Land Rights Network

American Land Rights Association

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Hammond Vendetta:  Hammonds Headed For Jail On Criminal Charges Filed By BLM on Normally Minor Fire Issues.

When the Mandatory Minimum sentence law goes wrong.

US Attorney Frank Papagni, ESQ uses terrorism statute with minimum 5 year sentences for small fires with less than $100 in damage.

How long are we going to allow BLM to use criminal statutes to go after relatively minor offences?  This abuse of the justice system has got to stop.

The BLM could use this law against any rancher or farmer near Federal land.  In this case the BLM is using this law in an unjust way to gain control and ownership of the Hammond Ranch is Southeast Oregon.

(When you read this message, think about the logic and public expense of locking up quality citizens who made a small mistake in jail for five years each.  It is no wonder the US leads the world in the percentage of our citizens locked up in jail.  People with significant drug offenses and even manslaughter go to jail for less time.).  How many people are they locking up at public expense on often minor technicalities?

When the Federal Court Judge Michael Hogan gave the Hammonds lessor sentences, US Attorney Frank Papagni appealed the case to the Ninth Circuit Court of Appeals and won.  That court said the Hammonds had to serve their minimum sentence as prescribed by the anti-terrorism law.  Dwight and Steve Hammond could go to jail sometime after July 9th unless this travesty of justice is stopped.

Background:

Federal district judge Michael Hogan refuses to apply arson mandatory minimum (on constitutional grounds?) (October 31, 2012).

This local article from Oregon reports on what appears to be a significant sentencing decision by federal district judge Michael Hogan concerning the application of a mandatory minimum provision.  Here are the details:

Rejecting mandatory minimum five-year sentences as “grossly disproportionate” to the crimes, Federal judge Michael Hogan in Eugene on Tuesday sentenced an Eastern Oregon rancher to three months in prison and his adult son to one year and a day for deliberately setting fires on federal land.  (They have already serves these sentences.)

(From the INTRODUCTION & STATEMENT OF THE CASE from the US Attorney Frank Papagni, ESQ ):

Dwight and Steven Hammond are cattle ranchers in Eastern

Oregon who maliciously set fire to public land. In the process of

committing the acts that formed the basis for their convictions, they

endangered Dwight’s grandson, and the lives of the firefighters who

were attempting to put out other naturally caused fires in the area.  (The judge disputed the allegation that the grandson was threatened.)

The counts of conviction under 18 U.S.C. § 844(f)(1) carried five-year mandatory minimum sentences. After accelerating the sentencing date, and proceeding without the benefit of a presentence report, the district court declined to follow the statute.

Stating that defendants’ acts of arson were not the type of conduct Congress intended to address, the court (Judge Michael Hogan) concluded that the mandatory statutory minimum five-year terms were grossly disproportionate in violation of the Eighth Amendment, and he imposed sentences of three months (Dwight Hammond) and 12 months and 1-day (Steven Hammond).

A federal jury in June 2012 convicted the Harney County pair after a two-week trial in Pendleton, Ore. Jurors convicted Dwight Hammond Jr., 70, (Now 74) on a single count of arson for “intentionally and maliciously” setting the 2001 Hardie-Hammond Fire in the Steens Mountain federal management and protection area.

They convicted Steven Dwight Hammond, 43, of the same crime and of a second arson count for similarly setting the 2006 Krumbo Butte Fire.  It burned in the same area and in the Malheur National Wildlife Refuge.  The jury acquitted both men on arson charges in two 2006 fires.

U.S. Judge Michael Hogan agreed with the Hammonds’ defense lawyers that setting fire to juniper trees and sagebrush in the wilderness was not the type of crime that Congress had in mind when it set mandatory sentences of five to 20 years for anyone who “maliciously damages or destroys, or attempts to damage or destroy by means of fire” any federal property.

The mandate was part of the Antiterrorism and Effective Death Penalty Act of 1996. Prosecutors alleged that the father-son owners of Hammond Ranches Inc. set a series of fires on U.S. Bureau of Land Management land where the Hammonds had grazing rights.

Prosecutors said the fires were set to reduce the growth of juniper trees and sagebrush, and to accelerate the growth of rangeland grasses for the Hammonds’ cattle.... (A normal grazing land management practice carried out by ranchers, the Indians for hundreds of years and even the BLM.)

In a sentencing memo, the defense lawyers noted that both men have served on the French Glen School Board, Community Club and Site Council, and were “instrumental” in founding and financing the French Glen Education Foundation, which funds extracurricular activities for area students.

The Hammonds also regularly host an annual science and careers fair for seven rural schools, contribute money and food to the Harney County 4-H and FFA clubs, and donate meat to the Harney County Senior Center, the memo said.

Assistant U.S. Attorney Frank Papagni acknowledged that the Hammonds, “both of them, have done many wonderful things for the community.”  But he urged Hogan to follow the law, noting that Steven Hammond’s nephew — Dwight Hammond’s grandson — testified that he “thought he was going to get burned up” when flames moved toward him as the then-13-year-old followed his uncle’s orders to light brush with matches. (The judge discounted this allegation.)

The arsons also endangered the lives of BLM firefighters and hunters camping near one of the blazes, the government alleged.  “Congress decided that this particular offense should carry a mandatory, statutory minimum term of five years,” Papagni wrote in the government’s sentencing memo.  (Judge Hogan disagreed).

Papagni said, “The evidence of defendants’ guilt was substantial. The jury’s verdict of guilt for this particular offense mandates imposition of the required statutory minimum term, as the statute constrains this court’s discretion.”

Judge Hogan disagreed, imposing the lesser terms. He also sentenced both Hammonds to three years of postprison supervision and required them to surrender their firearms.

