

# AN OPEN LETTER TO THE PRESIDENT

Former Director of Mint, Now Engaged at Sheepraising in Big Horn Basin, Calls Attention of Executive to Local Evils Resulting from Creation of Forest Reserves--If Sheep-Grazing Privileges are not Allowed an Important Industry will be Annihilated--Protest of Well-Known Geologist and Mining Engineer.

Dr. James P. Kimball, formerly director of the United States mint, who retains summer offices in Red Lodge, Mont., has written an open letter to President Roosevelt with reference to the recent creation of the new forest reserves in Montana and Wyoming, and to the rules and special orders promulgated for their government by the department of the interior.

Dr. Kimball is a geologist and mining engineer of national repute. With his sons he has large ranch and sheep interests adjacent to the recently created Yellowstone Forest Reserve in Big Horn county, Wyo. He has had wide experience in forestry reservation matters, professional and otherwise, is the only person who has made an instrumental reconnaissance and map of the high mountain region in the Absaroka forest reserve in Montana, and is personally familiar with the geographical and topographical conditions of the several reserves.

In 1898 he executed for a syndicate, including the late Henry Villard, and others, a map of the high mountain regions of Carbon and Sweetgrass counties, and this map, engraved in proof and uniform and continuous with sheets of the geologic atlas of the United States, is now in the office of the United States geological survey in Washington, D. C.

Dr. Kimball claims that, included in the reserves, are large, unwooded areas of doubtful benefit for forestry purposes or game protection, but of vital importance to the local stock-raising industries. He contends that, unless the reserves are cut down, or general rules made allowing sheep to graze within specified limits of the reserves, the woolgrowing industry will be locally annihilated and an important contributing factor to the prosperity of Montana and Wyoming taken away.

The open letter which Dr. Kimball addresses to the president treats scientifically the conditions against which he directs his criticisms. Under date of Dec. 26 it is furnished The Red Lodge Picket for publication. The letter was mailed from Red Lodge to President Roosevelt today and he will be furnished with the full text thereof as follows:

Red Lodge, Mont., Dec. 26, 1902. To His Excellency, the President of the United States:

Mr. President--On the present local conditions incidental to the recent discretionary action of the President, under 30 Stat., 34-36, in proclaiming withdrawal from the rest of the public domain of an area amounting to some 2000 square miles, constituting the western upland of the Big Horn Basin of Wyoming known as the Yellowstone Forest Reserve; and of an area of some 2200 square miles in southern Montana as also a new reservation designated as the Absaroka Forest Reserve, I have the honor of addressing to your Excellency an open letter with particular reference to the inclusion in both new reserves, which are continuous, of large unwooded areas of doubtful benefit, if any, for forestry purposes or game protection, but of vital importance to the stock-growing industries, in pursuit of which the arid belt on the Yellowstone waters has been settled and developed to its present notable and important prosperity. This prosperity, locally due, as elsewhere throughout the arid belts on both slopes of the Rocky mountains, to the privilege of grazing stock on the public domain, is now threatened with all but complete subversion over extensive areas by the recent action of the Secretary of the Interior in prohibiting grazing of sheep within the Yellowstone Forest Reserve, whence the probability that a similar prohibition will be announced for the new Absaroka Reserve, after supervisory service shall have been organized.

As to the recent enormous addition to the Teton Forest Reserve in Wyoming I have at present no comment to offer.

To the Executive whose discretionary prerogative it is to create forest reserves, as also to restore them in whole or part to the unreserved public domain, I beg to address this communication rather than to the Department of the Interior, because it has been my personal experience that communications, relating to forest reserves in matters within discretion of the President, and addressed to the department for advisory action of the Secretary of the Interior and further reference, have received departmental action without further recourse, as no

doubt warranted by the statute where such action is negative. It is also at the will of the Secretary that advisory action be deputed to bureau officers whose wont, as perhaps whose duty it is, to advocate, assert and defend ex parte all acts of forest reservation, and especially to promote all restricting and prohibiting rules and regulations as prescribed by the department, under authority of the Secretary, against all other interests, public or private. That opinions and recommendations are apt to be conceived and prepared in a technical, and even academic, spirit conformably to the more scientific purposes of forest reservation, regardless of industrial interests, is not improbably in accord with the zeal expected from all bureau officers. Of such spirit--no criticism is here intended--however difficult in general it be for extraneous and sometimes conflicting interests to stand up outside the pale of authority against it. Nor is it meant to here imply criticism of the practice of the department, which appears not incompatible with the statute, but simply to note the omission of the statute to fortify by actual provisions its declaration, which must be considered its saving or qualifying clause in the public motive for its enactment, and without which it could scarcely have been enacted.

