EDITORIAL

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Legal Aspects of Hunting on Public Lands

Management of game populations on our public lands is an integral part of the science of range management. Because these lands are held in public ownership in most instances priorities of use are not recognized and therefore the management problem becomes more complex from an administrative standpoint. The use of privately owned lands may be established by the owner and those lands may in fact be dedicated to a single selected use. Public lands, however, must be administered with many uses, actual or potential, kept in mind.

If we can logically place any emphasis on game management as a tool of range management, then we must be concerned with the legal aspects of hunting on public lands.

What is involved is an analysis of the interrelationship between the citizen, The State Government and The Federal Government in the realm of game management on public lands? Unquestionably, controlled public hunting constitutes an effective means of game management. Public hunting controlled or otherwise, however, cannot contribute to game management, and therefore range management, without a right in the public to appropriate game species, have access to public lands for the purpose of the appropriation of game species and be subject to sensible and enforceable regulations concerning the taking of game species as promulgated and enforced by the agency of the political subdivision entrusted with ownership and custody of wildlife.

Therefore, let us proceed to look into our problems and attempt to determine some of the legal ramifications involved when hunting on public lands.

State and Federal Jurisdiction

General recognition is given to state ownership of wildlife. The State of Arizona, by legislation, has expressed this ownership in the following terms. "Wildlife, both resident and migratory, native or introduced, found in this state except fish and bullfrogs impounded in private ponds or tanks or wildlife and birds reared or held in captivity under permit from the Commission, are property of the State and may be taken at such times, in such places, in such manner and with such devices as provided by law or rule of the Commission, (ARS 17-102)." A literal interpretation of the statute or a similar statute enacted by any other state might in some instances, however, mislead as to the authority vested in the state agency. This is true because under our form of constitutional government we recognize not only state and federal ownership but also state and federal authority. The United States Government has retained in some instances and in some areas what has been defined as exclusive legislative jurisdiction. The Constitution of the United States gives express recognition to but one means of federal acquisition of legislative jurisdiction and that is by State consent under Article I, Section 8, Clause 17. However, in the case of Fort Leavenworth Railroad vs. Lowe, 114 U.S. 525 (1885), the United States Supreme Court sustained the validity of an Act of Kansas ceding to the United States legislative jurisdiction over the Fort Leavenworth Military Reservation, but reserving to itself the right to serve criminal and civil process in the Res-
where exclusive legislative jurisdiction may be vested in the Federal Government by state cession.

In the Fort Leavenworth case the Supreme Court approved a second method not specified in the Constitution of securing legislative jurisdiction in the United States. This is by what has been defined as federal reservation or a reservation of powers in The Federal Government to retain exclusive jurisdiction over a federally owned area within the state at the time the State is admitted into the union. It follows, therefore, that unless there has been a transfer of jurisdiction pursuant to Clause 17 by federal acquisition of land with state consent or by cession from the State to The Federal Government or unless The Federal Government has reserved jurisdiction upon the admission of the State, The Federal Government possesses no legislative jurisdiction over an area within a state, such jurisdiction being for exercise entirely by the State, subject to noninterference by the State with federal functions and subject to the free exercise by The Federal Government of rights with respect to the use, protection and disposition of its property. When The Federal Government has acquired exclusive legislative jurisdiction over an area, however, it is clear that the State in which the area is located is without authority to legislate for the area or to enforce any of its laws within the area. All the powers of government with respect to the area are vested in the United States. Pollard vs. Hagen 3 How. 212. It therefore follows that a state cannot enforce its game laws in an area where exclusive legislative jurisdiction over wildlife has been ceded to the United States. Chalk vs. United States 114 2d 207.

State criminal jurisdiction extends into areas owned or occupied by The Federal Government, but as to which the government has not acquired exclusive legislative jurisdiction with respect to crimes. In many areas owned by The Federal Government for its various purposes it has not acquired legislative jurisdiction. The Forest Service of the Department of Agriculture, for example, in accordance with a provision of federal law (16 U.S.C. 480) has not accepted the jurisdiction proffered by the statutes of many states and the vast majority of federal forest lands are held by The Federal Government in a proprietary status only. The Federal Government may not prosecute for ordinary crimes committed in such areas. Federal civilians who may be appointed as guards in the area do not have police powers but possess only the powers of arrest normally had by any citizen unless they receive appointments as state or local police officers.

