

Wayne N Hage

Written Testimony for:

COMMITTEE ON NATURAL RESOURCES

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**As required by and provided for in House Rule XI, clause 2(g) and
the Rules of the Committee on Natural Resources**

Subcommittee on Public Lands and Environmental Regulation
Oversight Hearing on *"Threats, Intimidation and Bullying by Federal Land Managing
Agencies"*

October 29, 2013

Since 1978 the employs of these agencies have demonstrated a disregard for my families property rights and have punished us for making an honest use and assertion of these rights. The reason I accepted the invitation to testify here today is that I believe that it is so important for congress to be aware of the atrocities that are being committed against my family and countless other ranchers. It is worth the risk or retribution from the agency employees. I would not be surprised if the BLM, USFS, and DOJ try to make my life difficult because I am testifying before this committee.

Many ranchers have a problem with the BLM and USFS. They have conducted them selves in a criminal manner and destroyed many ranchers. I personally have been at the receiving end of this criminal conduct. This problem however does not stop with the Hage family. The number of other ranchers that have suffered like my family is too numerous to count. I know many. In fact you can talk to almost any rancher who has to deal with the BLM and USFS and hear about another incident where a Federal employ has broke the law and was never held accountable. You will only once in a great while hear of minor punishment.

My family has spent over 23 years in the court protecting our property and liberties from these Federal employs. During these 23 years we have had 8 published decisions and findings of Takings of our property by the Federal agencies, and findings of Conspiracy by the Federal employs.

Three courts have been witness to and addressed the government threats intimidation and bullying. The Ninth Circuit Court of Appeals overturned a criminal conviction obtained by the USFS against my father for cleaning out brush from a ditch with hand tools.

The Federal Court of Claims trial Judge realized and found that it would have been futile for the Hage family to comply will all of the demands of the BLM and USFS

employs. He thus ruled the Federal Government had taken our water rights. As potential cost to the taxpayer of \$14,000,000 for the criminal acts of employs of the BLM and USFS.

The Chief Judge of the Federal District Court of the District of Nevada was so shocked by their behavior that he had found and ruled that the federal government employs engaged in a conspiracy against the Hage family. He also was convinced that the employs of the BLM and USFS would not stop and therefore gave my family a permanent Injunction against the Federal Government. (I pray that the Ninth Circuit Court of Appeals does not overturn the injunction, it is our only protection.)

The employs of the agencies, namely Tom Seley of the BLM and Steve Williams of the USFS were also held in contempt of court for trying to seek their own remedy after they realized the court process was not going their way.

The bosses (agency heads some from Washington DC) of Tom Seley of the BLM, and Steve Williams of the USFS, testified in a show cause hearing for thier contempt that they expected Seley and Williams to conduct themselves in this manner that the court found contemptuous and which shocked the conscious of the court. This tells me the problem goes to the agency heads. The conduct, which the court saw as unlawful and vindictive was actually expected out of the federal, employs by the Agency heads.

The Federal District Court of the District of Nevada has referred the Tonopah BLM Field manager and the Austin Forest Ranger to the U.S. Attorneys office for the District of Nevada, for prosecution of the conspiracy against my family, but then explained that there is a possible conflict of interest. The Court then suggested that a U.S. Attorney from another district handle the case. To this date I am not aware that anything will be done to hold these employs accountable for this conspiracy. I also do not expect that the U.S. attorney will ever hold these employs accountable for their actions. Thus they know they have enough protection from prosecution that they will not be deterred from acting this way in the future. It is for this reason and others that I believe I will be punished by employs of the BLM, USFS and DOJ for testifying before this committee. The dangerous part of this is that now the Federal employs will now be braver than ever.

One of the main problems is that the employs of the USFS and BLM have the protection of the DOJ lawyers. They will go to great lengths to protect the employs of the USFS and BLM even to the extent of violating their ethics rules. One example; The USFS claimed that we needed a 'special use permit' to maintain a July 6, 1866 Act ditch right of way with heavy equipment. The July 6, 1866 Act ditch right of way is a Congressionally granted and recognized right of way that preexisted the USFS and did not have any requirements or limitations for obtaining any permission for its maintenance and use. The USFS however claimed we could not maintain our July 6, 1866 Act ditch right of way without first obtaining a 'special use permit' from them, or we could only use hand tools. Even though we believe the USFS is incorrect in requiring us to obtain a 'special use permit,' (which supposedly they can deny) for any maintenance, we chose to only use hand tools to remove 'brush' that was obstructing water flow in the ditch.

Nonetheless, the USFS prosecuted my father for cleaning this ditch. The prosecution was overturned by the Ninth Circuit court of appeals. However the DOJ lawyer Elizabeth Ann Peterson, in clear violation of the ethics rules and with no support of the record, represented to the Federal Circuit Court in the case *Hage v. U.S.* that my father was using ‘heavy equipment’ and a dozer to clean this ditch. She argued that since we did not first seek a ‘special use permit’ from the USFS and were not denied this permit that our case was not ripe. The Federal Circuit Court based its ruling on these misrepresentations of the facts and partially overturned the decision in *Hage v. U.S.* on the grounds that the case was not ripe because we did not first seek and get denied a ‘special use permit’ from the USFS. Again the USFS even argued that we did not need this ‘special use permit’ if we only used hand tools, and the facts are only hand tools were used. Thus one intentional lie from a DOJ lawyer cost my family immeasurable hardship.

I have included some excerpts from the case *U.S. v Wayne N. Hage, Executor of the Estate of E. Wayne Hage, and Wayne N Hage, Individually*. Case No. 2:07-cv-01154-RCJ-VCF. I find it best to read the Judges own words on this matter.

