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Homesteading and Public Land Law

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It is imperative to the discussion of Butcher and Wyatt as homesteaders to have an understanding of the public land laws which affected their choice of land. Consequently, a review of the history of legislation affecting the allocation and use of the public domain is in order and particularly that legislation under which Butcher and Wyatt made entry: the Homestead Act of 1862. Through this act early settlers around Tucumcari were able to acquire, at little expensive, 160 acre tracts of land.

In addition, the shortcomings and beneficial aspects of other acts of Congress concerning the acquisition of public domain will be examined as they provided the guidelines under which homesteaders received patents around Tucumcari throughout the early years of the twentieth century. The focus of this discussion then will center on the use and abuse of the public domain by both the private sector and the various government regulatory agencies.

The question of how to regulate public and state land is one 1.28
that was posed with the earliest settlement of America by Europeans 1.29
in the early seventeenth century. In most instances, land grants 1.30
were given to individuals by monarchs in recognition of particular
favors or for services rendered to crown and country. This system 1.31
of land grants continued until the American Revolution when the 1.32
federal government was established by the Constitution. The
Articles of Confederation in 1781 exemplify the first federal 1.33
concern with the public domain west of the original 13 colonies. In 1.34
order to join the confederation, colonies had to cede their western
claims to become states. As Congress needed additional revenue, the 1.36
sale of the public domain was seen as a source for the much needed
monies. There were various systems of land settlement prefered by 1.37
certain groups. In New England settlement in towns was strongly 1.38
favored. However, the southern states advocated a system whereby
the individual would select his own tract of land and settle on it. 1.39
They were both incorporated into the Ordinances of 1784 and 1785. 1.40

Land regulations changed during the Constitutional Period (1789- 1.43
1804) where there were certain determinants established for the 1.44
disposal of the public domain. Questions as to size of tracts,
settlement requirements, cash or credit sales, and a place of sale 1.45
either in Washington, D.C. or in the western land offices were 1.46
discussed by legislators.

One of the major problems with early federal land policy was that it allowed credit sales. There was much debate over the proposed price for the land and the length of time purchasers would be allowed to repay the government. It was suggested by ~~President??~~ Hamilton that one quarter of the purchase price be put down at thirty cents per acre for a period not to extend over two years (Gates and Swenson 1968:123). Thomas Jefferson and Albert Gallatin were also active in formulating public land policy. Gallatin proposed a price of $2.00 per acre of small tracts of land requiring settlement within a two year period, ~~also.~~ The main purpose behind Gallatin's suggested high price was the extrication of the public debt. Those settlers who did not have the capital needed for large investments could buy on credit. It was ~~believed~~ by most, however, that much of the public domain would be acquired in large tracts by land speculators with huge amounts of capital to invest. ~~This~~

...These fears were realized in the Preemption Act of 1820 which although superceded by the Homestead act of 1862 continued to be used by land speculators until 1891...

The Homestead Act of 1862

The Homestead Act of 1862 set up the original ~~guidelines for~~ requirements for settlers to obtain homesteads in the public domain. The requirements discussed in this section are those outlined in the January 25, 1904 Circular from the General Land Office showing the Manner of Proceeding to Obtain Title to Public Lands under the Homestead Act, etc., ~~as~~ this is the type of publication that Butcher and Wyatt most likely would have refered to for guidance in establishing themselves on homesteads on the public domain. In

brief, this publication outlines all legislation to that time with appendices to original laws and forms that potential applicants would have had to fill out in order to file claims.

There ~~was a certain set of~~ were procedural steps ~~that any individual who wished to~~ in obtaining a homestead ~~had to follow~~. The basic rules ~~formulated for establishing a homestead were~~: (1) maximum settlement of 160 acres or one quarter section, (2) the individual had to establish and maintain residence, and (3) it was necessary to improve and cultivate the land for five continuous years. Under these guidelines then, almost anyone could acquire land inexpensively (USGLO 1904:11, 127).

There were certain qualifications ~~which individuals needed to meet~~ to limit which would allow ~~them~~ individuals to make entry for homesteads. First, the individual applying had to be either the head of a family or over 21 years of age. Second, the individual ~~applying~~ had to be a citizen of the United States or had to declare intention to become a citizen. The last stipulation set forth was that the individual could not at the time of entry own more than 160 acres of land in the United States (USGLO 1904:11).