Where exclusive legislative jurisdiction is vested in The Federal Government the criminal jurisdiction of The Federal Government extends to private lands over which legislative jurisdiction has been vested in the United States as well as to federally owned lands. It has even been held that an owner of an area within a national park under the exclusive legislative jurisdiction of the United States may not kill or take game contrary to federal regulation, even on his own land. In areas where The Federal Government has not retained or does not have exclusive legislative jurisdiction, the inclusion within a state of lands of the United States does not take from Congress the power to protect their occupancy and use, to protect them from trespass and injury and to prescribe the conditions upon which others may obtain rights in them, even though this may involve the exercise in some measure of what commonly is known as the police power. That the power of Congress in these matters transcends any state laws is demonstrated by the case of Hunt vs. The United States 278 U.S. 96 (1928) wherein it was held that a state could not enforce its game laws against federal employees who upon direction of the Secretary of Agriculture destroyed a number of wild deer in a national forest (which was not under the legislative jurisdiction of the United States) because the deer, by overbrowsing upon and killing young trees, bushes and forage plants, were causing great damage to the land. The Court said, "That this destruction of deer was necessary to protect the lands of the United States within the reserves from serious injury as made clear by the evidence. The direction given by the Secretary of Agriculture was within the authority conferred upon him by Act of Congress. And the power of the United States to thus protect its lands and property does not admit of doubt... the game laws or any other statute of the State to the contrary notwithstanding."

**Legislation and Use of National Forests**

A discussion of the question of jurisdiction over federal areas within the states involves interpretation of numerous difficult constitutional and statutory questions and problems, but the aforementioned comments will give you some indication of the nature of the problems as related to the subject matter. Let us therefore proceed with an analysis of some of the pertinent federal and state legislation and regulations dealing with public lands and related to the use of those lands for hunting. Subsequent to legislation recognizing the es-
Establishment of national forests, the Transfer Act of February 1, 1905 provided for the transfer of the forest reserves from the Department of the Interior to the Department of Agriculture. Gifford Pinchot, who headed the Bureau of Forestry, continued as its chief. James Wilson, Secretary of Agriculture, in a letter to the forester laid down basic principles and public service policy which the Forest Service has continued to follow ever since. The letter said in part, “In the administration of the forest reserves, it must be clearly borne in mind that all land is to be devoted to the most productive use for the permanent good of the whole people and not for the temporary benefit of individuals or companies... You will see to it that the water, wood and forage of the reserves are conserved and wisely used under business-like regulations and enforced with promptness, effectiveness and common sense... where conflicting interests must be reconciled, the question will always be decided from the standpoint of the greatest good of the greatest number in the long run.” The United States Forest Service basic objective includes, “Making all resources of national forest lands—soil, range, wood, water, wildlife, recreation, minerals—as fully productive and of as great service, in accordance with the multiple-use principle, as necessary for them to supply their share of national requirements in an economy of abundance.” In practically every subsequent piece of significant legislation dealing with the utilization of public lands significant and important references have been made concerning the rights of the individual citizen in his use of the federal lands and concerning the jurisdiction vested in the state or its appropriate political subdivision in the area of game management.

In the Term Permits Act of March 4, 1915 as amended (16 U.S.C. 497) it was recognized that the authority for the establishment of term permits for summer home use and other purposes, “shall be exercised in such manner as not to preclude the general public from the enjoyment of the natural, scenic, recreational and other aspects of the national forests.”

Numerous regulations have been adopted in the administration of the national forests to effectuate the purposes contained in federal legislation. Many of the regulations recognize the public use, but establish the means by which that use may be controlled for the public health, welfare, safety or convenience. Regulation U-10, concerned with Special Use Permits, provides, “The temporary use or occupancy of national forest lands by individuals for camping, picnicking, hiking, fishing, hunting, riding, and similar purposes, may be allowed without a special use permit; provided permits may be required for such uses when in the judgment of the Chief of the Forest Service the public interest or the protection of the national forest requires the issuance of permits.” This regulation in Subsection (b), Subparagraph (2), further provides, “Special use permittees shall comply with all State and Federal laws and all regulations of the Secretary of Agriculture relating to the national forests and shall conduct themselves in an orderly manner.”

