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An Agricultural Law Research Article

The Desert Land Act Since 1891

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Originally published in AGRICULTURAL HISTORY
11 AGRIC. HIST. 266 (1937)

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THE DESERT LAND ACT SINCE 1891

The irrigation boom of the late eighties was based purely on speculation, and, for various reasons, it began to subside during the last decade of the century. The failure of Baring Brothers in 1889 stopped the English and Scotch investments in American irrigation enterprises, while at the same time, the overstocking of the ranges and the generally poor condition of the cattle industry prevented their development. More important, perhaps, were the economic and legal difficulties involved. When a company built a reclamation project, the usual procedure was to complete it quickly and cheaply in order to bring in revenue as soon as possible. The weirs were often constructed of cheap wooden framing, and in many places, especially California, the water was taken directly from streams by an inlet without either dam or diversion weir.¹ The result was that the cost of maintenance soon forced the company into bankruptcy.

The legal difficulties of irrigation have become notorious and not without reason. The diversity of water rights in the various States could not result otherwise. In California, the attempt to settle the question by the passage of the Wright District Irrigation Law only resulted in more litigation than ever. One student of the subject declared that defending water rights against later appropriators often cost an individual as much as the construction and maintenance of his entire system, not to speak of the resulting civil wars and ill feeling.²

Added to these difficulties was overexpansion, a condition which few people realized at the time. Theoretically speaking, in the era of the open frontier, every unemployed or discontented laborer was a potential farmer, but in the arid country this was not the case. Irrigation necessitated capital, and although the

¹ U. S. Geological Survey, *Annual Report* (1891-92), 13 (3):117-118.

² S. Fortier, "The Prevention of Water Right Litigation," *Irrigation Age*, 14:83-89 (December 1899).

lure of big profits had caused rapid development prior to 1890, the supply of irrigated land was greater than the number of settlers who wanted it.³ Irrigation had for the time being reached the saturation point.

Nevertheless, it is perhaps fairer to say that no one factor produced the maladjusted condition of irrigation in the various parts of the country. Certainly, the fluctuations were not due to the Government's land policy. If anything, the situation was just the opposite, for the coming of the Harrison administration brought a reversal of the Cleveland policy of fraud investigation. In his first annual message, President Harrison referred to the fact that the preceding administration had held up the granting of titles and used unusual methods of examination with fatal consequences to the settler. He declared that it would be his policy not to impute fraud without reason and that the laws would be so administered as to bring penalties only upon those who were obviously violating the intent of the law. Thus, by December 1, 1890, he was able to say in his second message that under his policy the average monthly issue of agricultural patents had increased about six thousand.⁴

Whether or not the Harrisonian policy was the cause, the original entries under the Desert Land Act showed no violent drop, except in California, in spite of the curtailment of irrigation which began about 1890. In Idaho, Montana, Utah, and Wyoming, the major irrigation States under the act, there was an increase in the number of entries.⁵ With the second Cleveland administration, the entries again fell, this time perhaps due primarily to the panic as the number of cases held for investigation were comparatively few. In 1893 only thirty-one original entries and eight final entries under the Desert Land

³ Thus the *San Francisco Chronicle* of Jan. 3, 1897 gives two full pages in a discussion of irrigation in California and expresses the view that the reason for irrigation stagnation was the over-expansion of the irrigation industry. On the whole, this view seems to have been well founded.

⁴ U. S. President, *A Compilation of the Messages and Papers of the Presidents, 1789-1897*, . . . by James D. Richardson, 9:49, 117 (Washington, 1898).

⁵ U. S. General Land Office, *Annual Report*, 1889:252, 1890:318. Hereafter cited as *G.L.O.R.*

Act were held, pending investigation.⁶ In 1894, 1895, and 1896, the original entries held for investigation jumped to over a hundred per year with the final entry investigations limited to nine, twenty, and twenty-two for the respective years.⁷ The total number of cases pending investigation under the various land acts averaged around two thousand, an insignificant figure when compared with the total number of entries which would normally come under such investigation.