In the present case, the Government’s actions over the past two decades shocks the conscience of the Court, and the burden on the Government of taking a few minutes to realize that the reference to the UCC on the Estate’s application was nonsensical and would not affect the terms of the permit was minuscule compared to the private interest affected. The risk of erroneous deprivation is great in such a case, because unless the Government analyzes such a note in the margin, it cannot know if the note would affect the terms of the permit such that the acceptance is in fact a counteroffer.

The Government revoked E. Wayne Hage’s grazing permit, despite his signature on a renewal application form, because he had added a reference to the UCC to his signature indicating that he was not waiving any rights thereby. Based upon E. Wayne Hage’s declaration that he refused to waive his rights—a declaration that did not purport to change the substance of the grazing permit renewal for which he was applying, and which had no plausible legal effect other than to superfluously assert non-waiver of rights—the Government denied him a renewal grazing permit based upon its frankly nonsensical position that such an assertion of rights meant that the application had not been properly completed. After the BLM denied his renewal grazing permit for this reason by letter, the Hages indicated that they would take the issue to court, and they sued the Government in the CFC. The Government, having already denied the renewal grazing permit arbitrarily, then chose to interpret the initiation of the CFC Case as a refusal to appeal its administrative decision, despite the issuance of further protests by the Estate’s attorneys. The Government refuses to consider any applications from Hage at this point. The entire chain of events is the result of the Government’s arbitrary denial of E. Wayne Hage’s renewal permit for 1993–2003, and the effects of this due process violation are continuing.

In 2007, unsatisfied with the outcome thus far in the CFC, the Government brought the present civil trespass action against Hage and the Estate. The Government did not bring criminal misdemeanor trespass claims, perhaps because it believed it could not satisfy the burden of proof in a criminal trespass action, as a previous criminal action

against E. Wayne Hage had been reversed by the Court of Appeals. During the course of the present trial, the Government has: (1) invited others, including Mr. Gary Snow, to apply for grazing permits on allotments where the Hages previously had permits, indicating that Mr. Snow could use water sources on such land in which Hage had water rights, or at least knowing that he would use such sources; (2) applied with the Nevada State Engineer for its own stock watering rights in waters on the land despite that fact that the Government owns no cattle nearby and has never intended to obtain any, but rather for the purpose of obtaining rights for third parties other than Hage in order to interfere with Hage's rights; and (3) issued trespass notices and demands for payment against persons who had cattle pastured with Hage, despite having been notified by these persons and Hage himself that Hage was responsible for these cattle and even issuing such demands for payment to witnesses soon after they testified in this case.

By filing for a public water reserve, the Government in this case sought specifically to transfer to others water rights belonging to the Hages. The Government also explicitly solicited and granted temporary grazing rights to parties who had no preferences under the TGA, such as Mr. Snow, in areas where the Hages had preferences under the TGA. After the filing of this action, the Government sent trespass notices to people who leased or sold cattle to the Hages, notwithstanding the Hages' admitted and known control over that cattle, in order to pressure other parties not to do business with the Hages, and even to discourage or punish testimony in the present case. For this reason, the Court has held certain government officials in contempt and referred the matter to the U.S. Attorney's Office. In summary, government officials, and perhaps also Mr. Snow, entered into a literal, intentional conspiracy to deprive the Hages not only of their permits but also of their vested water rights. This behavior shocks the conscience of the Court and provides a sufficient basis for a finding of irreparable harm to support the injunction described at the end of this Order.

The Court will not award punitive damages under state law, because there is not "clear and convincing" evidence of "oppression, fraud, or malice, express or implied" on behalf of Defendants. See Nev. Rev. Stat. § 42.005(1). 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.

Defendants are also entitled to an injunction, as outlined, *infra*. There is a great probability that the Government will continue to cite Defendants and potentially impound Defendants' cattle in the future in derogation of their water rights and those statutory privileges of which the Government has arbitrarily and vindictively stripped them.

IT IS FURTHER ORDERED that to the extent not inconsistent with this Order, the Court adopts Defendants' Proposed Findings of Fact and Conclusions of Law (ECF No. 392)

The conspiracy ruling was much more limited than what it could have been. Had we presented all of our evidence the court would still be trying to write its decision.

It is warming to know that with regard to the Courts that we still have the Rule of Law. Although as I have found out it is nearly impossible to defend a persons property and rights in the courts due to the financial burdens and the length of time involved. (My Mother and Father filed the original case and were not able to live long enough to see the end of the litigation. My step Mother died before there was an end to the litigation and it is looking like my siblings and I may be in old age before this is concluded.) However there it is becoming very apparent that there is no **rule of law** with regard to the employs of the BLM, USFS and perhaps the DOJ, there we have the **rule of man**. I remind congress that Aristotle explained that the difference between a correct form of government and perverse form of government is that the former is the Rule of Law and the latter is the rule of man.

What solution may I offer?

The Citizens of this great country need to have the means to hold the employs of these agencies accountable for their actions. I believe that only if they are held accountable will they stop the Threats, Intimidation and Bullying. To accomplish this we need at least two things from Congress.

- 1) We need harsh penalties to be placed upon the employs who break the law and violate a persons rights. They are using the color of law in the performance of their actions, and they have the force of the Federal Government to protect them.
- 2) There must be an easier way to be able to hold them accountable. One of the biggest problems is that they claim their actions are actions of the Federal Government and thus they claim sovereign immunity. The individual is then forced to go up against the full force and might of the Federal government and prove that it was not an action of the government in order to proceed. This is a very difficult to do. We need to take the sovereign immunity away from Federal employs who break the Law.

Thank you for allowing me to testify before this committee
Wayne N Hage