

## THE FED'S WANTED CONTROL

Beginning in the late 1920's, prior to the passage of the Taylor Grazing Act, great debate arose over alleged overgrazing of the Public Lands. Interestingly, for the most part it was not the public that was pushing the debate but rather those in government. It seemed that both the Department of Interior and the Department of Agriculture were vying for control, and to accomplish their goal both were wasting no words in describing the rape and destruction they said was occurring upon the Nations Public lands.

In testimony before committee, Senator Pittman stated that "in Nevada under state laws controlling water, stockmen [had] districted the state so as to prevent overgrazing by one man overrunning another man's range." He said:

"And it has been working out quite satisfactorily. Quite naturally, after years of working out this same process to protect the ranges our stockmen are very uneasy about disturbing a condition they have so successfully met after years and years of effort and quite considerable litigation."

But such testimony did not sway the federal agents. They were determined that the Western Public Lands were to come under their management; sighting at every opportunity the great need for federal management to stop "overgrazing" and "excessive soil erosion". The primary proponents were; Fred W. Johnson, Commissioner of the General Land Office in Department of Interior: Herman Stabler, of the Geological Survey: E.A. Sherman, Associate Forester, Department of Agriculture: E.C. Rockford, Assistant Forester: R.G. Poole, Assistant Solicitor of Department of Interior, and Harold Ickes, Secretary of the Interior.

Congressman Ayers of Montana objected to such allegations. Before the House committee on Public Lands. He testified:

"Mr. Chairman, the sheep barons and cattle kings and the greedy destroyers of the Public Domain exist only in the imagination of this bureaucratic setup, and the people who have made more money off the livestock industry than the livestock man himself... This bill gives the Secretary practically dictatorship over our livestock industry of the west and can be compared to the dictatorship of Russia. It gives him power that rightfully belongs to the States... "This bill is federalism in the extreme... The only persons who would benefit from this legislation is a bunch of bureaucrats here in Washington who have taken it upon themselves the task of seeing how much more power they can get".

Congressman Scragham from Nevada testified:

"Yes, I have seen every one of those 110,000 square miles of the public domain in my State. I have been over a great deal of it on foot or on horseback. I have seen it from an automobile and an airplane. I have seen personally every square mile and I know what I am talking about. What has been presented here as facts are merely the options of those in the various bureaus in Washington who seek to create another gigantic bureau at an expense of some two millions of dollars that will be saddled on the taxpayer".

And Congressman Carter from Wyoming testified:

"Mr. Chairman, and Gentlemen of the Committee, I appear here in opposition to H.R. 6462, [The Taylor Grazing Act]... It is clothed in highly perfumed and sugar-coated words to deceive the true intent and purpose of the bill. The title should read: 'A bill to take away from the livestock industry of the west the free use of 173,000,000 acres of public domain, abolish the 640-acre homestead and the Desert Entry laws, and retard the political and economic growth of the west'... On December 23 last, Secretary Ickes, [of the Department of Interior] by way of interview, had an article in the Saturday Evening Post entitled "The National Domain", in which he stated that he would be for this bill provided certain changes were made. Then on January 5, less than two weeks later, the gentleman from Colorado, [Mr. Taylor], introduced the bill under consideration, which reads as if an antenna was attached to the mouth of Secretary Ickes". "If it were not against the rules of the House, we could call this the "Ickes Bill."

In response Secretary Ickes stated:

"Gentlemen of the Committee. All that the Department of Interior wants to do is to maintain and upbuild the range for the benefit of the local interests. Now in doing that, we have no intention to run amuck in any state or in any area and drive stockmen off the ranges or deprive them of rights to which they are entitled either under state laws or by customary usage".

This statement by Secretary Ickes is very important, for it clearly demonstrates that Mr. Ickes and others of that time well understood the doctrine of Preemptive Rights established by local law and custom and rules of the courts. It is also a clear indication that by passing the Taylor Grazing Act, it was not the intent of Congress to extinguish such rights.

Such intent was also illustrated by in a official memorandum to Daniel Beard, Deputy Assistant Secretary Land and Water resources, from Deputy Solicitor Frederick N. Ferguson, dated January 19, 1979. Solicitor Ferguson wrote:

There is no indication in the [Taylor Grazing] Act itself, in subsequent case law, or in the legislative history that the Act in any way was meant to diminish or impair established valid rights. In fact, the opposite appears to be true. Congress in enacting the legislation took care to protect valid interest. The Act say: "Nothing in this Chapter 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..." Sec. 315

Solicitor Ferguson went on to say:

During hearings of the House Committee on Public Land and Range Management and of the Senate Committee on Public Land and Survey, most of the opposition to the bill stemmed from fear that enacting the legislation would somehow impair already established rights. Both then Secretary of Interior Ickes, and Representative Taylor from Colorado, the prime sponsor of the bill, repeatedly assured the Committee's members that no rights were being impaired and that it was not the intention of the legislation that any existing rights be impaired. Ikes said, "We have no disposition to abridge or interfere in any respect with existing law, rights, or customs." At page 14: Senate Committee on Public Land and Survey, 73rd Cong., 2d Sess. (1934).

Taylor said, "The bill tries to and I am sure it does protect all vested water rights, and in fact vested rights of all kinds; ...there was no intention to destroy anybody's rights. If the language in the bill does not protect them we will be glad to have it done." At page 31 and 33, Senate Committee on Public Land and Survey, 73rd Cong., 2d Sess. (1934).

The Taylor Grazing Act, by its language, provides the Department of Interior a framework of control and management of the public lands. It was not intended to nor does the language in any way, abrogate existing rights.