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DISCUSSION: RANGE RESOURCES

**Advantages and disadvantages of the retention of the
permittee system of public land disposal versus the bid system.**

Multiple use versus dominant use.

Need for environmental protection of grazing lands.

MR. REAVLEY: (*oral statement supplementing his paper*) The people I work with are rather disappointed with the grazing section recommendations of the Public Land Law Review Commission. I want to describe to you some of the reasons why we feel this way. This is a fine report when it comes to the concern of the permittee, but I would state to you that the permittee on federal lands, and in this day and age, in no way reflects the total livestock industry. The opening page of the report says that all of the forage on public lands constitute about 3 per cent of all the forage used by domestic livestock in the country. Many eastern livestock operators, some of these are very, very successful businessmen, tell me that they are increasingly apprehensive about the inability of the people on the Western ranges to make their real contribution in the livestock industry. They say that because of the terrain used, and all these sorts of things, they are raising an animal that is not of the size that can really produce the profit that is necessary to be in a good competitive position with other places around the world. For example, in South America domestic livestock can be raised at a cheaper rate than they can be here, and the livestock operators say they are very apprehensive about this particular thing.

Making grazing a dominant use of Western ranges, of the forestry lands, or of Bureau of Land Management lands, is a difficult thing to impose, particularly in view of changing values of public lands in the West today. I am reminded of

the study done in Colorado that showed that these livestock producers were receiving more income by charging access fees to hunters than they were getting from the amount of profit received from raising the animals on the permits they had. That is a problem that still occurs over many of the states. A study indicated that on over a million acres of public lands people were denied access by this locking up by private users.

I would like to draw a parallel between the grazing industry in the West and the commercial fish industry. It is now a well known fact that we have more commercial fishermen than we have resources. We have not yet figured out a way to restrict the number of those people who wish to engage in that particular industry. We do restrict by imposing limits on the length of time the owners can fish. On the Columbia River now, in some instances, the commercial season is open maybe one day a week. By this expediency, large numbers of people are discouraged from entering this industry or are forced to leave it. I submit to you that to a degree the same thing is occurring to quite a large number of permittees. It is not difficult to search the records and find out what has happened to the sheep industry. The income has been falling off to the extent that they can no longer stay in business; many, many of the small permittees are finding it increasingly necessary to seek other means of income. They are just not making it. In many instances the permit system perpetuates a system where a meager source of supply is used by too many people.

I think that if we look at the history of the permittee system as it exists, the recommendations would perpetuate it to a degree with only a few modifications. The fact that the total percentage of grazing lands is still deteriorating is well known. The smallest figure in the total is for lands that are improving. I do not care how many laws you have on the books, the telling in the final analysis is on the condition of the land itself. To me, the greatest tenure that anyone can have in this sort of thing is available forage. Providing tenure by law is meaningless if there is no forage on which to graze animals. We have always said that there will always be a place for

grazing on public lands, but we believe that the greatest amount of available forage will occur under some other kind of system and not the presently well-known permittee system.

We believe that the government should assume a larger responsibility in rehabilitating deteriorated ranges. I would cite the Vail project as an example of rehabilitation. At first, many of the people in the Vail area were uncooperative which, at least in part, contributed to the deterioration of those lands. Finally, they were able, through political muscle, to obtain a large sum of money for rehabilitation, and the recovery has been wonderful. Yet to a degree, what we are saying is that the reward these people got for being uncooperative was a large sum of money so that those lands could be improved. This seems to be a sort of backward way in my opinion to reward people for not cooperating with the government, for not operating to the total public good. It is interesting to note that, due to climatic conditions and one thing or the other, the Vail project has been very successful. Due to some real effort, group management, and proper funding a great deal of forage increases can actually be achieved on public lands. We firmly believe in this. We have always believed in this.

We have long thought that increased appropriations should have been made. The history of the permittee system will clearly show that many permittees have been very successful in keeping down the number of professional people because they naturally did not want interference by government officials. They kept down the amount of funds available to do range improvement work because they felt that they should be doing it themselves. It is for these and other reasons that to me, this type of permittee system has not been too successful.

I wanted to make the point about grazing compatibility that I think is important from the standpoint of studies in Utah, and in Colorado. These studies have shown that in achieving the proper balance of browsing plans for livestock and forage plans for deer and elk, it is possible, through the right kind of ratio, to keep the land in a proper balance so that both classes of livestock and wildlife can achieve the maximum benefits. Now this has really only been done on an experi-

mental basis because thus far the federal government has not refined its management practices to the extent that clear evidentiary conclusions can be drawn. But here is another area where great improvements could be made.

