

History of Public Land Grazing

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Stockmen have been using the grasslands of this continent since the first Spanish settlers arrived in the early 1500's representing nearly 500 years of livestock grazing. Prior to cattle and sheep, herds of native animals, including bison, used these lands. There was never a "pristine" condition in which the plants were not periodically eaten. The vegetation evolved under grazing pressures from a variety of animals. The natural condition of the grasslands was grazing.

Spanish ranchers settled Mexico in the early 1500's and had expanded into what would be the American Southwest by the early 1600's. By the time the 13 eastern colonies declared independence from England in 1776, Spanish ranches and missions were thriving in California and the Southwest. The American livestock industry started later. After the buffalo herds were decimated by hide hunters the grasslands of plain and mountain became ideal livestock country. Cattle herds were driven north from Texas and eventually most of the open range was used for stockraising. The timbered areas of the East were cleared for farms. The arid parts of the country (Great Plains and western mountains) were settled last, mainly because of lack of water.

As America expanded westward, the farming culture and stock-raising tradition eventually clashed. The early stockmen depended on open range and the farmers were fencing and plowing it up, claiming it as their own.

Failure of the Homestead Laws

The Homestead Act of 1862 was the first major law governing disposal of land. But the eastern legislators' only experience was with fertile agricultural land with ample rainfall. The law had major flaws for the dry West.

America was built on the concept of private property, the right of every man to own his own land. Pre-emption, the right to settle on a piece of ground and later buy it, was basic in our country. England had discouraged private appropriation of lands, and this was a major complaint in our Declaration of Independence.

America had a vast amount of land waiting for people to settle it. Immediately after the Revolutionary War, thousands of pioneers moved westward and settled on public land, with no authorization to do so. They were trespassers, just as the stockmen in the West in later years were trespassers. In 1828 a Public Lands Committee reported to Congress that it was impossible to prevent settlement and that the settlers who had made roads, bridges and other improvements at their own expense should have a privilege over other purchasers. The General Land Office had been created in 1812 to handle the growing number of applica-



Many cows and calves are pastured on federal lands—BLM and Forest Service for summer pasture. These lands—some steep and timbered, brushy and rocky—could never grow crops, but do grow a lot of grass that cattle can eat.

tions. The first settlers were all squatters; they expected Congress to grant them a first right to buy the land, and this same feeling prevailed elsewhere on the frontier (and later with the range ranchers, but they were not able to gain title to their grazing lands).

The 1841 Pre-Emption Act made legitimate the farmer-trespasser on the public domain. In 1849 the Dept. of Interior was created, and the General Land Office which supervised land sales and homestead claims became its major unit. The 1862 Homestead Act allowed settlers 160 acres free; they could gain title to the land after living on it 5 years and paying the paperwork processing fee. The limit was 160 acres because a settler could not clear trees from a larger parcel in the timbered East nor plow more than 160 acres of Iowa or Illinois prairie with the equipment of those days. The homestead law worked well for the half of our country east of the 100th meridian, but farther west a settler needed more than 160 acres. He needed 2,000 to 50,000

Editor's Note:

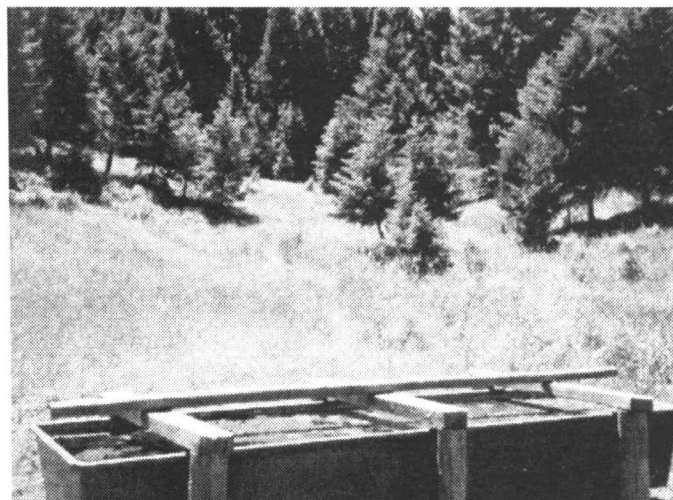
The author is a rancher near Salmon, Idaho.

acres to raise livestock; the grass was sparse and it took 10 to 100 acres per cow, depending on the land and the rainfall.

