**Policy Position Paper of the Range Allotment Owners Association:**
**The Relationship of Range Units and Grazing Allotments to Federal "Permits" issued by the Bureau of Land Management and the Forest Service.**

Range Allotment Owners Association
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From the earliest days Congress recognized the "possessory right" of Indians and set aside reservations for their permanent lands (Indian Act of 1796 (1 Stat 472). Congress also recognized the possessory rights of non-Indian settlers who had established towns and farms in the Territory before it became part of the United States (Grant to French Settlers March 3, 1795, 1 Stat 442). In the initial settlement of the United States territory following the Revolutionary War no one could acquire a right of property enforceable against the United States until the land was "surveyed" and officially "opened" to settlement (Preemption Act of 1830 & footnotes, 4 Stat 420). However, this all changed with the acquisition of the vast Western territories. Settlement and the acquisition of property rights, proceeded the coming of the surveyor and the government land agent by decades. Well established possessory land titles existed long before any land office existed to record the settlers' claims. When Congress finally acted to settle land titles they invariably gave a "preference" right to the original pioneer settler or his heirs or assigns, and no federal employee could deprive them of those property rights by their misinterpretation of the law. See Rector v Gibbon, 111 US 276 (1884) and cases cited therein.

Congress formally recognized stockraising settlers possessory rights to improvements, stockwater, irrigation water-rights and granted related easements on federal land in the West beginning with the Acts of July 26, 1866 (14 Stat 253), July 9, 1870 (16 Stat 218) and the Desert Land Act 1877 (19 Stat 377). See, California v United States, 438 US 645 (1978), and United States v New Mexico, 438 US 696 (1978). In the 1800s the Supreme Court also held that Western stockraisers did not have to have a constructed impoundment or diversion in order to perfect a stockwatering right (Salina Stock Co. v Salina Creek Irr. Co., 163 US 109 (1896). Also Steptoe Live Stock Co. v Gulley, 295 P. 772 (1931).

Congress authorized "stock grazing" on all land open to settlement under the homestead, preemption, and mining laws by the Act of March 3, 1875 (18 Stat 481), and opened all land in the West (both surveyed and unsurveyed) to settlement by the Act of May 14, 1880 (21 Stat 141). California, southern Arizona, New Mexico and southern Colorado all had numerous Indian and Mexican settlements and territorial property laws that recognized stockwater rights and "stock-range" rights prior to the United States acquisition of those territories. The Western States and Territories all adopted the prior Mexican "possessory range-rights" as property rights recognized by the United States and State Supreme Courts. (Atherton v Fowler, 96 US 513 (1877), Griffith v Godey, 113 US 89 (1885), Brooks v Warren, 13 P. 175 (1886), Webber v Clarke, 15 P. 431 (1887), Buford v Houtz, 131 US 320 (1890), Wilson v Everett, 139 US 616 (1891), Lonergan v Buford, 148 US 581 (1893), Swan Land and Cattle Co. v Frank, 148 US 603 (1893), Grayson v Lynch, 163 US 468 (1896), Cameron v United States, 148 US 301 (1893), Ward v Sherman, 192 US 168 (1904), Bacon v Walker, 204 US 311(1907), Bown v Walling, 204 US 320 (1907), Curtin v Benson, 222 US 78 (1911), and Omaechevarria v Idaho, 246 US 343 (1918). In harmony with the State and Territorial range laws, Congress began "granting" "grazing privileges" on abandoned military reservations in 1884 (23 Stat 103).

(Note, a “privilege” is an “exclusive right”). By the Act of February 25, 1885 (23 Stat 321) Congress authorized stockraising settlers to fence in their ranges since they claimed a “color of title” or “asserted right” to the land (Cameron v. United States, supra). The Supreme Court recognized the right of a “bona fide settler” or “occupant” in the “possession” of land that he had enclosed for “stockraising” and improved, as a “right” to the land that would prevent even the bureaucrats of the Interior Department from taking that land to give it to someone else. The Interior employees were actually obligated to protect the rights of these bona fide settlers (Atherton v Fowler, supra).