After these initial qualifications were met the individual had to follow ~~a certain~~ specific procedures to apply for a homestead. The first step in the process of applying was to fill out the application on form 4-007 in the local land office closest to the land. The application required the applicant's name, residence, post office address, and a brief description of the land that the individual wished to enter. The application was supposed to be made in good

faith for the actual settlement and cultivation of the land. The applicant stated that he was not acting as an agent for any person, corporation, or syndicate in making such an entry, nor was it made for the purpose of speculation. The applicant confirmed that he was not applying for entry to agricultural public lands which ~~will~~ exceed 320 acres and that he had not applied for a homestead in this manner at any previous time. The applicant agreed to pay all legal fees and commissions when the entry was made. It was necessary also to sign an affidavit that he was not the proprietor of more than 160 acres of land in any State or Territory on form 4-063 (USGLO 1904:275). Upon compliance with all the requirements the receiver at the local General Land Office ~~would~~ issued to the applicant a receipt for the fee ~~and then?? that part of the commissions paid, form 4-137~~ (USGLO 1904:276). The application ~~would be~~ was then recorded in the district Land Office and ~~then~~ reported to the General Land Office in Washington, D.C. The residence of the applicant had to be stated in order that all notices of proceedings relative to his entry could be sent to him by mail. After all of the forms were filled out and fees paid the applicant had filed or completed the first phase in the series to acquire a homestead.

~~There were~~ Homesteaders had also to meet certain residence requirements ~~that homesteaders needed to meet~~ to finalize their claims. These requirements defined time ~~parameters~~ limits for residence, ~~dwellings~~ (or house types), and cultivation of the land. The homesteader was required to establish residence in a house on the land claimed within six months after making his entry. The residence period and length of cultivation of

land was five years. There were then only two final requirements that had to be met by the homesteader.

After five or, in certain cases, seven years it was possible for the homesteader to make proof in favor of his claim by a statement that all laws and requirements were complied with. The claimant was also required to show proof that the land had not been transferred to another party other than a church, cemetary, or school, or for the right of way for railroads, canals, reservoirs, or irrigation ditches. The option to commute a homestead was also available to a claimant. ~~According to Section 6, Section 2301:~~ OK

> Nothing in this chapter shall be so construed as to prevent any person who shall hereafter avail himself of the benefits of section twenty-two hundred and eighty-nine (the qualifications previously discussed) from paying the minimum price for the quantity of land so entered at any time after the expiration of fourteen calendar months from the date of such entry, and obtaining a patent therefore, upon making proof of settlement and of residence and cultivation for such period of fourteen months. (USGLO 1904)

Which, simply stated, allowed the applicant ~~to commute or~~ to pay cash for the land after a residence period of 14 months.

Another important aspect of the Homestead Laws should be considered here as it directly affected Wyatt during his proving up period; that is, leaves of absence which were provided by law. Basically, there were three laws under which a homesteader could be absent from his claim for extended time periods (USGLO 1904:16). The conditions provided for by the law of March 2, 1889 would have been the only law applicable to the homesteaders in New Mexico

within the study area. Under the provisions of this law extended periods of absence were accepted because of crop failures, sickness, or any unforeseen accident which would result in the inability of the homesteader to support himself or his family on his claim.

In addition, the Act of March 2, 1889 contained a section which alloued a claimant to leave his claim for a period specified by the register and receiver of the district Land Office that would not surpass one year in duration at any time. Short periods of absence were generally overlooked by the General Land Office, however, if the applicant found it necessary to be away for extended periods special forms stating the dates and length of absence were required along with a testimony from the applicant corroborated by the affidavits of impartial witnesses.

The last required step in acquiring a claim through the Homestead Law of 1862 was that ~~of~~ the applicant or homestead claimant ~~to~~ make final proof in person. The applicant had to file intention to make final proof of land with the register of the district Land Office. This notice had to be published in a newspaper nearest the land for five successive weeks, once a week, and paid for by the applicant. The application would then be sent to the Commissioner of the General Land Office in Washington, D.C. and after approval returned to the district Land Office where the claim was filed for recording.

Fees for final proofs were also required to be paid by the applicant. The payment of commissions and fees for the Land Offi

were required when the applicant made final proof. The fee in New Mexico for land that sold for $1.25 per acre, was $6.00 for 160 acres, which is what Butcher and Wyatt both acquired; $3.00 for 80 acres and $1.50 for 40 acres (USGLO 1904:30). In addition, ~~as set forth by Appendix No. 91, Section 2294 of the Revised Statutes of the United States~~ the cost of each affidavit was twenty five cents; each deposition of a claimant or a witness, when not prepared by a Land Office officer, cost twenty five cents; whereas each deposition of a claimant or a witness which was prepared by a Land Office officer cost one dollar. These fees were approved on March 11, 1902 (USGLO 1904:254-255).