Attempts were made to amend the Homestead Act (Timber Culture Act, Desert Land Act, etc.) allowing a few more acres, but this still didn't help the stockman—as pointed out by a U.S. Geological Survey Report in 1879 which put the minimum practical acreage for a rancher in arid country at 2,560 acres. The Secretary of Interior suggested leasing land in large blocks to responsible cattlemen for a term of years that would justify fencing, but Congress refused.

Most of the remaining public land was best suited for livestock, requiring large tracts. Presidents Grant and Hayes realized this; Hayes in his 1877 message to Congress said the lands were practically unsaleable under the existing laws, and that a system of leasehold tenure would make them a source of profit for the U.S. “while at the same time legalizing the business of cattle raising.”

Major John Wesley Powell in 1878 proposed 2,560 acre homesteads. He suggested survey lines take water into consideration, as the Spanish-Mexican lands did. Powell thought it absurd to waste time and money marking off square sections, thousands of which would have no value as independent units since they had no water. Survey lines utilizing the greatest number of water frontages would have made almost all the western lands usable. But as it was, ranchers were compelled to settle on tracts with water, and these often contained the only available stock water for miles. As a result more land remained in the hands of the government than would have been the case if it had been surveyed and distributed according to topography and



Late July 1990 (part of our high range). Water developments have benefitted both livestock and wildlife.

water.

In the late 1880's the only ownership of property on most western ranches was the claim to buildings and “accustomed” grazing rights to certain ranges. But this ownership was tenuous. Even though the Homestead Act had been in effect since 1862, most of the northern plains and mountains had not yet been surveyed and technically were not opened for homesteading. The stockmen's ranges would soon be settled by homesteaders, however, unless ranchers themselves could gain title. Usually all they could legally gain title to were the 160 acres where the ranch buildings were located. Congress' uncompromising position on homestead laws led to fraud and overcrowding of rangeland because no one had uncontested rights to their pastures.

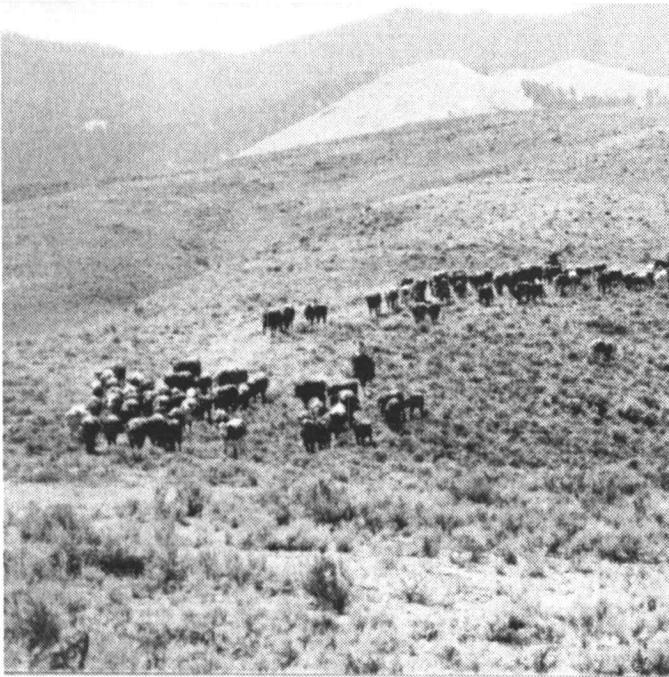
One reason the laws were not properly amended was due to lobbying by the General Land Office (GLO), opposing efforts of stockmen to gain title to their ranges. The land office was practicing self-interest politics; its annual budget was determined in part by the total number of claims filed, and officials at each land office received fees and commissions for processing claims. Their jobs depended on the amount of business they did. They often strung it out as long as possible, which led to inefficiency and red tape. They preferred to deal with a large number of small homestead claims and didn't want any changes that would dispose of land in larger blocks.