In 1887 Congress passed the General Allotment Act (24 Stat 388) and granted to each member of federally recognized Indian Tribes an individual Homestead and an “additional entry” called a “grazing allotment”. The General Allotment Act also contained a provision allowing for “equalization”, that is, granting additional grazing land that together with the homestead would provide an amount of land sufficient to support the allotee's livestock during the period of the year when not on the homestead. In 1891 Congress passed the Forest Reserve Act (26 Stat 1890), which was essentially a “homestead law” (United States v New Mexico, supra). Serious conflict between the prior actual settlers within the Forest Reservations and federal bureaucrats resulted in passage of the Forest Service Organic Act (FSOA), of 1897 (30 Stat 32). The purpose of the FSOA was to better protect the rights of the settlers and define the regulatory role of the Forest Service; “Nothing herein shall be construed as prohibiting the egress or ingress of actual settlers residing within the boundaries of such reservations or from crossing the same to and from their property or homes; and such wagon roads and other improvements may be constructed thereon as may be necessary to utilize their homes and to utilize their property under such rules and regulations as may be prescribed by the Secretary of Interior.” In 1898 the General Allotment Act was amended by the Curtis Act (30 Stat 495) to create a “split estate”, where the allotment owner received the surface, but the mineral estate and timber rights were retained in tribal ownership.

Stockraiser's possessory property rights, improvements, and water rights gave them the “preference” right to receive the government's title to their ranges. However, Congress was hesitant to make large grants of land to ranchers that had little interest in developing minerals or cutting timber, (Watt v Western Nuclear, 462 US 36, (1983). Additionally, there were several requirements of the Homestead laws that would prevent ranchers from “proving-up” on the land encompassing their ranges. The Homestead laws, required uninterrupted residence for five years and cultivation as well as improvement. When the Forest Service started granting Homesteads and Mining Claims to new comers in the 1900 time period, a flood of strident complaints from the existing stockraising settlers hit Congress like never before. This resulted in Congress voting to have a full blown Congressional Investigation of the Department of Interior, Department of Agriculture and the Forest Service (Act of January 19, 1910 (36 Stat 871). In a speech to Congress the previous year President Teddy Roosevelt recommended that in order to satisfy the legitimate property rights of the various competing interests, Congress should fully adopt a split-estate land disposal policy. In this way the United States would retain the Commercial timber and the minerals for separate disposal while granting the fee surface title to the stockraiser in large enough amounts sufficient for the support of a family for agricultural and ranching purposes (Watt v Western Nuclear, 462 US 36 (1983), and Kinney Coastal Oil Co. v Kieffer, 277 US 488 (1928).

During this time period Congress abandoned the arbitrary acreage amounts in the previous

Homestead laws (i.e. 160, 320, 640 acres etc.) and instead adopted the “Unit Policy”. The family "farm unit" was “an amount of land sufficient for the support of a family” and was first inscribed into the land laws in the Reclamation Act of 1902 (32 Stat 388). The terms “unit” or “sufficient for the support of a family” language was repeated in the National Forest Homestead Act of 1906, Agricultural Entry of Mineral Land Act of 1914, The StockRaising Homestead Act of 1916, the Taylor Grazing Act of 1934 and over a dozen other Acts of Congress up into the 1950's. This became known as the “Unit Policy”. Once an amount of land “sufficient for the support of a family” and encompassing his improvements was surveyed and the plat map was returned to the settler, then his right was vested. Once a settler had been in possession of his improved land for 5 years, his title was fully vested whether a patent had issued or not and the “entryman” could sell, transfer or devise his title (36 Stat 592). See Irwin v Wright, 258 US 219 (1922).