Relinquishments were established by Congress on May 14, 1880 (USGLO 1917 ~~No. 341~~:36). This process allowed a preemption, homestead, or timber-culture claimant to file a written relinquishment of his claim in the local Land Office. After the relinquishment had been made the land was reopened for settlement and entry with no more required interaction with the Commissioner of the General Land Office.

~~Three Year Residence Provisions~~

The Desert Land Act of 1891

The Desert Land Act of March 3, 1891 in Section 5 specified a three year residence period with a $1.00 per acre charge per year. At the expiration of three years filing proof of residence corroborated by witnesses the party could apply for patent after making final entry (USGLO ~~Circulars~~ 1904:35-36).

Unless the next 7 pp are directly relevant to Butcher or Wyatt — and there is no statement to that effect — eliminate them.

The residency requirement of five years for the Enlarged Homestead Act of 1909 was reduced to three years with an absence of five months per year by Congress in 1912 (Hibbard 1924:395). To a large extent this was a direct result of potential homesteaders emigrating to Canada rather than immigrating to the land that was available in the western United States (Gates and Swenson 1968:507).

The Enlarged Homestead Act of 1909

> ...the dry farming advocates...obtained the Enlarged Homestead Act of 1909 which authorized 320 acre-homesteads on nonirrigable, nonmineral land having no merchantable timber in Oregon, Washington, Arizona, New Mexico, Colorado, Utah, Montana, Wyoming, and Nevada.... Five years of residence on the land with continuous cultivation of other than native grasses was required and there was to be no commutation (Gates and Swenson 1968:503).

In 1906 the Department of Agriculture had established the Office of Dry Land Agriculture to study methods of farming best adapted for the Great Plains. These dry farming techniques had been studied by the Department of Agriculture, however the Geological Survey under the auspices of the Department of the Interior was the organization chosen to make the final determination on land that would qualify for entry under this provision.

The Department of Agriculture warned that the wet years of the first decade of the twentieth century would not continue. Thus agricultural experimentation had been conducted under the most favorable circumstances with higher than usual annual

rainfall. The years of 1911 and 1912 were drought years and enlarged homestead entries dropped sharply as a result although they did rise again. However, this period proved to be so difficult for homesteaders that in 1912 Congress reduced the required residency period for the Enlarged Homestead Act from five years to three years with an allowed five months leave of absence. This change was also partially brought about by growing alarm in state and federal government that Americans preferred to homestead in Canada rather than the United States because of more lenient restrictions of the Canadian homestead laws. Members of the Senate and House also accused investigators from the GLO of "spying" (Gates and Swenson 1968:507) on homesteaders and taking more time than necessary for granting patents to claimants.

By 1922, after years of extensive study of dry farming techniques, the Department of Agriculture published a bulletin entitled, "Farm Lands Available for Settlement." One of the major points made was that the 320 acre limit of semiarid land was usually insufficient "except under the most favorable circumstances and expert management" (USDA 1922:__)."

Most homesteaders did not have the technical expertise to make a success out of dry farming homesteads or even the ability to raise stock (Gates and Swenson 1968:507). Consequently large percentages of homesteads were given up prior to the Act of 1912 because the average family could not make a productive farm on 320 acres. Unfortunately this land and the land purchased by

speculators then had to be bought up by ranchers at inflated prices after attempts at cultivation had failed.

Another problem that caused great concern in Congress, a direct result of the Enlarged Homestead Act, was that much of the public domain was being classified for homesteading. Much of the forest and mineral rich lands were classified as nonirrigable and were going directly into private ownership. Conservatists attempted to change the system of classification and finally through the efforts of President Theodore Roosevelt the Withdrawal Act of June 25, 1910 was passed by Congress. It

> authorized withdrawals of public lands from any form of entry for 'power sites, irrigation, classification of lands or other public purposes' and stipulated that all such withdrawals should remain in force until revoked by an act of Congress. It authorized no appropriations, however to cary out classification of the lands and provided no funds for the development or use of the withdrawn lands (Gates and Swenson 1968:509).

