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BURDEN LIES ON STATES

Secretary Ballinger Says Obligation of Conservation With Us

PRESIDENT PUTS O. K. ON TALK

Secretary of Interior Speaks Before Minnesota Conservation Convention and Says Government's Power to Conserve Resources is Limited---Declares He is for a Wise Policy.

In an address before the Minnesota conservation convention, Secretary of the Interior Ballinger gave his interpretation of the national obligations regarding the public domain and its disposition. The speech according to reports from Washington had the personal O. K. of President Taft.

The greater portion of the burden of conserving the natural resources of the country were laid by Secretary Ballinger at the doors of the states.

"There has been and is," he said, a grossly exaggerated notion among some people as to what the general government can do in conserving the natural resources that lie in the deposits of minerals and are contained in the soils and streams. For the most part they have passed into private ownership and are under the municipal jurisdiction of the states.

Any national conservation policy must be predicated on the policy affecting the public domain, since for the most part the states are soverign within their own spheres of jurisdiction. Therefore, I believe a greater obligation rests upon the state than upon the national government to inaugurate laws to prevent waste in the utilization of natural resources."

Referring to the duty of the national government in this connection, he regarded it as essential that the public domain he studied and surveyed and an "adequate scientific classification of the remainder of the public lands," be made.

He scored the "idealistic conservationists" heavily for tackling the proposition "without a sound knowledge of conditions."

"I grant you some people are for the most part sincere, but their very sincerity gives them such a vigor of imagination and prediction that it is oftentimes hard to combat their vagaries except through practical demonstration.

"Then, to give them their due," he added, "they have this virtue, that they do not let us forget that extremes often prove fruitful or sound reason to those who may be over optimistic."

Of his own stand in the latter, Secretary Ballinger said:

"I am as ardent an advocate of wise conservation as the most radical, but it must be wise conservation to appeal to me. It must simply be as full and free a development of our natural resources as is consistent with our civilization and needs. It may mean the reservation from use for limited periods of certain of our deposits of coal, of mineral oils and gas, of phosphate or of timber to protest against the inordinate greed of men who wish to exploit the present with no regard for the future or the general welfare, and when it becomes necessary it is a national duty to make such reservations out of public domain.

"But we must not forget that we are not through with the policy of development, of building up new communities and settlements, even in far off Alaska.

We have not realized that period where we can say the remainder of our public lands shall be auctioned off to the highest bidder to increase the revenues of the national taeasury.

"Congress is now struggling with the problems relating to water power and other measures designed to retain in the government the power fo control and supervision."

Discussing Alaskan matters, he continued:

These Alaskan coal lands and claims, at their market value, are withdrawn from entry, awaiting classification, and all the unentered or unlocated coal land in Alaska are standing under absolute withdrawal act of 1906, and not a patent has ever been issued to an acre of coal land in Alaska. In fact, nearly all the coal lands that have been patented have been obtained not as coal lands but under the guise of some other form of entry, as agricultural, timber or stone, etc. No man, or set of men, can comply with the present laws and finance a mine on the public domain of 640 acres of land except under extremely favorable conditions. The absurdity of the law has, ini tself, invited fraud and indirect methods of evading its provisions.

"It is impracticable to secure oil or gas lands or phosphate lands under the general mineral laws, and in all these cases there is no power of control or ability in the department to prevent monopoly in the sale of the deposits when the title is once secured thereto. Awaiting remedial legislation from congress, all known areas of public lands containing these deposits are under temporary withdrawals from private entry, and it is hoped congress will furnish the interior department the necessary machinery to safely and properly guard the public interests in their ultimate disposition."

MEASURE IS NOT YET OUT OF WOODS.

But for the fact that the bill proposing to raise $30,000,000 to aid in the completion of government irrigation projects has been made an administration measure, it would stand little or no show of passing the house of representatives this session. Even now it is in a more or less precarious situation, but the outlook for its final enactment has somewhat brightened in the last few days, and its friends once more feel that there is reasonable chance of its enactment into law before adjournment, says a Washington dispatch.

It was unfortunate, in a way, that the speaker insisted that the bill be referred to the ways and means csmmittee, which now has it in hand, but he regarded it as a measure to raise revenue and hence insisted upon having it sent to that committee. The public lands committee and committee on irrigation were both anxious to get the bill, but the say of the speaker was final, hence the reference to ways and means.

There are only two or three members of the ways and means committee who understand irrigation work, or who know that the government has been doing towards reclaiming the arid lands of the west. In their ignorance, the majority of the members of the committee have been disposed to question the necessity for raising $30,000,000 additional at this time, and have been inclined to regard the bill as an appropriation, rather than the authorization of a loan which it is. It has been difficult to impress upon them the fact that the federal treasury will not be taxed to reimburse this $30,000,000 but that the money will be repaid out of the reclamation fund. Moreover, those who know nothing of the working of the reclamation act, fear that congress, in time, will be asked to appropriate annually for the building of irrigation projects.