Almost all the research that has been done on range lands in the United States has been on the basis of the individual commodity. It has been either a wildlife study on the range or a livestock study on the range. It has not been a coordinated ecological system type. It is interesting to note that very recently the United States Forest Service Range and Experiment Station in Berkeley, California has been changing these previous research system types to an interdisciplinary type of research. They have been putting wildlife and range together in order to return to the basis of recognizing the trinity of soil, water, and vegetation and the interrelationship of all the various kinds of uses that can be put to these kinds of things.

We contend that the range is a very delicate ecological system and if it is properly managed, it has to be done on the basis of the community viewing the total ecological system rather than on the basis of whacking it up for dominant uses to satisfy needs of individuals through an economic base.

Perhaps some other system besides the permittee system can solve these problems. This has been in perpetual debate since the Taylor Grazing Act. We do know that the Indian Service has had considerable amount of luck with the bid system for forage use. I can cite the Utah Game and Fish Department which has put out forage for livestock on the bid basis. The first year the cattlemen got together and decided they did not want to be a part of the bid system, but by the second year they started bidding. Now this bid system has been firmly established in Utah, and it is working out very well.

I submit to you that it's time we get a new approach to this thing. I submit that through proper research and management, we can have even more forage available to the livestock industry. I emphasize "to the livestock industry" because I know that every other large basic resource group achieves

profit from public lands by using the bid system. However, the livestock end of it is a deviation from the bid system but we see no reason why consistency cannot prevail, and incidentally, several of the "brasses" of the federal government have been saying this now for some time.

The *Report's* recommendations basically are no different from the ones we have been hearing down through the years. I think that these recommendations do serve as an excellent focal point for more debate on this; and I do feel that before this section does become law much more debate will be heard.

MR. HEYMAN: I do not understand why the bid system would heighten the possibilities of environmental protection.

MR. REAVLEY: If you have forage available, you put down a bid. If you did not have forage available or it was at a low level, you would not have to be worried about the permittees. They still have the statutory right to use those, as an example.

MR. MUYS: (Addressed Reavley) I have the same problems with the presentation today that I have had with the old arguments. In fact, I would like to get some specific idea of what the wildlife people object to in the *Report*. I know Mr. Kimball came out the day after the *Report* was out and made the comment that this was an incomprehensible report. But all the things you were talking about, as I think over this *Report*, are pretty well taken care of; if you had not prefaced your remarks by saying you have a lot of problems with this chapter, it sounds to me as if you are endorsing most of the things you find in the Commission's *Report* in the Fish and Wildlife Chapter. But I think it would be useful if at some point the wildlife groups would say where it is they see the place for grazing on public lands. It seems to me, everything I hear from the wildlife people wouldn't leave much place for grazing.

MR. REAVLEY: I think we all agree that these resources should be used. However, it is the method that we disagree upon. I suppose one reason why we are gun-shy on this thing is that in looking at it in the past, we feel that it has been

a failure. Looking at it from the standpoint of an ecologist, I feel we should not stand still for the continual deterioration of the ranges under the permit system.

MR. BARRY: There is another aspect besides environment and ecology on the one side and users on the other. This is public property. It belongs to the United States. In 1934, Congress sat down and decided that these people, the users, would be permitted to use these lands under certain regulations, but they should never acquire any right to these lands. That was the Taylor Grazing Act. I am not satisfied with the way it is working any more than you are, but I would like to know where this nonsense about the equity comes in when everyone, who got a permit, understood that it could be terminated at any time. You did not have to put your range improvements in; indeed, you would not have to put them in anyway unless it was to your own business advantage. You did not have to go into business as a cattleman. You could go into some other business and use private land. Where do you get an equity? Take this for example, when I start out I will let you use my boat until I need it. When I want it back, I do not care whether you have an equity in it or not. You do not have an equity in law. Congress was very careful not to give anybody an equity, and I do not think they deserve and preferential right to purchase any of these lands for any purpose whatsoever.

MR. TRELEASE: I would like to say one thing here in partial answer to Frank Barry's rowboat analogy. I think there is a difference between owning a rowboat and establishing a continuing business that operates over time, which requires investment, and which is a going concern. It is possible that there can be a reconciliation between a grazing use and the preservation of the ecology and the quality of the land. The real question that arises is: If you are operating, or trying to create, a system of law under which a ranching, grazing business is to be conducted, what kind of rules would be desirable to this type of business? They are those rules which can enable a person in the business to receive enough protection for his expectations so that he does have a viable business.