However, it is important to remember in any examination of classification of public lands that the Geological Survey was only required to determine land qualified for entry under the Enlarged Homestead Act of 1909 on the availabililty of water for irrigation. As this was the only criteria for classification, the subsurface mineral deposits were not a determining factor, so by 1917 the Geological Survey had classified 275,633,861 acres as unfit for irrigation. It would have been better in the interest of maintaining the natural resources to have the Department of Agriculture, the Forest Service, the Department of the Interior, as well as the Geological Survey work together in an examination

of the public lands prior to their classification in an attempt to save some of the land from usurpation by the private sector uninterested in preservation.

Stock Raising Homestead Act of 1916

> The Stock Raising Homestead Act authorized the establishment of 640-acre homesteads in reasonably compact form on land that was "chiefly valuable for grazing and raising forage crops," contained no merchantable timber, was not susceptible to irrigation from any known source of water, and was of such character that 640 acres "are reasonably required for the support of a family." Only lands "designated" (not classified, for the West disapproved of the term) by the Secretary of the Interior (which meant the Geological Survey, not the Dept. of Agriculture) as suitable for stock raising were to be opened to entry under the measure. Permanent improvements to increase the value of the land for stock raising -- presumably fencing or the digging of wells -- were required to the extent of $1.25 an acre. Coal and other mineral rights were to be retained by the government and no commutation was to be allowed (Gates and Swenson 1968:517).

There were bills and measures introduced for consideration by the Committee on Public Lands as early as 1914 which outlined stipulations similar to the Stock Raising Homestead Act. Harvey B. Fergusson, member of the House of Representatives from New Mexico, introduced to the committee a bill which would authorize 640 acre grazing homesteads. Although a member of the Committee, Fergusson was unsuccessful in his attempt to have his bill approved.

Also in 1914 William Kent, Representative from California, a conservationist and cattleman, introduced a bill that would (1)

establish areas within public land boundaries for grazing under the control of Secretary of Agriculture, (2) 10 year permits issued to stockmen to use public land for grazing for fees ranging from one half to four cents an acre, (3) protect the rights of homesteaders who would settle on farm land within the grazing districts established.

In April 1914 the Conference of Western Governors met in Denver and requested that Congress pass a bill to establish a stock raising homestead law.

The first 640 acre Stock Raising Homestead Act was passed by Congress in 1916. Congressman Edward T. Taylor of Colorado was responsible to a large extent for pushing the bill through the House. In 1917 the first session of the 65th Congress passed an amendment to the Act of 1916 which required that the Secretary of the Interior make a determination on the land subject to entry after a six-month period. (Hibbard 1924:398-399) There were criticisms in the House because the amendment would make all public land available for entry which was contrary to the goals of the original act. Homestead applications continued to be filed throughout the decade with 1921, the peak year with 25,653 applications (Gates and Swenson 1968:519).

Throughout the 1920s the Stock Raising Homestead Act came under the scrutiny of population experts as well as government officials in the GLO, Forest Service, and Committee on Public Lands. It was generally agreed by all that 640 acres was not adequate acreage for stock raising and a large number of people

were failing at attempts to homestead second rate land. Additionally there were drought years that made homesteading more difficult especially in 1918 and homesteaders were reported to be working in nearby towns in order to maintain their homesteads.

President Herbert Hoover and Secretary of the Interior, Ray Lyman Wilbur, presented a plan for the reexamination of federal controls of public lands to Congress in 1929 because of dissatisfaction of various departments in the government. In December of 1930 Congress authorized the formation of the Committee on the Conservation and Administration of the Public Domain. On January 16, 1931 the Committee submitted its report which called for the remaining unclassified portions of the public domain to be administered by one department, as opposed to several land administering agencies, for the conservation of resources.

By 1934 the adverse effects of the Stock Raising Homestead Act on the cattle industry, natural resources, and depletion of the public domain were obvious to Congress. Again Edward T. Taylor was instrumental in the passage of another bill to regulate grazing on the public domain, the Grazing Act of 1934 also called the Taylor Grazing Act.

> The Taylor Act made the Department of the Interior responsible for the management, development, preservation, and conservation of some 142 million acres of grazing lands (Gates and Swenson 1968:616).

