

Overview

Up until the time when settlement began in earnest west of the Mississippi, it had always been the practice of Congress to sell large tracts of land to speculators who in turn would sell lands to those who wanted a place of their own. This of course, had never gone well with those who were settling the land. So when it was learned that Mexico and Canada were issuing patents in recognition of claims of land and mineral rights, so that lands would be claimed under the name of either Mexico or Canada, it wasn't long until representatives in Congress began receiving letters from their constituents urging the passage of legislation recognizing the right of preemption - suggesting, that, should the citizens of the United States not be allowed the right to lay claim to lands, water rights and mineral deposits on the open lands in the West, then, perhaps many settlers would have little choice, but to file claims with the Mexican or Canadian government. Not long after, Congress did begin passing laws recognizing peoples right to take up homesteads and lay claim to mineral rights.

However, it was not until William Stewart, the first Senator from the newly formed State of Nevada, introduced a bill in Congress on July of 1866, that mineral claims, claims to the use of waters which arose on public lands, claims of ditch rights-of-ways, and road rights-of-ways were fully recognized.

The 1866 Act, did not however, establish procedure whereby settlers and miners could file their claims with the federal government. Instead, language within the 1866 Act required that rights of settlers be recognized "by local law and custom and rules of the courts". Which language was soon interpreted to mean, that, it was to be the states, which were to establish mechanisms for the recognition of claim of rights on the open and public lands found throughout the western United States. And so it is to this day, that State law dictates the manner by which claims for water rights, road rights-of-way, ditch rights-of-way and mineral claims are to be recognized and established.

The founders of this nation did not want the people to have to go to the government to be permitted or licenced before they could do, or accomplish things. They wanted the people to have "rights" so that they might be secure in their investments and their ability go forward and get things done. They didn't want the people to be beholden to the government for every little thing. That's why our fathers and our grandfathers left their homelands. That's what freedom was all about. They knew from experience, that once a government, or a king gains control of peoples lives or their businesses, via permitting processes, or by regulation, or both, and there is no longer recognition of property interest, then soon comes economic stagnation, favoritism, corruption, payoffs and tyranny.

That's why, during the early history of this nation, and during western settlement, that such rights as the right of persons to use certain waters, or to clean their ditches, or to use certain roads were granted and recognized. When the settlers arrived in the unsettled West, there were no coal mines, saw mills, or lumber yards. There was only the material at hand, and so the settlers took up their shovels and their axes and they went upon the mountains and they cut logs and poles for making their homes, their corrals and their outbuilding, and they used the clay from the valley floors for their roofing.

And soon the pioneers were turning their livestock upon the rangelands, and economically viable units were born. To farm in the harsh environments found in the West was not always feasible, but the environment did lend itself to raising cattle and sheep. And soon there were mines and mining operations, and towns, and a railroad that crossed through the county. And so more roads were developed and cattle and sheep were driven from one range to another, or from certain ranges to various towns and to shipping points. And for anyone to say today, that the right to graze upon the public lands, and for the use of waters that arise thereon, and to prospect and mine, and the right to the use of road and ditch rights-of-way thereon, and the right to the use of wood, stone, gravel and clay found upon the public lands by the predecessors of the bonafide settlers and residents, has not been good for the environment and the whole of nation is to ignore the past and avoid the truth.