The turn of the century brought an increased interest in irrigation. The activities of the National Irrigation Association, organized to promote interest in government construction of irrigation projects, aided by the return of prosperity and the renewed use of money in speculation, were primary factors in the revival. The Carey Act of 1894 which reserved lands for States also began to be utilized. Irrigation was recognized for the first time by the two political parties, and even President Theodore Roosevelt gave it his support.

More clearly than any other president, Roosevelt realized the needs of the arid region.⁸ Having gone to Dakota during the boom of the eighties, he knew the needs of the cattle industry from first-hand contact and had witnessed the failure of the more optimistic settlers who tried to farm without irrigation. When Roosevelt came into office, he gave attention to the needs of the West. He urged that the Government build irrigation projects, and during his administration the Newlands Act was passed. He formulated a conservation policy, and under the direction of Gifford Pinchot, much was accomplished. He instigated an investigation of the public lands situation, and in consequence, a commission was appointed to investigate the public land system in 1903. The commission, composed of F. H. Newell, director of the Reclamation Service, Gifford Pinchot, director of the Bureau of Forestry, and W. A. Richards, Public Lands Commissioner, began its work with avidity. Each mem-

⁶ *Ibid.*, 1893:68.

⁷ *Ibid.*, 1894:91, 1895:401, 1896:370.

⁸ E. D. Ross, "Roosevelt and Agriculture," *Mississippi Valley Historical Review*, 14:287-310 (December 1927).

ber was interested in one particular phase, and each approached the problem with more or less definite knowledge of the situation.

Meanwhile, with the turn of the century, the number of entries under the Desert Land Act increased by leaps and bounds. With the exception of Utah, all of the States and Territories under the act showed a marked increase in the number of entries during the first few years. California jumped from eighty-two entries in 1900 to three hundred and forty-nine in 1901. By 1902, the entries in Wyoming rose to more than a thousand and then gradually began to subside. The entries in Montana rose to twenty-three hundred by 1903, and the Dakotas, Nevada, Oregon, and Washington, hitherto relatively inactive, now began to show an increase in the number of entries.

A new force, the National Irrigation Association, began to demand the repeal of the land laws. It carried on the first large-scale lobby in Congress. It held no meetings but maintained an elaborate press bureau which was supported by \$5.00 annual dues from its members and contributions from the industrial organizations interested. Each of the transcontinental railways, including the Burlington, contributed \$6,000.00 a year, and the Rock Island system gave \$3,000.00.⁹ The association urged that no title should be given except to actual settlers who had built homes and lived on the land for five years; that the National Government should build irrigation works out of the proceeds of public lands; that the Desert Land Act and the commutation clause of the Homestead Act should be repealed; and that the States should make "beneficial use" the basic principle of their water-right legislation and pass homestead acts applicable to their lands.¹⁰

No group of the American public was overlooked in the campaign carried on by the National Irrigation Association, and throughout 1902 and 1903, *Maxwell's Talisman*, one of its journals, dealt almost entirely with the reports of irregularities and frauds under the Desert Land Act and objected strenuously to granting land in such large quantities. When the Public Lands

⁹ Commission on Irrigation of Arid Lands, *Hearings*, Apr. 1-8, 1904, p. 27.

¹⁰ *Maxwell's Talisman*, 2(1):8(August 1902).

Commission made its preliminary report, the *Talisman* evinced much dissatisfaction, but with the prosecution of Senator John H. Mitchell, Congressman John N. Williamson, and Binger Hermann of the land office in Oregon and the investigations of fraud in other States, it gained much material for its campaign.

When the activities of the National Irrigation Association came up for investigation by Congress, George H. Maxwell was forced to reveal that the transcontinental railways were behind the movement and supporting the association.¹¹ Meanwhile, Senator Henry C. Hansbrough of North Dakota charged that the large corporations were backing the movement to change the land laws, while Representative Frank W. Mondell from Wyoming stated in 1904 that more land had been irrigated under the Desert Land Act than under all other laws combined.¹²

I am convinced that there is no crying need for a radical change in the land laws at this session of Congress. For the first time in our history we see an active and well-organized lobby in Washington supported almost entirely by contributions of great corporate landowners. These unscrupulous fellows have been industriously and persistently magnifying every irregularity and local abuse of our land laws by sending broadcast the most grossly misleading and untruthful statements as to the volume and effect of the transfer of Government lands into the hands of private individuals.