Under the Investigative Act of 1910, Congress spent 6 months investigating the corruption and abuses of the Forest Service. This later resulted in the firing of “Chief Forester” Gifford Pinchot. The conclusion of Congress was to create a split-estate where the United States would retain the minerals and Commercial Timber for separate disposal while granting the surface fee title to the stockraisers already in possession of the ranges (Watt v Western Nuclear, supra), The principle remedial statute passed by Congress to effectuate this change in policy was the Pickett Act of 1910/1912 (36 Stat 847, 37 Stat 497). Congress also passed the Homestead Entryman Assignment Act of June 23, 1910 (36 Stat 592), Enlarged Desert Land Homestead Acts of 1909 & 1910 (35 Stat 639, 36 Stat 531), National Forest Allotment Act of 1910 (36 Stat 855), Act for the relief of Settlers 1912 (37 Stat 267), and the Agricultural Entry of Mineral Lands Act of 1914 (38 Stat 509). By the Acts of Acts of 1912 and 1913 Congress “directed and required” the Secretary to classify all land within National Forests open to entry and settlement (37 Stat 287, and 37 Stat 842). These Acts cured a number of deficiencies that prevented range allotment owners from perfecting their legal title to their allotments, such as year round occupancy, limit on size of allotments, ownership of the surface but not commercial timber, amount of improvement necessary to “prove-up”, and liability of mineral developers for damage to the stockraiser's surface estate interests. All grazing allotments were adjudicated in National Forests by the end of calendar year 1914. Congress passed a number of other split-estate land disposal laws from 1909 to 1916. The culmination of this change in policy was the StockRaising Homestead Act of 1916 (39 Stat 862 as amended). See Watt v Western Nuclear, supra. An amendment to the SRHA in 1919 required stockraisers to “enter all contiguous land” (even small inclusions of rough and rocky ground) to prevent the United States from being stuck with many numerous small islands of low quality land. Congress referred to the entryman under these split estate statutes as the “surface owner” (38 Stat 509, 39 Stat 862). The SRHA was intended to dispose of all the remaining 500 million acres of land in the west that was “chiefly valuable for grazing and raising forage crops”, (Stock-Raising Homesteads. 1916. House Rep. No. 35 64th Cong., 1st Sess., and Stock Raising Homesteads. 1916. Hearings Before Comm. On Public Lands. U.S. Senate 64th Cong. 1St Sess.) The Department of Interior Issued new regulations after 1919 preventing any mining claimant from initiating a claim after that date for land under the mineral land laws to a “limited surface title” good only until the minerals were exhausted. (Instructions 1919)

This split-estate policy of Congress necessitated a change in the definition of the term “public lands” since clearly the stockraiser owned a fee title to the surface for all agricultural and

ranching purposes, (Watt v Western Nuclear, supra.). The Federal Power Act of 1920 defined the term “Public lands” as “lands and *interests in land*” available for disposal under the general land laws, (Federal Power Act of 1920 (41 Stat 1063). Congress completely revamped the Mining laws with passage of the Mineral Leasing Act of 1920 (41 Stat 437). From that point “public lands” referred to the mineral estate and commercial timber within National Forests. The same process would be repeated for Grazing Districts under the Taylor Grazing Act in 1934 (48 Stat 12 69). This remained the legal definition of the term “public lands” until October 23, 1976 when Congress decided to retain ownership of their mineral and timber interests. Public lands thereafter was “lands and interests in land owned by the United States within the several States and administered by the Secretary of Interior...”. No longer is there any mention of those lands and interests in land being available for disposal (Federal Land Policy Management Act (FLPMA 90 Stat 2746).

FLPMA and the National Forest Management Act (NFMA) repealed many previous laws, grandfathered-in all prior existing rights, and established a new system of coordinated land planning that took into account the fact that the States had sole regulatory and legislative authority over private property rights within Forest Reserves or Grazing Districts. The FSOA plainly states “*The jurisdiction both civil and criminal over persons within such reservations shall not be affected or changed by reason of the existence of such reservations, except so far as the punishment of offenses against the United States is concerned, the intent and meaning of this provision being that the State, wherein any such reservation is situated, shall not by reason of the establishment thereof lose its jurisdiction nor the inhabitants thereof their rights and privileges as citizens or be absolved from their duties as citizens of the State.*” The plain and obvious meaning of this provision being that ranch settlers did not lose their State recognized property rights in their improvements, water and range rights. Also, the United States retained authority to punish for offenses against the government's retained interest in the mineral estate and commercial timber should a rancher engage in unauthorized mining activities (see Watt v Western Nuclear, supra).