Evolution of “Range Rights”

Out of necessity the rancher pastured his stock on public domain next to his private holding, in local custom developing a “range right”. But there were no fences, or laws to define ownership of a specific range, no legal way to keep newcomers from crowding in and overstocking the land. Eastern lawmakers wouldn't help, so the cattlemen made their own laws. The customs and rules they created gave stockraising some semblance of order and set many traditions; including community roundups and branding. Early



This area had very few trees forty years ago. Well managed grazing has created an environment favorable to young trees.



Fall Roundup.

stockmen ignored the inadequate land laws and acknowledged each other's rights to particular pieces of range or water sources. Like the early squatter-settlers in the East, western ranchers laid claim to what they needed, and hoped they could someday buy it. This was not to be.

There was no way the rancher could actually keep newcomers out. As early as 1885 experienced stockmen were thoroughly alarmed. They knew the arid grasslands couldn't support ever-growing numbers of cattle and sheep, especially in drought years. They fought against the overstocking and begged Congress for some kind of legislation to give order to the range. Similar grasslands in other countries had been developed with orderly methods for grazing, but not in America. Provisions for stock-raising leases had been made in Australia, New Zealand and Canada, with long-term tenure and legal right to transfer them to heirs. In Australia, grazing homesteads of 30,000 acres or more were available for 30 year lease. In Alberta, leases were issued for 20 year periods, and in Saskatchewan for 33 years. But a stockman arriving in the American West in 1890 could not lease even one acre.

Compared to the settlers on American grasslands, Australia's homesteaders had less failure, since they had enough land for stock raising. In America the small homesteads here often "starved out" due to lack of water for crops. On the northern plains there were hundreds of 160 acre homesteads, thousands of 320 acre homesteads, and only slightly less than a 100% rate of failure.

The continued existence of the rancher depended on acquiring title or lease to his range. Stockmen didn't think of themselves as temporary occupants, as Congress seemed to classify them, permitted to use the land only until the farmer arrived. Roy M. Robbins (1942, *Our Landed*

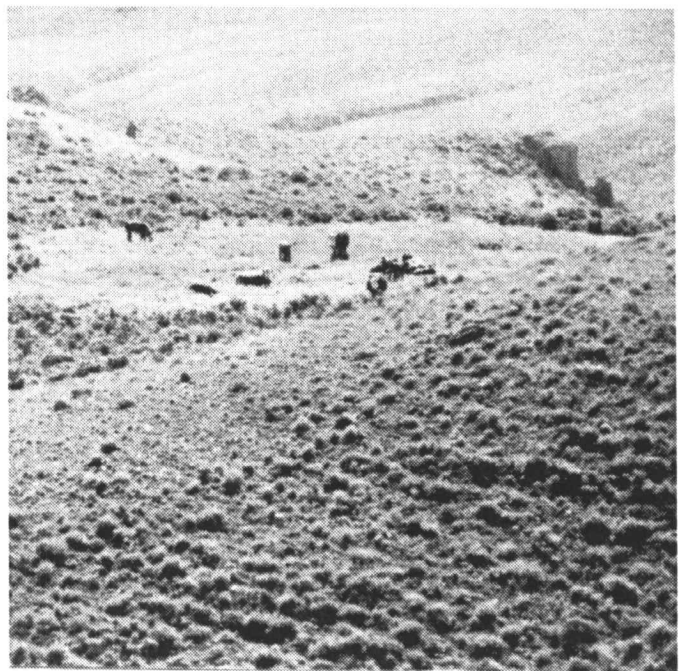
Heritage; U. of Nebraska Press) bemoaned the fact that the settlement laws "came to be used not so much by the actual settlers as by the cattle and sheep interests." But the stockmen considered themselves permanent settlers and felt they had some right to a legitimate claim to the land also. Why should the farmer be allowed land, but not the stockman?

Many ranges were broken into farms as homesteaders moved in. Some were left alone because they were completely unsuited for crops. The range right evolved as an integral part of the western ranch, in regions where there was abundant land that couldn't be used for irrigation or dry farming. The stockmen on these last frontiers stayed and fought for their land, staking claims for the ranch and using adjacent public pasture. On the land that was left, the stockman tried to make a permanent home. But such permanency could only be gained by control of the range. Without some sort of order on the public domain, the range livestock industry would destroy itself by overcrowding.

