



Rancher Wins Fight for Rights

On January 29, 2002, the United States Court of Federal Claims handed down a decision promising to have a widespread impact on the debate over western lands and property rights in general. It also has much to do with government accountability and the federal land management agencies that, under the color of law, have been carrying out a campaign of unlawful actions to harass ranchers and drive them off of their own lands.

The decision of Senior Judge Loren Smith resulted from over 10 years of litigation in an action entitled *Hage v. U.S.* The circumstances leading to the ruling on January 29th began when I purchased Pine Creek Ranch in central Nevada in June of 1978. The ranch includes a base property of 7,000 private deeded acres acquired by my predecessors under the Homestead Acts over a century ago. Like most ranches in that area, it also includes thousands of adjoining acres where our family owns water and grazing rights. These private grazing allotments were initially acquired by the pioneers who harnessed the resources and later transferred as deeded property to those who own them today. In 1866, Congress recognized western water rights previously established under local law and custom on the federal lands. Numerous state laws and court cases extended and solidified those rights.

The federal government dominates the 11 states west of the 100th meridian, with agencies like the National Forest Service and Bureau of Land Management controlling vast expanses of “federal” lands. However, the federal government does not possess complete ownership of these public lands. Ownership is divided in what is known as the “split estate”: Various entities, both governmental and private, own water rights, grazing rights, mineral rights, and timber rights. I paid for and own the surface water, ground water, and grazing rights on my allotments. In the arid expanses of the West, it takes a lot of acres to feed a cow and water is as precious as gold. Without those water and grazing rights, my family’s ranch and all others like it will cease to exist. For many years now, federal agencies and their environmentalist allies have been pretending that these genuine property rights are





Written by [William F. Jasper](#) on May 20, 2002

nonexistent, that our grazing and water rights are mere “privileges,” completely subject to bureaucratic whim and regulation. This represents a major assault on the very concept of property rights, which is absolutely essential to liberty.

Dream Come True

Owning a ranch like Pine Creek had been a dream of mine since boyhood. I was born in Elko, Nevada, and grew up with ranching. During the hard winter of '51 and '52, many ranchers, some of them my relatives, were desperate for help. So, I convinced my parents to allow me to drop out of high school, providing that I'd come back and finish up school after helping out on the ranches. But after I got out on the range there was no turning back. At that time, the big cattle outfits would put out a roundup wagon and they'd just stay out on the range for maybe 10 months of the year. For a teenage boy that kind of life — riding horseback on the open range — was an adventure that made school pretty dull and uninteresting by comparison, so I just stayed with it.

During a four-year stint in the Air Force I learned that I had some academic ability as well as horse sense. I came out at the top of all my classes, learned a lot about electronics and made up my high school with a G.E.D. test. After getting out of the service I went back to ranching, while also pursuing further education. I earned a degree in organic chemistry and a Master's degree in livestock nutrition (with a minor in economics) from the University of Nevada. I figured that my combination of schooling, practical experience, and determination would enable me to successfully operate my own ranch. My wife Jean and I started with a small ranch in northern California, just over the Nevada line. That's where our five children were born, and they grew up the western way, working the ranch alongside us. When the Pine Creek Ranch — one of the biggest and best in Nevada — came up for sale, it was the opportunity of a lifetime.

From Dream to Nightmare

Within two months of purchasing Pine Creek Ranch, I was contacted by the National Park Service and told they were going to purchase my ranch for a national park. I inquired as to how much they were going to pay. They offered about half of what I had just paid for the property.

I asked how they had arrived at the proposed purchase price. They explained they were only prepared to pay for the base properties. The grazing allotments, they informed me, were public lands and the federal government already owned them. I asked them about the almost two hundred springs, creek wells, and other water sources on those grazing allotments that were clearly owned by me as well as the right to graze those lands. Their answer remained the same. According to them, the United States could extinguish at will my vested water rights on the grazing allotments.

Concluding our meetings, I would tell them to go home and research the topic. If it turned out that my grazing allotments were public lands, we would talk their price. If it turned out that my grazing allotments were not public land, we would talk about my price. They never contacted me again.

Under Attack

However, not long after my meeting with the Park Service, I found myself being attacked by two other federal agencies. The U.S. Forest Service (USFS) laid claim to the bulk of my water rights by filing claims on them through the Nevada State Water Engineer. Both the USFS and the Bureau of Land Management (BLM) engaged in a systematic effort of harassment designed to drive me out of business. This included:

- Federal employees opening gates or taking down fences so that I could be cited for trespassing when my cattle would then wander off my land.



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- Putting a herd of elk on my land and then citing me for failing to maintain fences that the elk destroyed.
- Forest Service employees using a helicopter to scatter my cattle, making it impossible for me to collect them in time to avoid a trespassing penalty.
- Citing me with a “maintenance failure” for a single missing staple along hundreds of miles of barbed wire fence.
- Arbitrary cutting of my grazing allotments because, they claimed, I had not filled out the proper form.
- Employing violent and threatening individuals who were frequently drunk and also were involved in narcotics trafficking. One of these USFS drunks actually forced my wife, with all the kids in the car, off the road.

To combat this harassment, I filed numerous administrative appeals with the federal agencies between 1978 and 1990. This is a very costly process, with each appeal costing me thousands of dollars, but I had no alternative. During this period, I and other affected interests in central Nevada prevailed upon Congress to investigate. Congress began three investigations on our behalf. However, in every case, Congress turned the investigations over to the USFS to investigate itself. Predictably, the only people adversely impacted by the investigations were the people calling for them. The agency people involved in the economic vandalism of the property of Nevada citizens were given a free pass.

The issue came to a head in 1991. My family was nearly driven into the ground. We were hanging on by our fingernails financially. I had no choice but to sell the cattle and the land for whatever I could and hope that I could get out of there the shirt on my back. I was in the process of gathering my cattle when the USFS came in: automatic weapons, flack jackets, snipers — the whole works — as if we were dangerous criminals. The USFS confiscated over a hundred head of my cattle at gun point. But when they tried to sell them no one in Nevada would buy them because they knew they were stolen. The Forest Service, a federal agency, was engaged in cattle rustling! They had stolen my cattle and were trying to steal my land as well.

On September 26, 1991, I filed a taking case in the United States Court of Federal Claims, claiming just compensation under the Fifth Amendment for the property taken from me. Now the court was going to have to answer the question plaguing the western livestock industry for over a century. Does the rancher actually own the water, forage, and access rights in his grazing allotments? Or, does the rancher only have a conditional privilege to graze public lands, a privilege that can be terminated by the U.S. government without compensation?

When the court rendered its final opinion in January, it sent shock waves through the federal lands bureaucracy. The court said (in a 33-page opinion) that my vested water rights for livestock grazing on my allotments were compensable property rights under the Fifth Amendment of the U.S. Constitution and that any attempt by the federal government to block my access to the use of that property means the U.S. is required to justly compensate for the taking. The potential ramifications of this decision are enormous; thousands of ranchers now have good hope for redress against harassment and abuse by federal agencies.

The next phase of this litigation is to show how the U.S. took the private property and to determine how much compensation is owed. I might add, perhaps it's time for the mapmakers to find a new color and designation for that one-third of the lower 48 states that has been for so long erroneously designated as federal public lands.



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Wayne Hage, a rancher in central Nevada, is author of the pathbreaking book Storm Over Rangelands (1989).

Photo: Wayne Hage during an interview



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