I think it is a question of reconciliation of interests between the best type of range management possible and ecological management for public use. The question is not going to be answered very simply by the question of title: I loan my row-boat until I want it back.

MR. BARRY: The reason the government kept the public lands was that we did not have much base left. Whenever we turned public land over to private ownership, the profit motive doesn't treat the land very well. The ultimate motive is to save the land. We have had the Dust Bowl and other consequences of overgrazing. I believe that it was Senator Anderson who said that anybody who remembers, unless of course they are users, what it was like before the Taylor Grazing Act was passed would not object to the restrictions that were placed on the grazers.

MR. TRELEASE: What I am suggesting is that perhaps these objectives could be accomplished short of simple cancellation.

MR. BARRY: I don't suggest simple cancellation. I just do not believe in the system of giving preferences to people who have private rights on government lands.

MR. HANSEN: It would seem to me that we seem to be moving away from the doctrine of multiple use to the era of dominant use. This is a new doctrine, which we are supposed to be operating under. How do you reconcile these two doctrines?

MR. REAVLEY: To me, the dominant use, as described in the Public Land Law Review Commission *Report*, is not spelled out. If a particular section of ground has one over-all riding use, all other uses should be more or less compatible with that. According to Milton Pearl, this illustrates the dominant use concept. What this eventually means is that decisions will have to be made giving priorities to one use or another in a certain section. To me this is still multiple use. There are a great many unanswered questions: who is going to make these decisions about these areas; what size are these areas going to be; how long are we going to be ingrained with

a thing that perhaps we cannot live with in the future? If we can now determine which use is dominant, maybe some time in the future other demands will come along and we will have to sweep that demand away with something else. We could debate all day on these definitions and these various concepts of dominant and multiple use. I am now satisfied after talking about this particular thing that I understand what the Commission means by dominant use, but I did not understand it just by reading the *Report*.

MR. GUYTON: The dominant use concept has been used by the park service and others, not by that name but in the vein, for a number of years. As a perfect illustration of this there was a study conducted on the grazing aspects of a particular area in Utah. That study showed that, given the necessary security of interest to make good range improvement, the grazing industry in this particular section of Utah not only increased forage capacity but also increased the wildlife in that area. If this can result, I cannot help but see how all users, the people who are deriving the so-called economic benefits, and non-users, the public, will be benefited.

I think the disposition of the lands under the *Report's* criteria will benefit both the permittee, who would be left to manage his lands in a free enterprise system, and also the government, as they would receive revenues and not have the cost of administration. On this point someone has pointed out, and I think properly so, in the past if these few lands that were solely valuable for grazing, and this is bound to be such if disposition were so and permittees who held base property were given the preference to buy these lands, that this would permit the federal government to get funds necessary to purchase other lands for other public uses, like recreation. In the event that in the future these lands, disposed of earlier, were found to be again valuable for public uses and the government should take them, then the government could use its powers of eminent domain to acquire the property. Someone has speculated that, even though the lands may have increased in value since the government first disposed of them, perhaps the interest on the money that the government has made when they sold the

lands would more than adequately compensate for the increase in price.

MR. CARVER: The grazing of livestock on public lands is technologically simple. More than mining, timber harvesting, or reclamation of arid lands for agriculture, livestock grazing seems to present no *new* problems.

This may be the reason the Commission's *Report* is unsatisfactorily simplistic in its treatment of the subject. The Commission's *Report* does not even reflect the basic matrix contributed by its contractor, who emphasized that policy-makers must begin with an understanding of the main subgroupings of land, of soil, of climate and of vegetation types, the differences in characteristics of sheep and cattle grazing, the variations in seasons of use, and range conditions classes.

The failure of the chapter on Range Resources to communicate the importance of understanding the inherent complexity contributes to ambivalence of the reaction to it. Preservationists complain of the emphasis on economic efficiency, while those in the range livestock industry remain inarticulately nervous about the utility of the Commission's individual recommendations.

In general terms, thirty-five years of experience under the Taylor Grazing Act has institutionalized land-use patterns which are unequally susceptible to rationalization by the specific policy reforms suggested by the Commission. The Commission recognizes the interrelationship of private base property and associated grazing on public lands. The key to this relationship is the availability of water, and the variations from region to region.