Government Withdrawals of Land

In March 1891 President Harrison created the Timberland Reserves, removing part of the public domain. More forest reserves were soon created and controversy over grazing arose. Some Conservationists wanted no grazing in the forests, but since these lands had been traditionally used for grazing, it was allowed under a permit system. Prior use by the rancher, his need for the range, and amount of base property owned were taken into consideration when assigning permits.

As America marched westward, the rules continued to be made in the East. Westerners tried to make a living from



Cattle enjoying early spring range.

the land, but seldom owned the land they struggled on. Some of the land was homesteaded, some was granted to the states for support of schools, construction of roads or railroads. Later the government withdrew land for parks, wildlife refuges, Indian and military reservations, forest reserves, water power sites, etc. The remaining public domain was administered "pending ultimate disposal" but much was left in government ownership because the homestead laws weren't workable for stockraising. By the end of the 19th century some people challenged the philosophy of transferring federal lands into private ownership, which led to a policy of permanent retention of large areas in federal ownership. In the early 1900's the government withdrew millions of acres in the West from future settlement or public use. Westerners responded in anger and bewilderment, for once the land had been theirs to use.

During the last years of homesteading, several new laws were passed, including the Stock-Raising Homestead Act (640 acres) in 1916. All were inadequate for the rancher and only served to encourage farmers to plow up more fragile arid land, resulting in more failures, abandonment of homesteads, and soil erosion. Thousands of deserted shacks and rusted windmills dotted the plains, symbolizing the ruined hopes and wasted years of people who tried to make rangeland into crop land. Destruction of range was a tremendous loss, not only to stockmen of that day, but to those of later years. By 1936, 25 million acres of range had been plowed and abandoned, and 50 million more acres of good range had become marginal cropland, hastening erosion. With the drought of the 1930's, the plowed lands became the infamous Dust Bowl.

Grazing Regulations

Most of the federal lands were historically used by livestock, yet the government failed to make provision for stock raising—so too many ranchers tried to use the same lands. Local stockmen's organizations were created to try to bring order, but only partially worked because they had no force of law behind them. Competition for the grass forced abuses that would never have happened if a range unit could have been claimed and used by each rancher like a homestead. Frustrated ranchers saw the damage happening and were helpless to halt it. They begged Congress for some sort of permit or leasing system that would give the range some order and protect it (and the livelihoods dependent on it) from destruction.

Grazing regulations came into existence on the forests after the turn of the century, and belatedly on the public domain in 1934 with the Taylor Grazing Act, which was created in controversy. One issue was states' rights; the West was not keen on federal government having control over such vast areas within their states. Bringing order to range use was also a painful process by that late date; some stockmen had to go out of business (especially sheepmen and horse raisers who had no base property) since there wasn't enough range to go around.

Regulation of the range came into being during the days of drought, depression and Franklin Roosevelt's New Deal

socialism. The original plan when the Taylor Act was proposed, was to lease the land to the rancher. But the final Act, shaped and colored by the New Deal federal planners, provided a basis for complete federal management of the "leases" by Department of Interior. The Act satisfied no one—not the stockman, who wanted simple leases, nor the Dept. of Agriculture, which had been feuding with Interior, wanting control over the grazing lands for itself. The amazing thing was that the Act was passed at all, after 50 years of futile effort by the livestock industry. It left the ranchers forever dependent upon government administered grazing lands. The western rancher and the federal government have had to exist in uneasy partnership ever since.

With more orderly use, the depleted ranges began to improve. The ranchers who ended up with permits were assured of a specific pasture, and invested time and money in fences to control the use of those pastures, and created water developments and other improvements.

Politics of Federal Land Management

The Grazing Service was plagued with political problems from the start. In 1946 it became the Bureau of Land Management (BLM). Administration of public land by the growing bureaucracy of Forest Service and BLM had ups and downs, colored by politics and feuding between Interior and Agriculture, and money problems. The main fact of life for any bureau is gaining sufficient funds from Congress. Many range studies and range condition reports (including the Forest Service document "The Western Range", 1936) were propaganda documents to convince Congress of a need for money or bureaucratic expansion. In 1936 the Forest Service was trying to grab the public domain lands from Interior, and published "The Western Range" to show that lands had deteriorated under private ownership and Interior administration, and that the Forest Service had superior qualifications for managing *all* grazing lands.