Regulations have also been adopted by the Secretary of Agriculture relating to trespass within national forests. Regulation T-7 expressly recognizes the authority of the state by providing as follows, “The following acts are prohibited on lands of the United States within National Forests: Hunting, trapping, catching, disturbing, killing, or having in possession any kind of game animal, game or nongame bird or fish, or taking the eggs of any such bird, in violation of the laws of the State in which such land is situated.”

Regulation W-1 provides, “Officials of the Forest Service will cooperate with State, County, and Federal officials in the en-
enforcement of all laws and regulations for the protection of wildlife."

Regulation W-2 provides, "The Chief of the Forest Service, through the regional foresters and forest supervisors, shall determine the extent to which national forests or portions thereof may be devoted to wildlife production in combination with other uses and services of the national forests, and, in cooperation with the Fish and Game Department or other constituted authority of the State concerned, he will formulate plans for securing and maintaining desirable populations of wildlife species, and he may enter into such general or specific cooperative agreements with appropriate State officials as are necessary and desirable for such purposes. Officials of the Forest Service will cooperate with State game officials in the planned and orderly removal in accordance with the requirements of State laws of the crop of game, fish, fur-bearers, and other wildlife on national forest lands."

It can therefore be seen that in the lands administered as national forests adequate provision for the appropriation of game species and access for that appropriation exists pursuant to legislation and regulations. The role of the State in the management of the game resource is furthermore recognized and emphasized.

Legislation and Use of Federal Range

The significant piece of federal legislation dealing with public lands not in national forests, national parks and monuments is The Taylor Grazing Act of June 28, 1934. This Act as amended and the regulations promulgated thereunder provides the basic authority for wildlife management on the public domain in the continental United States, exclusive of Alaska. The Bureau of Land Management, United States Department of the Interior, would probably refer to this Act as their Bible. This Act also makes significant references to citizen and states rights. Among other things the Act provides, "Nothing in this Act shall be construed in any way to diminish, restrict, or impair any right which has been heretofore or may be hereafter initiated under existing law validly affecting the public lands, and which is maintained pursuant to such law except as otherwise expressly provided in this Act, nor to affect any land heretofore or hereafter surveyed which, except for the provisions of this Act, would be a part of any grant to any State, nor as limiting or restricting the power or authority of any State as to matters within its jurisdiction."

The Act further provides, "Nothing in this Act shall be construed as in any way altering or restricting the right to hunt or fish within a grazing district in accordance with the laws of the United States or of any State, or as vesting in any permittee any right whatsoever to interfere with hunting or fishing within a grazing district."

More specifically dealing with access the Act provides, "Nothing herein contained shall restrict the acquisition, granting, or use of permits or rights-of-way within grazing districts under existing law; or ingress or egress over the public lands in such districts for all proper and lawful purposes;"

Implied recognition of the importance of wildlife is found in the following language of the Act, "The Secretary of the Interior shall provide, by suitable rules and regulations, for cooperation with local associations of stockmen, State land officials, and official State agencies engaged in conservation or propagation of wildlife interested in the use of the grazing districts."

Regulations promulgated by the Interior Department to make effective the provisions of the Act provide in part for the protection of the right of access across public lands included in grazing leases for hunting and fishing purposes requiring that a reservation of forage must be made for wildlife, and provides that the unauthorized posting of federal lands is a violation of section 161.11 (a) (7) of the regulations which prohibits interference with licensed hunters or fishermen, or with other persons lawfully entitled to enter the Federal range. 43 C.F.R. 160.13 contains essentially the same provisions applicable to leased lands.

Access to Public Lands

The posting of Federal lands against entrance by the general public constitutes interference with their rights and is subject to trespass action if the violator fails to remove all such signs when so directed by the district manager. Here again we see the recognition of the importance of wildlife, the rights of the public in regard to access thereto and recognition of the reservation to the states of considerable authority concerning the management of game species.