The judge also allowed the men to stagger their sentences in order to keep operating their ranch. He ordered Dwight Hammond to report to prison in January 2013, with Steven Hammond to begin his sentence upon his father’s release.

As the title of this post indicates, it seems from the first sentence of this report that Judge Hogan concluded it would be unconstitutional based on the Eighth Amendment to apply a five-year mandatory minimum under the circumstances.

Portions of this material taken from Permalink, Oct 31, 2013.

Action Items:

-----1.  Forward this e-mail to at least 10 other people. Your whole list if possible.

-----2.  The Hammond sentencing takes place July 9th at the Federal

Court House in Eugene, Oregon at 10:00 am.  Wayne L Morse U.S. Courthouse, 405 East Eighth Ave. Eugene, OR 97401.  Intake: (541) 431-4100.

Plan to be there and bring your friends and relatives.  This must be a show of strong support for the Hammonds from the community.

-----3.  Call, fax and e-mail Congressman Greg Walden’s staff:

You can call any Congressman at (202) 225-3121.

Fax:  (202) 225-5774

E-mail:  nick.strader@mail.house.gov – (541) 389-4408

E-mail:  riley.bushue@mail.house.gov – (202) 225-5774

E-mail:  ray.baum@mail.house.gov – (202) 225-6730

E-mail:  katie.troller@mail.house.gov (202) -225-6730

(Note for Senate e-mails) There is an underscore between the first and last name.  Use  Wesley\_cook as an example.  The House uses a dot between the first and last name.

-----4.  Call, fax and e-mail Senator Ron Wyden:

You can call any Senator at (202) 224-3121.  Fax:  (202) 228-2717

E-mail:    Wesley\_cook@wyden.senate.gov – (202) 224-5244

Samantha\_offerdahl@wyden.senate.gov – (202) (202) 224-5244

Wayne\_kinney@wyden.senate.gov – (541) 330-9142 Extension 11

Juine\_chada@wyden.senate.gov – (541) 431-0229

-----5.  Call, fax and e-mail Senator Jeff Merkley:

You can call any Senator at (202) 224-3121.  Fax:  (202) 224-3753

E-mail:  Adrian\_snead@merkley.senate.gov – (202) 224-3755

E-mail:  phil\_chang@merkley.senate.gov – (541) 318- 1298

Dan\_whelan@merkeley.senate.gov – (541) 465-6750

-----6.  Call and e-mail UNITED STATES ATTORNEY

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5 405 East Eighth Avenue

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6 (541)465-6771

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U.S. Attorney Wayne Evans

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-----7.  Call, fax and e-mail these BLM and FWS officials as well as the US Attorneys.  Do not harass these BLM and FWS officials or the US Attorney.  This must be a peaceful, non-violent effort.

But it will be good if you tell the BLM and FWS officials as well as the US Attorneys when you call or see them that they are not being good neighbors.  In fact, you should say that to every BLM and FWS employee you see anywhere nationwide.

This tactic is important.  It worked well in the 90’s with the Fish and Wildlife Service and it will work again if you will do your part.  Anyone in a BLM or FWS uniform or who you know works for those agencies must be greeted with “You and your fellow BLM employees are not being good neighbors.”  Insert FWS for employees of that agency.

BLM - Andrew Resource/ Steens Area Field Manager

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-----8.  Go to the American Civil Liberties Union website for Oregon to submit a request for help for the Hammonds in this obvious case of a vendetta by Federal bureaucrats.  Go to ACLU.org.   So far we have heard nothing from the ACLU.  It looks like they only defend Liberals.

-----9.  E-mail, and call your local newspapers.

Portland Oregonian - Therese Bottomly – (503) 221-8327 – newsroom@oregonian.com

Burns Times Heralds- (541) 573-2011. editor@burnstimesherald.info

Bend Bulletin – cell: (406) 589-4347  tanderson@bendbulletin.com

BLM and Fish and Wildlife Service and the US Attorney appealed judge Hogan’s ruling.  They won on appeal and are now going back for a second bite at the apple.  They want to inflict as much pain on the Hammonds as they can.

Dwight Hammond is 74 years old.  If he goes to prison for a second time on the same case the family will likely to lose the ranch.  The Hammonds are suffering financially already because of the costs of litigation fighting this case and have already settled a civil action by the government costing even more money.

Using the vendetta, the BLM and FWS want to gain ownership of the Hammond ranch which is intermingled with Federal ground in the Malheur Wildlife Refuge.

This whole second sentencing looks like not only double jeopardy but an attempt to force the Hammonds to sell to the FWS and BLM so they can gain control of the Hammond ranch and expand the Wildlife Refuge and BLM lands at Congressional Designated Steens Mountain Special Management Area.

This case is obviously pay-back for the Hammonds winning in court against the FWS on their water rights case in the 90’s..  The BLM and Fish and Wildlife Service want to inflict as much pain as possible on the Hammonds to reduce the chances other ranchers will stand up for their rights.  This case is more about who controls the land and the people who live there than small fires that caused little damage.

(If the BLM and FWS as well as the US Attorney think these messages are going to stop if the Hammonds go to jail, they are grossly mistaken.  This is just the beginning of American Land Rights effort to save the Hammond Family and the Hammond Ranch.)

Google Alert:

You can find additional information about national issues and battles

American Land Rights has been involved in by going to Google and typing in the following search terms one at a time:  Chuck Cushman, Charles Cushman, Charles S. Cushman, American Land Rights Association, National Inholders Association and League of Private Property Voters.

Thank you,

Chuck Cushman

American Land Rights Association

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Please forward this message to at least 10 other people.  Your whole list if possible.