

No. 80

**FEDERAL GOVERNMENT—NATIONAL FORESTS—
GRAZING**

Held: Unless land acquired for national forest purposes has been included by law or executive order within exterior boundaries of such forest or within six miles thereof, regulations governing grazing of livestock in national forests cannot be enforced.

April 15, 1941.

Mr. William F. Shallenberger
County Attorney
Sanders County
Thompson Falls, Montana

Dear Mr. Shallenberger:

You have requested my opinion as to the extent of the regulatory powers of the Federal Government, acting through the Secretary of Agriculture, over lands acquired by exchange for national forest purposes, which lands lie without the exterior boundaries of a national forest. Your inquiry is directed particularly to the right to regulate grazing of livestock.

The State has ceded jurisdiction over lands acquired by the United States for national forest purposes in the following language, under Section 25.2 of the Revised Codes of Montana, 1935:

"25.2. Consent to Purchase of Lands by United States for National Forest Purposes—Jurisdiction. For the purpose of more effectively cooperating with the United States in the consolidating and rounding out of national forests in accordance with land use plans and to facilitate the placing of forest lands other than national forest but which are integral with national forest lands under stable protection and administration to the end of public benefit and to help land owners, including the counties of the State in their discretion, to dispose of such of their lands as may be needed for national forest purposes, consent of the State of Montana is hereby given to the

purchase by the United States of such lands in the State of Montana as in the opinion of the Secretary of Agriculture are needed for the purposes contemplated in Section 6 of the Act of Congress approved March 1, 1911, commonly known as, and called, the Weeks law, and/or Section 6 of the Act of Congress approved June 7, 1924, commonly known as the Clarke-McNary law, and/or any other provisions of any Act of Congress authorizing the purchase of land for national forest purposes, provided that the jurisdiction of the State of Montana, both civil and criminal, over persons upon areas acquired under this Act shall not be affected or changed by reason of their acquisition and administration by the United States, except so far as the punishment of offenses against the United States is concerned, and provided further that the State shall have the same jurisdiction in respect to such lands as it has in respect to other national forest lands within the State, and further provided that all property rights, easements, and benefits retained by, or reserved to, owners of lands purchased by the United States shall be subject to the tax laws of the State."

The chief federal statute dealing with jurisdiction is 16 U. S. C. A. 480, which is as follows:

"480. **Civil and Criminal Jurisdiction.** The jurisdiction, both civil and criminal, over persons within national forests, shall not be affected or changed by reason of their existence, except so far as the punishment of offenses against the United States therein is concerned; the intent and meaning of this provision being that the State wherein any such national forest 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 Secretary of Agriculture has the authority to make regulations for the grazing of sheep on the lands included in a forest reserve, and under such regulations a fee may be charged for grazing sheep, when it is for the purpose of preventing excessive grazing and thereby protects young growth from destruction.

U. S. v. Grimaud, 220 U. S. 506, 5 L. Ed. 563, 31 S. C. R. 480.

The Secretary of Agriculture may make rules concerning any land that may be included in a national forest and such rules are superior to any policy of the state in which the land is located.

U. S. v. Shannon (C. C. Mont.) 151 Fed. 863; 160 Fed. 870.

Lands included in a forest reserve are no longer public lands, for such a reservation severs the reserved land from the public domain (U. S. v. Shannon, supra).

Under Acts of Congress (42 Stat. 465; 43 Stat. 1090) exchanges of land in national forests are permitted and such exchanges may, in Montana, include lands within six miles of a national forest boundary (45 Stat. 1145). Upon acceptance of title, such lands become part of the national forest nearest to which they are situated.

If the lands in question are not within the exterior boundaries of a national forest or within six miles of the boundary thereof as established by law or executive order, I am of the opinion that regulatory measures, particularly with reference to grazing permits, governing national forests may not be enforced.

Sincerely yours,

JOHN W. BONNER,
Attorney General