The public land laws of the states in the Western United States can and do vary considerably. In Arizona, however, the law specifically allows the public access to and right to go upon state lands for the purpose of hunting and fishing (A.R.S. 59-133). State or Federal lands in the State of Arizona may not be posted except by consent of the Arizona State Game and Fish Commission (A.R.S. 17-304). In addition thereto, surface lessees are apprised of the fact that they do not have complete dominion over the premises leased by the terms of the surface leases issued by the State Land Department. Specifically all surface
leases contain provisions reserving the right to the state to grant rights-of-way and permits and leases for the purpose of extracting oil, gas, coal, ores, minerals, fertilizer and fossils of every kind, or prospecting therefor. Necessarily then, the rancher has no right to prevent hunters, or other third persons, from gaining entry on state lands by locked gates or otherwise.

In an opinion requested by the Pinal County Attorney of Wade Church, the Attorney General, in 1959, the question was posed, "Does the hunter or any other third person have the right to knock down, remove, or layover a fence for the purpose of gaining entry to state land for the purpose of hunting, moving equipment, or for any other purpose?" The Attorney General’s opinion stated in part, "As above pointed out, many persons have a right to enter upon state lands for proper purposes, but this does not carry with it the right to molest, injure or destroy any of the improvements thereon. Two wrongs do not make a right. If one having a right to enter state lands is denied that right, he cannot take the law into his own hands but must resort to the remedies provided by the law for gaining entry together with damages accruing because of the wrongful interference with the right. It follows that a hunter or other third person has no right to knock down, remove, or lay over a fence for the purpose of gaining entry to state land."

Summary

In summation, Federal and State legislation and regulations concerned with the administration of the public lands, with few notable exceptions, recognize the paramount jurisdiction in the State to manage wildlife resources within the confines of its borders and the rights of the individual citizens to have access to those public lands for the purpose of appropriating game species. In all instances, however, there is retained by the Federal Government the essential authority for the protection and preservation of its property and property interests, State laws to the contrary notwithstanding. Therefore, as a practical matter game management policies and their relation to range management necessitates and involves cooperation between the appropriate State and Federal authorities.

The individual hunter, without whose participation there could be no controlled management of game species, is most significantly affected by the application of state legislation and regulations establishing the times, places, manner and devices permissible for pursuing and taking game species. He is unaware and probably unconcerned as to why or under what circumstances he might make use of the public lands as his right to such use has probably never been challenged. He does, however, have the obligation to comply with all pertinent criminal statutes of the state and may not damage or destroy private property even on public lands without fear of consequences. The vandal may not claim sanctuary under such circumstances.

Robert J. Spillman
President, Arizona Game Protective Assn.
8502 E. Vernon St.
Scottsdale, Arizona

Mineral Consumption Related to Improved
Cattle Management Systems in Georgia

RALPH II. HUGHES AND BYRON L. SOUTHWELL

Range Conservationist, Southeastern Forest Experiment Station and Head, Animal Husbandry Department, Georgia Coastal Plain Experiment Station, Tifton, Georgia.

The wiregrass-pine range type furnishes an abundance of forage for cattle, but the main forage species are generally low in protein, phosphorus, and calcium (Williams et al., 1955). Even with the advantages of winter burning, the native herbage seldom contains the minimum mineral requirements for cattle suggested by the National Research Council (1958). For these reasons adequate mineral nutrition has been an integral part of forest grazing studies at the Alapaha Experimental Range in south Georgia since 1942.

Studies in Georgia (Halls and Southwell, 1954) showed that a mixture of two parts steamed bone meal to one part salt by weight, self-fed from mineral boxes, induced steers and heifers on range to eat enough bone meal to satisfy their needs for both phosphorus and calcium. For nursing cows, however, feeding of other supplements, such as cottonseed meal, in addition to bone meal and salt, appeared essential to fully overcome lack of minerals, particularly phosphorus. A later study indicated that improved pasture might be more economical than protein concentrates for supplementing range during the spring and summer (Southwell and Halls, 1954).