Where, as in some areas, the fee land controls the water, a form of monopoly with respect to use of the associated waterless public lands is an economic reality. A policy for pricing the use of such lands, or a policy giving preference to the base-property owner to buy them, would have a sharply different impact in New Mexico than the same policies in Montana, where private lands do not similarly control the water.

A somewhat different question of social policy involving monopoly is represented by the recommendation (not dignified by a number, or by italicization) for a policy to allow grazing privileges to be fully transferable upon request of the permittee, in the interest of "more efficient use" of the privileges.

I have criticized the chapter as being overly simplistic, at least so far as recognizing the variations in characteristics of public land grazing from region to region. Additional comment can be made on certain specific statements:

a. Recommendation 39 seems to engraft a new idea to the basic rationale of the Taylor Act. The suggestion is to use existing eligibility requirements for allocation up to recent levels of forage use but to auction the forage yielded by increased productivity of the land. The reference in the *Report* to a common administrative failure to adhere to the statutory standard of commensurability is surprisingly neutral. It is obvious, to me at least, that a new policy, which started from a base of "recent levels of forage use," would be virtually impossible to administer equitably.

b. The recommendation that rangeland be allocated "on an area basis" is completely unhelpful.

c. No section of the *Report* departs farther from reality than the discussion of "investment in range improvement." This section of the *Report* would be read differently by every district range or forest supervisor. Investments in range improvement have to be aimed more broadly at the resource. The Vail Project, one of the examples, discussed in hearings and studies, could not possibly have been created with the emphasis on divisions of benefits and fee adjustments, which this section discusses. Furthermore, earmarked funds have a pragmatic usefulness not likely to be replaced by adherence to higher principles calling for appropriated funds.

Other parts of Chapter 6 seem to me to reflect a failure to think the subject through. In assuring stability of the industry within tolerable public interest limits, provision for extending the principles of section 315q (compensation for

national defense taking) is constructive. Fixing a statutory term of ten years, of any other number of years, is not. To the contrary, the statutory term if instituted as a reform in the manner suggested, would promote instability.

The discussion of pricing is weakened somewhat by the way it treats the matter of variation from its announced standard of fair market value. The market adjusts for innumerable variables, including "conditions in the permit area". Furthermore, it is misleading to suggest that the present fee approach is fallacious because the same fee is charged without consideration of variances in operating and economic situations or differences in the quality of public range land and forage yield. The "animal-unit month" of course carried a constant fee, but in one area that may be the use of a hundred acres or more for each animal, in others, several animals on one acre. The present structure applies the term even when there is little or no forage; that is where there is a value to the operator in simply having a place for the animals to be for some temporary period. In a particular sense, trying to reach a common or standard money value for the nutritive value of forage and then applying quality adjustments up or down would present as many or more administrative problems as the present system. Flexibility exists in the present system.

The discussion of pricing is also weakened by introducing the equitable problem of accommodating the depressant effect upon "permit-value" of raising grazing fees. In an economic sense, the effect ought to be seen as applying to the value of the private segment of the investment in a ranching unit. It is true that "over-all value will become unimportant once an equitable adjustment has been made for current holders." How that is to be accomplished is the still unanswered question.

The critical nature of these comments invites the question of how I would have done things differently. In a general way, I think the contractor's study and the testimony submitted to the Commission deserved a better summary. The commercial users of the range resources have had an interest in the improvement of the condition of the range resource,

particularly in recent years, and considering the acreages which they use, they have been good citizens and good tenants of the land; in many cases their efforts have been positively helpful to the public or non-commercial values associated with land use. There have been cankerous exceptions, but all blame shouldn't attach to users generally. Some reasons for the worsening of some situations have been the promulgation of harsh and unreasoning rules, the frustration of reasonable expectations, and excessively bureaucratic approaches to intra-government problems at the expense of the private users.

Tenure is a shorthand symbol, and psychologically, at least, it must mean something more than a fixed time period for permits, a fixed term, or even a better definition of the right to compensation in specified circumstances. "Tenure" ought to be treated as consistent with an administrative system which promotes and rewards improvements upon the land or enhancement of the resource.

The Study's recognition of the consequences of the absence of important components of such a system is a good start. Both the user and the "preservationist", however, ought to be able to agree upon recommendations which show less preoccupation with symbols, formulas, and uniformity, and concentrate instead upon what I consider to be the undeniable fact that intelligent use of the range resource for livestock grazing is not only compatible with good conservation but also, given the realities of the system, is positively essential to good conservation.