With this prejudice existing in the minds of members of the committee it was unfortunate that former Secretary Garfield, in his testimony before the Ballinger - Pinchot committee, should have expressed the view that there is no need for raising this $30,000,000, for his opinion even though it be based on personal prejudice against administration measures, will give the opponents of the bill apparently good ground on which to base their protest against its passage, especially since Mr. Garfield is supposed to be conversant with the needs of the reclamation service.

But it is equally unfortunate for the bill that Representative Mondell of Wyoming should have occupied more than two full days in his argument before the committee. Mondell, while in favor of the legislation, has an unfortunate habit of talking all around the main features of a big question, and that is what he did in this instance. He digressed, discussed irrelevant phases of the irrigation work dwelt upon the value of water rights (a subject that was pure Greek to the members of the committee) all the while crowding out other western members who were waiting to be heard, and at the same time tiring the committee, which has never been over-interested.

But latterly some of the other western men favoring the bill have been able to present short, concise statements to the committee, bringing out the fact that this loan will be good business for the government, helpful to the settlers, and advisable from an administrative standpoint, and these arguments, it is felt, will tend to offset the damage done by Garfield and Mondell.

RAILROAD GOSSIP.

When Colonel Wood, J. W. McCulloch and William Hanley get together one naturally thinks of new railroads as the records show they have been buying uy lands that are of value solely for right of way purposes.

But these men are always noncommunicative when approached for railroad news and one has to look elsewhere to get material for a story.

This week J. R. Blackaby exhibited a letter from Colonel Hofer, of the Oregon Development League that had the ear marks of sincerity and the news is good enough to publish.

Mr. Hofer stated that William H. Watts, who is the general manager of the Utah Construction Company and at present engaged in building the nation cutoff stated that his company had a contract for building the Oregon Short Line extension from Vale to Klamath Falls.

While somewhat similar statements have been issued before this is the first time the statement has come direct from the general manager of the Construction Company.—Argus.

"THE RIGHT OF WAY GETTERS."

The visit of Wm. Hanley, the Burns capitalist, Col. C. E. S. Woods, Wm. Matthews, John Whistler, of Portland, and Wm. Jones, the Juntura capitalist, to Vale, Wednesday and Thursday of this week created no little stir. A large number of Vale people crowded about them during their stay, but not one of them can say that he knows just what these "right-of-way getters" were doing. Hanley easily led them astray, by telling that Col. Woods would tell about their schemes.

Mr. and Mrs. Hanley left for Burns Thursday, taking Engineer Whistler with them for a hard earned vacation they said, while Col. Woods and Capitalist Matthews went to Ontario. It was learned that Col. Woods will spend most of his time between Vale and Ontario and Matthews is along to help him financially. Col. Woods is said to have told Engineer Ashton that he would give him right-of-way from Vale to the mouth of the canyon as soon as there were assurances of construction work.—Vale Enterprise.

AFFECTS FOREST POLICY

Broad Application of Supreme Court Decision in Grazing Case

COMMENT ON CASE BY PAPERS

Court Held That Congress Could not Delegate to Secretary of Agriculture Authority to Make Regulations Which Would Have the Force of Law---Decision Knocks Things Some.

The sheepmen of the west are particularly interested in a recent supreme court decision in which it is decided that Congress has not power to delegate to the secretary of agriculture authority to make regulations covering the forest reserves that will have effect as law.

In other words the regulations must be recognized and regarded as regulations to be enforced, but infringement cannot be prosecuted in a criminal action.

The effect of this will be to practically open the forest reserves to unlimited numbers of sheep, it is said, since the government will have no means of enforcing its regulations.

This news was contained in a Washington dispatch which says:

A. F. Potter, chief of grazing land in the forest service, interprets yesterday's decision of the supreme court in the California grazing case to mean that the secretary of agriculture cannot institute criminal prosecutions against persons who violate departmental regulations governing grazing on forest reserves. The court, by an even vote, affirmed the decision of Judge Wellborn of southern California, who held that congress could not delegate to the secretary of agriculture authority to make regulations which would have the force of law, and hence held that persons violating such regulations were not subject to criminal prosecution.

Mr. Potter states that the decision affects only this legal phase of the question and does not bring into question the department's right to regulate the grazing on reserves, nor does it, in his judgement, curtail the right to impose a fee for grazing on the reserves. Both practices, he says, will be continued, unless, upon further analysis of the court's ruling, they are found to be unlawful.

The recent decision by the United States supreme court in the California sheep grazing case, apparently has a broader application than cursory inspection at first revealed. The decision, indeed, might be taken as a revolutionary interpretation of the basic principles of law governing the administration of government in the United States, and perhaps it will develop that this decision affects every department of the government, as well as the forest service, says an exchange.

Evidently the supreme court, being evenly divided, considered it a question of great significance. The court in effect decided that congress did not have power to delegate authority to the secretary of agriculture to make rules and regulations having the force of law.

This opens a wide field of discussion from a legal standpoint, and probably the lawyers will split many fine hairs in interpreting the ultimate effects of that decision.