Another source of agitation for the repeal of the Desert Land Act was the new school of conservationists. To this group, the Desert Land Act was a means of gaining control of the natural resources of the country. It did not allow the timber and minerals to be exploited, but it did permit the wasteful utilization of water. Looking at the problem entirely from the viewpoint of economic good for the country, they conscientiously insisted on the repeal of the Desert Land Act and worked hand in hand with the Maxwell group.¹³

In the midst of this agitation the Public Lands Commission

¹¹ Commission on Irrigation of Arid Lands, *Hearings*, Apr. 1-8, 1904.

¹² *Congressional Record*, 38:4214 (Apr. 4, 1904); *Irrigation Age*, 19:71 (January 1904).

¹³ President Richard Van Hise later became one of the chief exponents of this viewpoint.

carried on its investigation. The preliminary report, made in March 1904, expressed the view that Congress should leave the Desert Land Act as it was, with the exception of the provision in the act of March 3, 1891 which permitted the assignment of entries, because, if the provisions of the act are complied with "the entryman will have earned a patent at an expense too great for speculative purposes."¹⁴

However, the tone of the Commission's final report in the following year was entirely different. It held that the act was a means which enabled corporations to gain control of the land. The attempt of the Land Office to prevent this by ruling that a corporation could not make entry upon the land if its individual members had exhausted their rights of entry had been of no avail. The Commission claimed that the acreage allowed each person was still too great and that entry under both the Desert Land Act and the Homestead Act should not be permitted. They also held that entrymen should be forced to prove one fourth of the area under crop before final entry was granted. The act, it said, worked to create large estates because capitalists often supported entrymen. After an individual had filed his original entry, the committee pointed out, the water was usually acquired by the capitalists, who forced him to sell or go without water. The Commission recommended that assignments be no longer permitted, that stock in an irrigation company as proof of irrigation be abolished, and that the acreage allowed again be reduced.¹⁵

The effect of the Commission's report was great. At the thirteenth annual meeting of the National Irrigation Congress, held at Portland, Oregon, in August 1905, the subject came up for thorough discussion. Although the Government officials who were present attacked land frauds, the congress resolved that there was no relationship between the National Irrigation Association (which had been attacking the land laws, and, since 1897, controlling the Irrigation Congress) and the Irrigation Congress. In return, the Maxwell group held that the whole

¹⁴ U. S. Public Lands Commission, *Report of the Public Lands Commission*, viii, ix (Washington, 1905).

¹⁵ *Ibid.*, xix, xx, 79-86.

movement against the officers of the National Irrigation Association "originated in the machinations of what is known in Oregon as 'the Mitchell crowd'."¹⁶

The West was naturally opposed to such accusations as were brought against it, and the National Association of Agricultural Implement and Vehicle Manufacturers appointed a special committee to investigate the situation. This committee found that the general sentiment of the West was against the repeal of the act and held that in spite of the activities of the Government in reclaiming land, most reclamation would be done by private enterprise.¹⁷

As the campaign against the land laws continued, a counter campaign arose and in June 1907, a public land convention was held at Denver. At this convention, the Government officials were criticized severely. The forestry bureau was accused of setting aside good land for agriculture, and the Land Office was blamed for maladministration and unfairness.¹⁸

D. H. Anderson, editor of the *Irrigation Age*, probably epitomized the Western attitude. He held that the pictures published by the Land Office and the Reclamation Service were unfair and unrepresentative, and that the agitation for repeal of the land laws was merely an attempt of the railways to create an artificial demand for land scrip. In this campaign, he stated that the railways had succeeded in raising land values from \$3.50 to \$10.00 and \$12.00 per acre. He also claimed that the bureau chiefs had the art of self-advertising and were following the example of Maxwell.¹⁹

Whatever may have been the truth of the charges preferred

¹⁶ *St. Paul Pioneer Press*, Aug. 25, 1905; *Maxwell's Talisman*, 5 (3):13 (October 1905). Senator Mitchell, it will be remembered, was convicted in the land-fraud cases in Oregon.