The BLM has also resorted to propaganda tactics, such as the oft-quoted 1975 *Range Condition Report* (prepared by BLM for the Senate Committee on Appropriations, January 1975), which painted a very distorted picture in its attempt to gain more money for BLM expansion. The government agencies periodically did studies, but results were often slanted to justify administrative policies. Most of the range research was done to achieve functional goals, often for political advantage. Since most studies were done by the same agency doing the administering, there was a tendency to slant the research to justify the administration process.

For instance, in the early days of Grazing Districts in Montana, employees were instructed to determine range condition and what percent of their areas were in each condition class. Their surveys showed 80-90% of the land in good to excellent condition. But when their boss in the state office saw the figures, he insisted they were wrong—because the district wouldn't get any money for range improvement with figures like that. So the figures were changed. Only 10 to 20% of that range could be in good or excellent condition, and 80% had to be "poor" (as stated by

Dan Fulton in his book *Failure on the Plains*, Montana State University, 1982). This type of figure juggling has added "credibility" to the myth that all the ranges were overgrazed and exploited by greedy, ignorant ranchers, until the government stepped in to "save" the range by regulating the ranchers.

Management of public lands has been a mix of science, tradition and politics, with the rancher caught in the middle trying to grow livestock and grass. The rancher is the only true range manager, for he is the only one actually on the land. The health and future of the land affect his own future. But the government agencies and pseudo-environmentalists haven't understood this very basic fact, and have often thrown obstacles in the way of good management, rather than trying to work *with* the ranchers.

Conflicts Over Range Use

Range management is thwarted by the fact the rancher has no real security or tenure. If he has tenure, he can plan for the future and know he will still be there to benefit from his good management of today. But tenure is now more uncertain than ever, as other interests clamor for more say in public land decisions. The preservationist aspect of the conservation movement wants livestock use reduced or eliminated. The federal agencies try to balance and juggle the demands of various interests. Grazing has gotten the shorter end.

Yet the demands of users and potential users of public lands are not irreconcilable if common sense and cooperation are used. Grazing is a use that does not alter the natural condition of the land, and can be compatible with other uses. Wildlife and livestock complement one another on a well managed range. One reason game numbers have increased so much in recent years is because the range

improvements done by ranchers have benefitted both wildlife and livestock. Timber production benefits from grazing the grass that would otherwise compete with young trees or give cover to rodents that damage young trees. Well managed grazing improves rather than impairs watershed values and riparian areas.

We have to remember that these lands were grazed by buffalo for millions of years. Grazing is a natural and perhaps necessary use of the land, yet has been much criticized by people interested in wildlife, recreation and wilderness. Political pressures from these segments of the public have mounted. The good relationship that sometimes existed, with sincere efforts between ranchers and federal managers, has often been undermined by more "important" duties of BLM and FS as administrators of wilderness/wild horses/wildlife habitat/recreation/timber, etc. It is not politically popular to be sympathetic with the livestock industry.

The rancher feels threatened. His existence is totally dependent on the range and he feels entitled to some kind of assurance and consistency from his federal landlord. There is none. Personnel changes within the agency, or a new government administration, often bring major policy changes. Agency people come and go. Some are easy to work with and others are openly antagonistic to grazing. The rancher has to stay on the land and pick up the pieces, trying to adjust to each new policy and get along with each new overseer. There is no guarantee of tomorrow. A new manager, a new policy, such as Rangeland Reform '94, a new law passed by Congress to satisfy environmental groups, may make the rancher's good management efforts all for nothing. The tenure question for the rancher is just as critical today as it was at the turn of the century. We haven't progressed very far.

Ranchers are dependent on land they can never own, and probably never lease in a conventional manner—land that may be made off-limits to grazing if extremists in the environmental movement have their way. The National Environmental Policy Act (NEPA) gave other interests a way to take BLM to court over its grazing programs, such as the 1974 suit by Natural Resources Defense Council forcing BLM to do extensive environmental impact statements on all range areas. Environmental groups use many laws (Wild Horse Protection Act, Endangered Species Act, etc.) as tools in their efforts to eliminate grazing.

