

SUMMARY

EVIDENCE THAT THE FOREST SERVICE AND BLM PEOPLE INTEND TO GAIN CONTROL OF PERMITTEES WATER RIGHTS

In November of 1984 there was a report completed by the Surveys and Investigations Staff, titled *A REPORT TO THE COMMITTEE ON APPROPRIATIONS U.S. HOUSE OF REPRESENTATIVES on the WATER POLICY OF THE BUREAU OF LAND MANAGEMENT RELATING TO THE GRAZING MANAGEMENT PROGRAM*

In the opening statement of the report it is stated:

"To utilize the public rangelands as specified by Congress, it is essential that the Bureau of Land Management (BLM) have the use and control of the water on its lands. In recent years, however, BLM has encouraged private individuals to file for water rights on stockwater developments on public lands. Private ownership of these rights has negative implications for multiple use of public lands because it allows a single-use interest, i.e., livestock grazing, to control the use of the water."

In that same year the USDA Forest Service Watershed and Air Management Staff, also came out with a similar document titled, *Development of Forest Service Water Rights Policy Relating to Grazing - An Overview*.

On page 11, under SUMMARY for the section titled *Management Implications*, it is stated:

"The Forest Service believes it is essential for water rights to remain with the land, rather than with individual permittees. This provides the flexibility necessary for management of the National Forests and grasslands in the public interest, regardless of who the permittee may be. It is for this reason that all water rights applications by other parties are protested where the water use might curtail or result in less efficient Forest Service management."

On March 21, 1995, the Elko County Grazing Task Force sent a FOIA request, to R.M. "Jim" Nelson, Supervisor of the Toiyabe National Forest asking for, among other things, a list of all water filings, including claims of vested rights submitted to the state Water Engineer for the Toiyabe National Forest.

In response, Mr. Nelson supplied a list of 640 Forest Service filings for water rights, of which there were 390 filings for stockwater, most of which were claims of vested rights. (See Documents 36 & 37)

Employees of the Bureau of Land Management are also taking action to gain control of stockwater. In 1990 the State Director of the BLM for Nevada established policy requiring that permittees sign over half their water rights before the BLM will approve applications for water developments.

These policies raise serious questions. In *United States v. New Mexico* (438 U.S. 696 1978) the U.S. Supreme Court confirmed the New Mexico District Court decision that "...any water rights arising from cattle grazing by permittees on the forest should be adjudicated to the permittee under the law of prior appropriation and not to the United States."

The Court said, "The United States contends that, since Congress clearly foresaw stockwatering on national forest, reserved rights must be recognized for this purpose. The New Mexico Courts disagreed and held that any stockwatering rights must be allocated under state Law to individual stockwaterers. We agree."

On June 6, 1995, Cliff and Bertha Gardner sent FOIA requests to both the Forest Service and the BLM, asking for all documents disclosing written delegation of authority orders authorizing federal officers, agents or employees to file for stockwater rights under state law. The agencies in their letters of response supplied no documents even referencing "stockwater".

There is no question what the agency people have in mind, once grazing permits are canceled or abandoned, water rights will automatically go to the next party of application, which will be the Forest Service or Bureau of Land Management - which policy appears to be in direct conflict to the position of the United States Supreme Court.

And what of the clear mandate of Congress as outlined in the Taylor Grazing Act "to stabilize the livestock industry dependent upon the public range"?

When permittees are being forced to abandon their permits, is such action helping to stabilize the livestock industry?

And what of the mandate set forth in the Multiple Use and Sustained Yield Act - of "achieving and maintaining in perpetuity a high-level annual or regular output of renewable resources"?

Are the agency people maintaining a high-level of output by putting people out of business?