¹⁷ "Report of Committee on Arid Lands and Irrigation of the National Association of Agricultural Implement and Vehicle Manufacturers," *Irrigation Age*, 20:113-115 (February 1905). In the hearings before the Committee on Arid Lands, nearly every member from the West was against the repeal; the notable exception was from Nevada. Hearings on Repeal of Desert Land Act, 58 Congress, 2 session.

¹⁸ *Irrigation Age*, 23:150-151 (March 1908).

¹⁹ D. H. Anderson, "The Campaign against the National Land Laws," *ibid.*, 108-109 (February 1908).

by each side, it was obvious that the West had a distinct advantage. No matter how much the National Irrigation Association agitated, it could not be said that it represented the region affected. The executive officers and board of directors of the association, with one exception, listed places of residence outside the arid region. They were men who were prominent in business but who lacked the direct contact with irrigation which would allow them to speak with authority. The struggle thus resolved itself into a contest of self-determination of destiny on the part of the West. To the Westerners frauds were not great, and they did not intend to have the policy which had been so advantageous changed. Moreover, they had a vital interest in maintaining the policy, for if it were changed and settlement allowed only by means of the Homestead Act, what then would be the source of revenue for the national reclamation projects? How could an individual make a settlement without waiting for national irrigation projects, since with repeal it would obviously be impossible to live on the land while proving a homestead claim?

Congress, unwilling to antagonize the West by the repeal of the act, adopted the safer policy of trying to remedy the existing abuses. By an act of March 28, 1908, it provided that no assignment would be recognized unless the person to whom it was made was eligible for entry, and that entries could not be made on unsurveyed lands.²⁰ It was believed that this would prevent the accumulation of large holdings, and to a considerable extent this view was justified.

After the passage of the act of 1908, agitation for repeal of the Desert Land Act died down. The only subsequent change in policy was when, because of the increase in irrigation, the General Land Office began investigating the feasibility of the projects. This action meant that henceforth land would not be granted unless there was reasonable assurance that it could be reclaimed.²¹

²⁰ U. S. Laws, Statutes, etc., *The Statutes at Large of the United States of America* (1908), 35 (1):52; *Federal Statutes Annotated*, 550.

²¹ *Decisions of the U. S. Department of the Interior Relating to the Public Lands*, 39:260-262 (Sept. 30, 1910); "Statutes and Regulations Governing Entries and Proofs under the Desert-Land Laws," U. S. Department of the Interior, General Land Office, *Circular 474* (Washington, 1929).

The era of the Desert Land Act as an important policy for reclamation of arid lands was now over. With the outbreak of the World War, constant requests for relief from the exacting requirements of the law were granted by Congress, and while entries still continued to be made, they were in ever decreasing numbers. Men's efforts were directed into other channels and the depressing conditions in agriculture after the war prevented them from taking land for farming.

It was more apparent than ever that irrigation by means of individual effort was a thing of the past. When, in 1914, the market for irrigation securities collapsed, even irrigation by corporate action went into the discard, and those who still had faith in irrigation turned to the district plan as the best available method. As a consequence, the act of August 11, 1916 provided that public lands within State irrigation districts should be subject to State laws which regulated them, such plans for reclamation being subject to the approval of the Secretary of the Interior before liens could be applied to the lands.²²

By an act of May 15, 1922, provision was made whereby the Secretary of the Interior might make contracts with organized irrigation districts to carry out the provisions of the reclamation act of June 17, 1902. According to this law, the dates of payment to the Government for construction were to conform to State tax laws. Public lands within the district were subject to State laws regulating irrigation districts as in the act of August 11, 1916. Since the Federal Government was responsible for the water supply, it was provided that irrigation districts would not have to file maps and plans as was the usual custom.²³

Under the acts of August 11, 1916 and May 15, 1922, applications have been made by seventy-three irrigation districts. Fifty-eight applications, involving 2,432,258.40 acres, have been approved, and sixteen, involving 323,408.09 acres, have been rejected.²⁴

Although the movement for conservation continued and Con-

²² *Statutes at Large* (1916), 39 (1):506-507.