**WHERE DID “PERMITS” COME IN?**

The decision of the Ninth Circuit in United States v Hage (2015) was that Hage had to have a *"permit"* to "graze on federal public land", however the Findings of Fact and Conclusions of Law determined by the District Court, holding that Hage owned his Grazing Allotments and Range Unit were not overturned (nor even addressed). Thus, it has become necessary to distinguish the regulatory “permit” authority of the BLM and USFS from the property rights of the allotment owner in order to determine what (if any) damage was done to the “public lands” (i.e. interest in land belonging to the United States). The only logical conclusion is that while the western National Forests and Grazing Districts exist in a split estate (Watt v Western Nuclear, supra), the United States Congress has delegated authority to the agencies to “permit the use” of "public lands" as a means to protect the government's retained mineral estate and timber rights (i.e. “Public lands are lands and *interests* in land...” FLPMA 1976). However, the agencies have very limited authority to set terms and conditions in “permits”. In United States v United Verde Copper Co., 196 US 207 (1905), the Supreme Court said “*the Secretary of the Interior attempts by [interpretation] to give an authoritative and final construction of the statute... If [the Secretary's rule] is valid, the Secretary of the Interior has power to abridge or enlarge the statute at will. If he can define one term, he can another. If he can abridge, he can enlarge. Such power is not regulation: it is legislation. The power of*

*legislation was certainly not intended to be conferred upon the Secretary. Congress has selected the industries to which its license is given, and has entrusted to the Secretary the power to regulate the exercise of the license, not to take it away. There is, undoubtedly, ambiguity in the words expressing that power, but the ambiguity should not be resolved to take from the industries designated by Congress the license given to them, or invest the Secretary of the Interior with the power of legislation. The words of the statute are that the felling and use of timber by the industries designated shall be 'subject to such rules and regulations as the Secretary of the Interior may prescribe for the protection of the timber and of the undergrowth growing upon such lands,* ***and for other purposes'****. The ambiguity arises from the words which we have italicized. They express a purpose different from the protection of the timber and undergrowth, but they cannot, we repeat, be extended to grant a power to take from the industries designated, whether by the general clause or the specific enumeration, the permission given by Congress.*" Thus, the Supreme Court held that the Secretary could not use his "permit" authority to take away an essential right granted by the statute. Here is a breakdown of the federal "permit" statutes and the limitations placed on the Secretaries by Congress.

Regarding the Forest Reservation Act of 1891 (26 Stat 1099) Congress said "*in any criminal prosecution or civil action by the United States for a trespass on such public timber lands or to recover timber or lumber cut thereon it shall be a defense if the defendant shall show that said timber was so cut or removed from the timberlands for use in such State or territory by a resident thereof for agricultural, mining, manufacturing or domestic purposes, and has not been transported out of the same;*" The Forest Service Organic Act (FSOA) of 1897 (30 Stat 35), states that the Secretary of Interior was to "regulate their occupancy and use and to preserve the forests thereon from destruction". A cursory reading of the FSOA reveals that it was only the "timber and stone" or the "forest within the reserves" that Congress intended to protect by a "permit" system (see United States v New Mexico, 438 US 696 (1978); "*The Secretary of Interior* ***may permit****, under rules and regulations to be prescribed by him* ***the use of timber and stone*** *found upon such reservations* ***free of charge*** *by such bona fide settlers, miners, residents, and prospectors for minerals, for firewood, fencing, buildings, mining, prospecting, and other domestic purposes, as needed by such persons for such purposes*;" By use of the term "may" permit use of timber and stone, it is obviously optional not mandatory .

