

In the United States Court of Federal Claims

Case No. 91-1470L
Filed: June 6, 2008
FOR PUBLICATION

**THE ESTATE OF E. WAYNE HAGE
AND THE ESTATE OF JEAN N.
HAGE,**

Plaintiffs,

v.

THE UNITED STATES,

Defendant.

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43 U.S.C. § 1752(g); takings;
Fifth Amendment; just compensation
cattle; vested water rights; 1866 Act
Ditches; damages; grazing permit;
Beneficial use; Federal Land Policy
Management Act.

Lyman Bedford, McQuaid, Bedford & Van Zandt, LLP, San Francisco, CA, for Plaintiffs.
Michael Van Zandt, of Counsel.

Kathleen Lennon Doster, Department of Justice, Environmental and Natural Resources
Division, Washington, D.C., with whom was *Tim Racicot*, Special Assistant to the Assistant
Attorney General, Department of Justice, Seattle, WA, for Defendant.

Johanna Wald and *Thomas Lustig*, National Resources Defense Council, San Francisco, for
amici curiae, National Wildlife Federation, Sierra Club, National Resources Defense Council,
Nevada Wildlife Federation, and Nevada Department of Wildlife. *Michael Wolz*, Deputy Attorney
General, for *amici curiae*, State of Nevada and the State Engineer of Nevada. *Robin Rivett*, Pacific
Legal Foundation, for *amicus curiae*, Pacific Legal Foundation. *John Echeverria*, Washington D.C.
and *Joseph Feller*, Tempe, AZ, of Counsel.

OPINION

SMITH, Senior Judge:

I. Introduction

This case involves the conflict of two legitimate claims on the public lands. Both claims can
be found in the Nation's earliest history. On the one hand there is the Nation's interest in preserving