Congress, by the act of June 4, 1897, said explicitly that "the secretary may make such rules and regulations," and that "any violation of such rules and regulations shall be punished by $500 fine or 12 months imprisonment or both."

The supreme court in effect says in its decision that congress had not that power.

But it is evident that if the purposes of the act, "as will insure the objects of said reservations, namely, to regulate their occupancy and use and to preserve the forests thereon from destruction," are to be accomplished in actual practice, it is necessary for the department to have the power to enforce its mandates.

Hitherto, these objects have been accomplished through the enforcement of rules and regulations, which congress made enforcible by making violation thereof a crime punishable by heavy fine and imprisonment, as above set forth. But the supreme court specifically states that congress had not the power to delegate the authority to the secretary of agriculture to make such rules and regulations having the force of law. Therefore, accomplishments of the objects of the act of June 4, 1897, through rules and regulations is absolutely negatived.

For instance in the California case, it was decided that violation of the regulation requiring a sheepman to have a permit to graze sheep before he could graze them on a national forest reserve is not a violation of law.

Following this line of reosoning to its ultimate conclusion, in actual practice, it can easily be seen that under that decisihn the forest reserves are thrown wide open to sheep, and a sheepman may graze his flocks without a permit from the forest service with impunity, because he cannot be prosecuted under a criminal charge.

It has been suggested that the forest service may, as a final recourse, attempt to enforce these rules and regulations by suing in the courts to recover damages sustained, as is the case in timber trespassing. But this line of procedure would be of little effect in preventing general grazing of sheep on the forest reserves. A criminal prosecution is a deterrent factor in the enforcement of law, whereas a civil suit, especially on the part of the government as the plaintiff, has been found in practice to be of little benefit.

It appears that in order to give the forest service power to enforce the objects of the protection of the forests, it will be necessary for congress to enact the rules and regulations as laws.

But this would be cumbersome and inconvenient for the departments of government. It is at this day difficult to draw the line of demarcation between the territory of jurisdiction controlled by each department or bureau.

The rules and regulations have proved satisfactory in a measure because they could be changed at any time by the secretary, when the varying exigencies appeared to demand changes, or when new conditions arose that the old rules and regulations did not cover.

If congress should have to pass laws for the forest service, it would have to do the same for many rules and regulations of the general land office.

By the passage of the act of June 4, 1897, under which, with several subsequent amendments, national forests are now administered, this law gave the secretary of the interior authority over the forests and provided that their surveying, mapping and general classification should be done by the United States geological survey, and the execution of administrative work by the general land office. This was done on the theory that management of land, not of forests was chiefly involved.

But the technical and complex problems arising from the necessary use of forest and range soon demanded the introduction of scientific methods and a technically trained force, which could not be provided under the existing system. The advice and services of the bureau of forestry were found necessary, but, under the law at that time, could be but imperfectly utilized. The necessity of consolidating the various branches of government forest work became apparent and was urged upon congress by the president and all the executive officers concerned. Finally the act of February 1, 1905, transferred to the secretary of agriculture entire jurisdiction over the national forests, except in matters of surveying and passage of title.

The rules and regulations for the use of the national forests are in accordance with that act and the various supplementary and amendatory laws passed since June 4, 1897. They are based upon the general policy laid down for the forest service by the secretary of agriculture.

Secretary Wilson said, February 1, 1905: "In the administration of the forest reserves, it must be clearly borne in mind that all land is to be devoted to its most productive use for the permanent good of the whole people, and not for the temporary benefit of individuals or companies."

But to insure the accomplishment of the objects of the forest service, it was necessary that its mandates be backed by the government, and so the congress of the United States gave the secrethe power to delegate to the chief forester, and through him, to his aids, the authority to make necessary rules and regulations for the use of the forests. Congress itself regarded its act as conferring the force of law on those rules and regulations because it specifically provides that violation of them shall be punishable by heavy fine, or by imprisonment, or by both.

The decision of the supreme court seems to set all this work at naught. It tears the fabric of established custom in the carrying out of the objects of that act to pieces. It abrogates the rules and regulations, because it emasculates the act in deciding that violation of the rules and regulations is not punishable by criminal prosecution.

The court did not only pass upon the matter of sheep grazing permits. Indirectly it passed upon the power of congress to delegate its powers. It is a constitutional question of vital significance, and so the supreme court must have regarded it.

In settling this issue, the court will certainly not make fish of one department of national government, and fowl of another. In effect, that decision means that congress has not the power, under the constitution of the United States, to delegate authority to the secretary of any department to make rules and regulations having the force of law.

E. B. Hill is back from a trip to Canyon City and has gone to his land holdings in the Trout Creek valley.

NOTICE.

All parties owing Lewis & Garrett, or Simon Lewis are hereby notified that all these accounts are in the hands of our attorney C. H. Leonard for collection and settlement. Persons indebted to us will please settle the same with Mr. Leonard at once.

SIMON LEWIS
J. T. GARRETT.