Thus, the Supreme Court held in United States v Grimaud, 220 US 506 (1911), that the Secretary of Interior (Agriculture after 1905) could regulate or even exclude grazing to protect the young growth of *trees* as related to a free-grazer or tramp sheep outfit (Pierre Grimaud), "*To pasture sheep and cattle on the reservation at will and without restraint might interfere seriously with the accomplishment of the purposes for which they were established. But a limited and regulated use for pasturage might not be inconsistent with the object sought to be attained by the statute. The determination of such questions, however, was a matter of administrative detail. What might be harmless in one forest might be harmful to another. What might be injurious at one stage* ***of timber growth****, or at one season of the year, might not be so at another*". See also Light v United States, 220 US 523 (1911).

However, less than 6 months later the same court unanimously held that to require an actual stockraising settler, having valid existing rights, that owned nearby patented land, held various easement rights under the Act of July 26, 1866, and had 23,000 acres of "range" rights, to have to obtain a restrictive "grazing permit" (against his will) prior to using his

property rights within a newly created federal reserve, would be an unconstitutional taking of property in violation of the Fifth Amendment of the Constitution (Curtin v Benson, 222 US 78 (1911)). The FSOA also stated "*it is not the purpose or intent of these provisions, or of the Act providing for such reservations, to authorize the inclusion therein of lands more valuable for the mineral therein, or for agricultural purposes than for forest purposes*" and any lands within a forest reservation "*found better adapted for mining or for agricultural purposes than for forest purposes may be restored to the public domain*". Thus agricultural use (such as stockraising) would have taken precedence over timber production.

Also, the first actual statute that uses mandatory language that requires issuance of a "permit" to a western rancher is the Mineral Leasing Act (MLA) of 1920 (41 Stat 445). In that statute (as well as the Forest Reserve and Forest Organic Acts) the Congress refers to the stockraiser as “surface owner” or “actual settlers” or “assignors” or the "entryman or patentee or assigns" and says he "***shall** be entitled to a preference right to a permit and a lease, as herein provided in case of discovery*". With reference to "discovery" this obviously refers to a discovery of a valuable deposit in the government's retained mineral rights. The MLA was enacted in 1920 following the major policy change of Congress in which they decided to dispose of the Western lands as "split-estates" and adopted the farm or ranch “unit" policy. The MLA gave the "surface owner" (ie stockraiser) the first option to develop oil or gas under a limited number of acres (up to 2,560) comprising his farm or ranch "unit". The 1920 era Forest Service Grazing Permit only contained 3 regulatory provisions: 1. put out branding fires so as not to catch any timber on fire, 2. if any fire breaks out in the timber, the stockraiser will help put it out and the US would compensate him, and 3. if a fire breaks out in the timber caused by the stockraiser, he would help extinguish it but would not be paid compensation.

The language of the statutes and the Congressional record made it clear that the stockraiser received an actual "fee title" to the surface for all agricultural and ranching purposes, (Watt v Western Nuclear, supra). Because the United States retained a right of "reentry" for prospecting, and a limited right of surface occupancy by its mineral entrants (by agreement with the surface owner/stockraiser or submission of a bond to compensate the “surface owner”), the Supreme Court held that the type of surface development that the stockraiser could engage in and still receive damage-compensation for, was limited to agricultural and ranching purposes, (Kinney Coastal Oil v Kieffer, 1928)). The SRHA and subsequent Acts actually lists specific things the surface-owning stockraiser was entitled to compensation for: forage crops, tangible improvements, "the value of the land for grazing", stockwatering rights. BLM and Forest Service people claim that since the SRHA was repealed by FLPMA, that stockraisers owning grazing allotments or ranch units, are no longer eligible for compensation of their surface property rights. However, Congress sees that differently. Title 7 of FLPMA specifically protects prior existing rights: “*All actions by the Secretary concerned under this Act shall be **subject to valid existing rights***.” The other principle land planning statute of Congress if the National Forest Management Act of 1976, (NFMA). NFMA state “*Any revision in present or future permits, contracts and other instruments made pursuant to this section shall be **subject to valid existing rights***”. In 1993 Congress amended the SRHA and added 3 more pages of law to protect the rights of the stockraiser (which Congress calls the “surface owner” (107 Stat 60). Not only is the stockraiser entitled to compensation for water rights, forage and the value of the land for grazing, and all tangible improvements but also payment of a fee equivalent to the loss of income from disruption of the ranch operation during the period of mineral activities, (see 39 Stat 864, 63 Stat 214, 107 Stat 62).

