



2

Late Nevada rancher wins \$4.2M after judge finds Forest Service took water rights

By Scott Sonner (AP - 6/10/08)



A judge awarded more than \$4.2 million to a late Nevada rancher's estate after finding that the U.S. Forest Service engaged in an unconstitutional "taking" of water rights out of hostility to the rancher, a property rights activist.

The decision by U.S. Court of Federal Claims Judge Loren A. Smith involved the Fifth Amendment clause against private property being taken for public use without just compensation.

In the early 1980s, the Forest Service began to notify him he was in violation of his federal grazing permit. In 1983, the Forest Service sent him 40 letters and agency officials made 70 visits to his ranch.

Smith, based in Washington D.C., said the cancellation of Hage's grazing permit because of overgrazing and trespassing did not violate the Fifth Amendment because a grazing permit is a license, not property.

However, Smith said, the taking occurred when the Forest Service made it impossible for Hage to maintain irrigation ditches, which deprived the ranch of water and made it unviable.

The government demanded that he maintain the ditches using nothing more than hand tools. As willows, pinion, juniper and other vegetation grew unchecked in the irrigation ditches, Hage had argued that his ranch lost water.

"The court finds the government's actions had a severe economic impact on plaintiffs and the governments' actions rose to the level of a taking," Smith wrote.

The judge noted that hand tools would not be effective over such vast expanse of land. The ditches brought water to the 7,000-acre ranch as well as the 700,000 acres of national forest land where Hage grazed his cattle.

Hage "offered ample evidence that the Forest Service had engaged in harassment toward (him), enough to suggest that the implementation of the hand tools requirement was based solely on hostility to plaintiffs," Smith said.

The judge also ordered the government to pay back interest to Hage's family. A lawyer estimated the interest dating to 1991 would be an additional \$4.4 million.

www.startribune.com/nation/19751469.html?location_refer=Nation

3

Patent Filings Surge in China

Applications are rising by 20% a year on the mainland, a sign of growing concern for intellectual-property rights. But could they be trouble for multinationals?



by Michael Orey (BusinessWeek - 6/3/08)

Add one more item to the list of things being cranked out in huge volume in China these days: patent filings. That may come as a surprise to many, since the country has long been known for paying little heed to intellectual-property protection. According to recently released data, China's State Intellectual Property Office (SIPO) received 694,000 patent applications in 2007. That puts it far ahead of both the U.S., with 484,955 applications, and Japan, with 443,150.

The volume of filings offers just one measure of the pace of innovation in a country. But in China, the recent surge—applications have been increasing at 20% a year—also signifies something else: a growing recognition that securing legal protection for inventions there is worthwhile. Indeed, a report issued in May by Evaluserve, an intellectual-property analytics company, notes that over the last two decades, China has taken a variety of steps to enhance its patent system, including creating an online, searchable patent database and a hierarchy of courts for handling intellectual-property disputes.

www.businessweek.com/bwdaily/dnflash/content/jun2008/db2008063_332712.htm?chan=top+news_top+news+index_technology

1

Sullivan Legislation Protects the Rights of Private Property Owners

Today, Congressman John Sullivan introduced legislation to protect the rights of American private property owners. **H.R.6219, the Private Property Rights Protection and Government Accountability Act**, will defend private property owners against the government's broadened eminent domain ability (which, in this case, is when the government seizes private property), because of the U.S. Supreme Court's unfortunate 2005 *Kelo v. City of New London* decision.

The verdict in the *Kelo* case resulted in State and local governments being given increased authority to use eminent domain to take private homes against the will of homeowners. These homes were in a geographical area that was part of a plan which served a public "purpose" – the purpose of the potential of increased tax revenue. The *Kelo* decision was the first time the U.S. Supreme Court approved the use of eminent domain for purely private development, greatly expanding the constitutionality of eminent domain actions.

H.R. 6219 will restrict certain federal economic development funds for ten years to any state or locality in which eminent domain is used to take private property and develop it for a private purpose. It also allows private property owners to take legal recourse to fight private property takings by state and local governments that are used for private purposes.

4 **Event Notice:**

Second-Thursday Property Rights Hill Working Group

Thursday, 6/12
11:00-12:00am
505 Cannon HOB

If you have an agenda item for the working group, please email kzahourek@propertyrightsalliance.org or contact at 202-290-7646

Please note, you should have already received an invitation from the Second Thursday Property Rights Hill Working Group regarding this event.

For more information on the Property Rights Action Caucus, please visit <http://broun.house.gov/prac>. If you are interested in becoming a member of the Caucus please contact Stephen Kraly at 202.225.4101 or Stephen.Kraly@mail.house.gov.