced off certain meadows and springs to which the Hages held the water rights.

In 1986, Hage stopped applying for special use permits to maintain his water sources and ditches on federal land, arguing he had an “absolute right” under Nevada water law to maintain them.

In 1991, the Forest Service twice impounded Hage’s cattle. When he could not get them back by paying the cost of impoundment, the government auctioned the cattle for \$39,000 and kept the proceeds — a bit more than \$165.88.

That year, Hage filed suit claiming a “taking” of his property rights under the Fifth Amendment.

This past fall, Judge Jones held a three-day hearing at the end of the trial of this case and found Tonopah Bureau of Land Management area manager Tom Seley and Humboldt- National Forest Service ranger Steve Williams **in contempt** for witness intimidation and attempts to circumvent the jurisdiction of Toiyabe the court. The judge said there was “intent to deprive this court of jurisdiction by intimidation of witnesses and threats against witnesses.”

Jones ordered from the bench, “Mr. Seley can no longer be an administrator in this BLM district. I don’t trust him to be unbiased. Nor can he supervise anybody in this district.”

He said the two tried to destroy the ranch financially by filing claims against the Hages’ water rights and sending solicitations for 10-year grazing permits on a grazing allotment held by the Hages.

Ten months later, the online office directories of both agencies list both men as still holding down the same jobs.

At one point in the many iterations of the Hage litigation a federal court awarded the Hages \$2.9 million for the taking of their water rights under the Fifth Amendment and \$1.4 million in statutory compensation for improvements made in connection with the revoked grazing permit. With interest the total award amounted to \$14.2 million. And that was four years ago.

An appellate court vacated the award, saying the case was not yet “ripe” because the Hages had failed to continue filing for grazing permits, even though it would have been a futile gesture.

The Fifth Amendment “takings” case has been **appealed to the U.S. Supreme Court**, which is scheduled to decide this month whether to hear it.

The Hage petition asks the high court to decide: “Whether the fencing of water sources in which Petitioners had stockwater and other water rights, intended to and which was sufficient to prevent livestock access to the source for at least a period of time, is a physical taking ...”

Considerably more than \$165.88 is at stake.

*(A version of this column appears this week in [The Ely Times](#), [Eureka Sentinel](#), [Mineral County Independent-News](#), [Lincoln County Record](#) and the [Elko Daily Free Press](#). Thomas Mitchell also blogs at [4TH ST8](#).)*

<http://watchdogwire.com/nevada/2013/06/14/federal-judge-accuses-federal-land-managers-of-attempting-to-bankrupt-ranch/>