The next statute after the MLA to talk about "permits" was the Taylor Grazing Act of 1934 (48 Stat1269). The TGA was established to prevent “soil deterioration” in reference to the federal retained mineral estate. The Stock Raising Homestead Act was incorporated by reference. Likewise with the Forest Reserve Act of 1891, the entire TGA read as a whole was definitely a land disposal law. The Secretary of interior is directed and required to grant rights of way to adjacent stockgrowers for land “upon which such person has stock grazing rights“. Further the act says the Secretary may issue or cause to be issued permits to graze livestock on such grazing districts to “bona fide settlers, residents and other stock owners”. “Preference **shall** be given in the issuance of grazing permits to those who are within or near the district who are landowners engaged in the livestock business, **bona fide occupants or settlers,** or **owners of water or water rights**, as may be necessary to support the proper use of the land, water or water rights owned, occupied, or leased, by them, except that until July 1, 1935, no preference shall be given in the issuance of such permits to any such owner**, occupant or settler**, whose **rights** were acquired between January 1, 1934, and December 31, 1934, both dates inclusive, except no permittee complying with the rules and regulations laid down by the secretary of Interior shall be denied to renewal of such permit, if the denial will impair the value of the **grazing unit** of such permittee, when such **unit** is pledged as security for any bona fide loan.” As stated in United States v United Verde Copper Co., (supra) the Secretary could not use his authority to issue permits and “fill in the details” for the purpose of making regulations that actually conflicted with the rights intended to be granted by Congress. As stated in the “preference shall be given”, the word “SHALL” means it is non-discretionary on the part of the Secretary. Likewise the Secretary could not reduce livestock numbers it it would affect the value of the grazing “unit”. Again reference to the “unit policy” adopted by Congress in 1902.

As stated in Kinney Coastal Oil v Kieffer, supra, and Watt v Western Nuclear, supra, Congress had fully adopted the split-estate policy for land disposal by the passage of the Pickett Act (1910), the Agricultural Entry Act (1914), the StockRaising Homestead Act (1916) and the Mineral Leasing Act (1920). Thus, Congress redefined the term “public lands” in the 1920 Federal Power Act (41 Stat 1063) to after 1920, to be “land and **interest in land**”. Therefore, Congress wanted to make it clear in the TGA that issuance of a “permit” “shall not create any right title or interest in or to the land” obviously the underlying mineral estate. Congress further made manifest its continuing split-estate policy in section 8 of the TGA where it said “any person who acquires the right to mine and remove the reserved mineral deposits may enter and occupy so much of the surface as may be required...upon payment to the **owner of the surface** for damages caused to the surface and improvements thereon”. The TGA's various provisions gave ample opportunity for anyone wanting to enter land for a farming homestead to do so. After two years (49 Stat 1976), Congress by the addition of the last 2 provisions of Section 7 gave a “preference right of entry” to applicants to acquire their allotments under the SRHA: “Locations and entries under the mining laws, including the act of February 25, 1920, may be made upon such withdrawn and reserved land without regard to classification and **without restriction and limitations by any provisions of this act**. Where such lands are located within grazing districts reasonable notice shall be given by the Secretary of interior to any grazing permittee of such lands. The applicant after his selection entry or location, is allowed shall be entitled to the possession and use of such lands. Provided: That upon the application of any applicant qualified to make entry, selection of or location under the public land laws filed in the land office of the proper district, the Secretary

of Interior shall cause any tract to be classified, and such application if allowed by the Secretary of the Interior shall entitle the applicant to a preference right to enter, select, or locate such lands if open to entry as herein provided."