²³ *Ibid.* (1922), 42 (1):541-542.

²⁴ *G. L. O. R.*, 1930:15-16.

gress was beseeched to adopt a policy applicable to the remaining public lands, comparatively little was done. Following the old policy of disposing of the public domain, Congress, by the act of February 27, 1917, provided that a person might make a desert-land entry although he already had an enlarged homestead claim, and by the "Pittman Act" of October 22, 1919, impetus was given to the development of underground waters.²⁵ Under this latter act the General Land Office had received 232 applications by June 30, 1930. Of these, 85 had been approved, 45 cancelled, requirements made in 82, and 20 had not yet been settled.²⁶

It was quite evident that the problem of arid lands was still unsolved. The main legislation with regard to these lands had been made with the idea of bringing them under cultivation like the lands of the more humid regions. The conservationists and the people of the West were both dissatisfied with the situation, recognizing what Major J. W. Powell had pointed out years earlier; that, after all, only about 10 percent of the land could be cultivated if every drop of water available was brought into use. However, between the conservationists and the West there was a vast difference in point of view. The latter looked at the remaining public domain with longing eyes. It saw, unutilized, nearly two hundred million acres of land exclusive of Alaska, the national forests, parks, power sites, stock driveways, and land used for other purposes. In many Western States, a large share of the land was still in the hands of the Federal Government. More than 72 percent of Nevada, nearly 44 percent of Utah, over 25 percent of Wyoming, and nearly 20 percent of Arizona, New Mexico, and Idaho was still owned by the Federal Government in 1930. This area was equivalent to between one half and two thirds of the total area of Europe. In Nevada alone, an area considerably larger than Denmark, Holland, Portugal, and Belgium combined was still in the hands of the Federal Government. It was only natural, then, that the Western States desired a policy which would favor them.

²⁵ *Statutes at Large* (1917), 39 (1):946; (1919), 41 (1):293.

²⁶ *G. L. O. R.*, 1930:16.

Little was done until President Hoover, in pursuance of an act of April 10, 1930, appointed a Public Domain Commission to determine what policy should be adopted toward the remaining public lands. James R. Garfield, the ardent conservationist of the Theodore Roosevelt era, was chairman. The Commission recommended enlargement of the reserves and giving the surface lands to the States on the ground that they could better handle the existing problems. The land was to come under private control through sale to the highest bidder.²⁷

In spite of the fact that Secretary of the Interior Curtis D. Wilbur, Chairman Garfield, and members of the Commission, such as Dr. Elwood Mead, were conservationists, the recommendations were immediately assailed as contrary to the principles of conservation. The Forest Service, in particular, was opposed to the plan. Colonel William B. Greeley, member of the Commission and formerly chief of the Forest Service, refused to sign the report. Ward Shepard, for seventeen years associated with the Forest Service and an ardent conservationist, recalled the days of Pinchot by appealing to the press.²⁸

The conflict was merely a continuation of the old struggle to harmonize any plan of disposing of the public domain with the principles of conservation. Nearly every land law has been wasteful when measured by conservation. The report of the Commission was an attempt to strike a mean between the two principles. Certainly, if any rational policy toward grazing lands is adopted, the attempts to gain control of the public domain by means of the Desert Land Act will cease.

It is apparent, then, that the interpretation of the Desert Land Act as a policy of reclamation depends upon the viewpoint of the individual making the judgment. If the emphasis is placed upon the frauds and the utilization of the act by the stockmen, the beneficial effects are apt to be overlooked. If, on the other hand, the reclamation of Imperial Valley alone is

²⁷ See *United States Daily*, Mar. 9, 1931, p. 1, 5, 8, for text of conclusions and recommendations.

²⁸ Ward Shepard, "The Handout Magnificent," *Harper's Magazine*, 163:594-602 (October 1931).

pointed out, another distorted view is given. Imperial Valley is the largest single irrigation project in the United States; the land was largely taken up under the Desert Land Act, but it is only a part of the picture. The whole picture involves the assumption of land for the cattle industry, fraud in making the entries and claiming the patents, and abuses in the administration of the act, as well as the beneficent results in those lands made to blossom as a rose.

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