This EIS process was frustrating to both ranchers and BLM. Ranges had improved greatly between 1934 and 1974, yet environmental groups took BLM to court to force more livestock cuts. The easy way out for BLM, faced with court suits and lack of funds, was to cut numbers regardless of whether the reductions were justified. The 1970's were a time of turmoil and strained relations between BLM and ranchers. The passage of FLPMA made it clear the land would be held forever in federal ownership and gave BLM a full range of Executive powers and duties. The EIS process, with BLM trying to please a growing public antagonism to grazing, spurred ranchers to join other westerners thwarted by the expanding federalism, and the Sagebrush



Fall Roundup.

thwarted by the expanding federalism, and the Sagebrush Rebellion began. People dependent on public land for their livelihoods were finally fighting back. They felt the government should not be allowed to make decisions without first consulting the people affected. The West needs some say in managing its own affairs. The Sagebrush Rebellion was only one small skirmish in a long battle—states' rights and self determination have been an issue in the West from the beginning—and won't be the last, as long as the West is controlled by rules made in the East.

The ranchers' cries for help against policies that would put them out of business were heard, and BLM had to change course a little, partly because of changes in administration and a swing away from the environmentalist-oriented leadership it enjoyed during the Carter years. During the 1980's the federal landlord attempted to listen to the ranchers again. The Stewardship programs were created, and other efforts to work with the ranchers and give them some voice in managing the range such as the Cooperative Management Agreements (CMA). Progress was made in resolving major concerns. Environmental groups have fought these moves at every turn. Some refused to participate in the Stewardship program, and also took BLM to court over the CMA's. They didn't want ranchers to have any control of the range or much say in management.

Today we're still struggling over public land policy. Environmental groups are using every tactic they can to eliminate grazing, using controversies over riparian area

management, "ecosystem management", the grazing fee issue, etc. to force ranchers off the range. The proposed new grazing regulations in the Clinton administration are geared to drastically reduce or eliminate grazing.

We don't know what the future holds. Logic implies that if we work together on the problems we can solve the basic conflicts, if we have a government that respects private property rights and personal freedoms and doesn't keep pushing for more power and dictatorship over the lives of its citizens. On public lands we can have multiple uses that satisfy many interests and continue to support western communities and provide necessary products for our nation.

There will always have to be trade-offs and compromises. The West, which is dependent on public land for its economy, must probably forever share these vast areas within our states with a dominating East that will always outnumber and outvote us, telling us what we will or won't do with our lands, and since there are often conflicting demands for the same areas. Public land policy will always be colored by politics, and therefore be inconsistent and ever-changing. Those of us who depend on public land for our livelihood and way of life can only hope to keep the public informed and aware of the importance of this land, and of the good job we are doing as stewards. Perhaps then we can be assured of a workable landlord-tenant relationship in the years to come.

When Mother Cooked with Wood

I do not quarrel with the gas
Our modern range is fine,
The ancient stove was doomed to pass
From Time's grim firing line,
Yet now and then there comes to me
The thought of dinners good
And pies and cake that used to be
When mother cooked with wood.

The ax has vanished from the yard,
The chopping block is gone,
There is no pile of cordwood hard
For boys to work upon;
There is no box that must be filled
Each morning to the hood;
Time in its ruthlessness has willed
The passing of the wood.

And yet those days were fragrant days
And spicy days and rare;
The kitchen knew a cheerful blaze
And friendliness was there.
And every appetite was keen
For breakfasts that were good
When I had scarcely turned thirteen
And mother cooked with wood.

I used to dread my daily chore,
I used to think it tough
When mother at the kitchen door
Said I'd not chopped enough.
And on her baking days I know,
I shirked whenever I could
In that now happy long ago
When mother cooked with wood.

I never thought I'd wish to see
That pile of wood again;
Back then it only seemed to me
A source of care and pain.
But now I'd gladly give my all
To stand where once I stood,
If those rare days I could recall
When mother cooked with wood.

From: *Just Folks* (1917)

by

Edgar A. Guest