The final "permit" statute applicable to allotment owners was the Granger-Thye Act (GTA) of 1950 (64 Stat 82 to 88). This was the statute that for the first time ever specifically authorized the Forest Service to issue Grazing "permits". Like the TGA it contains the statement that "nothing herein shall be construed as limiting or restricting any right, title or interest of the United States in any land or resources". It must be noted that nothing in either the TGA (1934) or the GTA (1950) implied federal ownership of "forage" "the value of the land for grazing" nor federal ownership of improvements, water rights or any "surface owner" rights. All these interests were specifically granted to the Stockraiser in the various Acts of Congress such as the Agricultural Entry of Mineral Lands Act (38 Stat 509), StockRaising Homestead Act (39 Stat 862), Act for the Relief of Stockraising Settlers (42 Stat 1445), TGA (48 Stat 1269 as amended), Grazing Compensation Act (63 Stat 214), SRHA Amendment 1993 (107 Stat 60). In fact the Federal Land Policy Management Act (90 Stat 2743) states that whenever a permit is "canceled in whole or in part in order to devote the lands covered by the permit to another public purpose, including disposal the permittee or leasee shall receive from the United States a reasonable compensation for...his interest in authorized permanent improvements...". FLPMA also states "All actions by the Secretary conserned under this Act are subject to valid existing rights". The National Forest Management Act (90 Stat 2955) also states "Any revision in present or future permits, contracts, and other instruments made pursuant to this section shall be subject to valid existing rights."

**CONCLUSION:**

In conclusion, today "public land" is defined as "land *and interest in land*" that belongs to the United States that is administered by the BLM (FLPMA 90 Stat 2745). On the other hand an "allotment" is an apportionment of "land chiefly valuable for grazing and raising forage crops" and is synonymous with the term "homestead" (United States v Jackson, 280 US 183 (1930), United States v Payne, 264 US 446 (1924)). Beginning in 1902, the "Unit policy" did away with acreage limits and granted "an amount of land sufficient for the support of a family" (Irwin v Wright, supra). Congress has disposed of a surface fee title to Western lands within National Forests and Grazing Districts to ranchers for "all agricultural and ranching purposes" (Watt v Western Nuclear, supra). The principle statutes accomplishing this split estate disposal were the Pickett Act, the Enlarged Desert Land Acts (including the Agricultural Entry of Mineral Lands Act), and the StockRaising Homestead Act (as amended). See also Kinney Coastal Oil v Kieffer, supra. Because Congress retained an "interest in land" they changed the definition in 1920 to "land *and interest in land*" open for disposal under the general land laws (Federal Power Act 1920 (41 Stat 1063). The "interest in land" that was open to entry and disposal under federal land laws from 1920 to 1976 was the mineral interest or underlying mineral land and the commercial timber (Watt v Western Nuclear, supra). Once Congress began to retain split estate interests in Western lands, they also delegated to the Forest Service and the Grazing Service (now Bureau of Land Management) authority to "permit the use of timber and stone" and later to grant "permits" to ranchers as the "surface owner" to develop a limited amount of minerals under his allotment (Mineral Leasing Act 1920). Additionally Congress authorized the USFS and BLM to issue "permits" solely to "prevent overgrazing and soil deterioration" thus protecting the governments mineral and

timber interests. In United States v United Verde Copper Co, supra, the Supreme Court specifically said the employees of the land departments cannot use their “permit” authority to take from citizens the very rights Congress granted to them. This is especially true where Congress by specific language granted the “forage” the “value of the land for grazing” the “improvements” the water rights and “surface” “land use rights” all by numerous Acts to the “allotment” owners. Therefore, while the federal government has delegated limited authority to federal agencies to issue “permits” for the purpose of protecting and regulating the use of minerals and commercial timber, they cannot use this authority to insert provisions that have no basis in law or that take from ranchers their “valid existing rights” or “land use rights”.