Abuses, Land Fraud, and Speculation

Abuses of the legislation regarding the Public Domain were frequent from the days of first filing through the early years of the twentieth century. Such abuse took several forms. Calculated deception by land speculators, politicians, and cattlement for capital gain has received the bulk of attention from a historical perspective but other less severe or smaller scale methods of abuse were even more widespread in the western states, especially after 1900. These latter ~~methods~~ are the methods of homesteaders and have not been the subject of historical research until recently although they may have had quite significant effects on the history of U.S. westward expansion. Paul Wallace Gates, who has been most active in research on this subject, emphasizes that:

> Few laws have so shaped American development, so accelerated its growth, so intimately touched the lives of millions of people. Yet few laws of such profound importance have been so little studied as the homestead laws. Their legislative history is well known but their economic history is not. Studies at the grass-roots level are needed to determine what proportion of homestead entries was made for farming, what proportion was made by farm-makers taking advantage of the law to raise the capital they desperately needed to get their farming operations under way before they were overwhelmed with debts, and what proportion was made for cattlemen, lumbermen,

> mine owners, land speculators, and land companies trying to gain illegally and at little cost land and resources they could not otherwise obtain (Gates 1977:133).

The primary reason for all types of land fraud lies in the incongruous nature of federal land policies. The Homestead Act of 1862 was conceived with 'Eastern' notions concerning subsistence farming. As settlement proceeded westward into an increasingly arid environment, the basic settlement unit of 160 acres which may have been adequate east of the Mississippi, became less and less realistic as viable homesteads. With regards to the Great Plains, Gates notes that:

> A major difficulty with all homestead acts was that they invited settlers to come to the West and take up land which called for much capital to make it into viable farm units. Most homesteaders lacked capital and were forced to make do by working on the railroads, doing construction in nearby centers, digging wells, or otherwise selling their labor while trying to fulfill the minimum requirements to hold their claim (1977:128).

This situation has had several profound effects on the settlement of the western states. First, it may be seen as a primary impetus for the development of dry-farming methods appropriate to the arid west. With the support of the railroads,

promoters, and other propagandists who figured to profit from increased immigration. These farming methods formed the basis of the dry farming "movement" between 1895 and 1920 on the high plains. The early success of these methods prompted many to move west; however, the success was due to unusually high precipitation during this experimental period (ca. 1895-1905) and the drought years after 1918 brought an end to the movement (Gates 1977:126).

Another effect of the incongruous land system and indirectly, of the dry farming movement, may be seen in the plethora of legislative adjustments to the Homestead Act between 1890 and 1920. These laws, such as the Enlarged Homestead Act of 1909, allowed increasingly larger settlement units to be claimed. Unfortunately, Congress seems to have consistently remained one step behind in this as the new regulations suffered from an inadequate land classification system which was an essential component of these laws.

In New Mexico, land fraud was severe and ultimately favored "the strong and the first comers" as Westphall (1965:120) has phrased it. To a large extent, the severity was due to a single limiting factor -- water:

> The real fight in New Mexico was over water and was as much between the have and have-nots in ranching as between ranching and agrarian interests. The land laws, limiting to an inadequate amount the quantity of land that could legally be acquired, encouraged the

THE PRACTICE OF "LAND-GRABBING" WAS INDEED WIDE-SPREAD IN NEW MEXICO BETWEEN 1880-1900 & WAS AN EMOTIONALLY CHARGED ISSUE:

"TO ROB A MAN OF HIS HOME IS A CRIME, SECOND ONLY TO MURDER; AND TO ROB THE NATION OF ITS PUBLIC DOMAIN, & THUS ABRIDGE THE OPPORTUNITY OF LAND-LESS MEN TO AQUIRE HOMES, IS NOT ONLY A CRIME AGAINST SOCIETY, BUT A CRUEL MOCKERY OF THE POOR (JULIAN 1887: 28-29)"

Limiting factor -- water:

The real fight in New Mexico was over water and was as much between the have and have-nots in ranching as between ranching and agrarian interests. The land laws, limiting to an inadequate amount the quantity of land that could legally be acquired, encouraged the

> struggle over the really valuable land -- the land with water. Had there been devised a system of parceling land in accordance with the nature of the country, much of the fraud in land matters would have been averted. Given a sensible system, sensible people would largely have followed it. Given an impossible system, even sensible people rebelled against it and, like a small force that can cause an avalanche, this rebellion grew to unmanageable proportions (Westphall 1965:120).

But this is not the entire story. Abuses of public land laws such as those documented here committed by Butcher and Wyatt are, in all probability, more common than the dealings of cattle-barons and large-scale land speculators, albeit less exciting. Perhaps 'abuse' is too strong a label here. The federal land system can also be seen as being flexible as well as incongruous or maladapted in allowing homesteaders to accumulate the capital to make a living. Butcher and Wyatt may not have been successful as homesteaders (i.e., subsistence farmers) in Tucumcari, but they were able to become men of property through the system.