I also beg to make the present communication an open one, for the satisfaction of a considerable number of worthy citizens of Montana and Wyoming whose avocation, like my own, is threatened with sudden subversion--not so directly from the inclusion, as in both reserves, of arid bottoms and unwooded plateaus, as from prohibitions on the part of the Secretary of the Interior, tending to destroy the leading stock-growing industry local to the region, by depriving herded flocks from recourse to upland forage and the higher waters in periods of drought like the protracted droughts of the last two summers--recourse absolutely necessary at times as a preventive of starvation of stock and of disastrous loss.

It were unreasonable, as generally considered, to expect exclusion from forest reserves of interior tracts, like those here referred to as valueless for forestry purposes, but to which stock-growers have been compelled to resort in seasons of dire extremity from drought. But it remains within the discretion of the President to withdraw from both reserves external tracts of the same kind, as will be indicated below, which subserve no intelligent or locally useful purpose, unless for their control as grazing limits, and whose inclusion within the borders of the new reserves except for the purpose of such control, can have been to no further end than reservation agrandizement. Reference is here made to unsurveyed territory so elevated and bleak that no necessity arises to safeguard it even for public use against entry. Local requirements, however, have obviously been left out of consideration at Washington in either recent reservation measure.

Whatever remains to be done to mitigate the disastrous effects of subversion of the established industry of the region, they cannot now be wholly averted. The individual resources of many citizens which go to make up the general welfare of communities throughout the Big Horn and Yellowstone basins must necessarily suffer--to the impairment of the resources of the whole region.

Agriculture, as an end rather than a means throughout the arid belt, offers but an incomplete and precarious substitute for stock and wool growing--its absorbing as well as primary and natural industry. To this region, abundantly supplied with water for irrigation from perpetual snow fields and glaciers, the avowed purposes of forest reservation are of minor importance, however different may be the physical relations of other parts of the country whose improvable and taxable areas have been reduced by forest reserves. Compared with grazing prohibition applied to untimbered areas, local benefits to be derived from them in this region, except protection from fires, would be hard to instance.

Upon the organization of a service for the Yellowstone Forest Reserve, it was publicly announced by the Special Superintendent that applications would be received for permits for the grazing of a limited number of cattle, horses and sheep within specific limits of the reserve, as provided by the Rules and Regulations and by special circulars of the Department of

the Interior. Until tardy announcement on the part of the Deputy Superintendent, as late as December 10, that the Department has prohibited the admission of sheep within the reserve after Jan. 1, 1903, it was generally assumed that such applications would be entertained in good faith, and grazing limits eventually be designated as provided in printed blank applications issued by the Department to that purpose.

Without grounds for such assumption on the part of citizens of the Big Horn Basin, an appeal to the Executive for protection of the prevailing, long established and leading industry of the Basin, would doubtless have been promptly made as soon as the proposition for creating the new Yellowstone Forest Reserve had come to the knowledge of the public.

When the proposition was before the Department of the Interior, no intimation was given to me, when in conference on the subject with its division officers, that any departure was contemplated from the published provisions of the Department for controlling and limiting, but not prohibiting, the grazing of sheep as well as other stock within forest reserves. Indeed, assurances were given me that resident cattle and wool-growers had no cause for apprehension, but much to gain from assignment of definite grazing limits.

It is probable that the call for applications, while tending to allay apprehension, was followed by applications in such number, not only from resident land holders, but also from non-residents, and persons at long distances from selected limits. That several applications were for the same limits is also probable--something to the embarrassment of the department. Even so--preference was reasonably expected, if in no approximate ratio of distance from home ranches, at least in favor of the nearest dwellers and taxpayers, as provided by the rules and especially by circulars of the Department. As anything like grazing limits for nomadic flocks seemed hopeless under the rules, most of these have been deported to distant ranges at no great sacrifice. Residents, on the other hand, who have hitherto been dependent on upland pasture and water for summer grazing, and who had the best of reason to expect the granting of applications, are now left with stock to carry over to the next annual marketings. Had reasonable notice been given of change of purpose on the part of the Secretary of the Interior, reduction of flocks and herds, which has been forced on all stock-growers throughout the Big Horn Basin and parts of the Yellowstone Basin in both states, might have gone on still farther.

Nothing indeed could have better indicated the importance of the relief sought than an excess of applications. Instead of meeting the difficulty by preferential awards as by departmental rules and circulars, it is incidentally met by prohibition of all but a moderate number of cattle and horses--the latter scarcely being in question. Thus it appears that one branch of the stock industry has been sacrificed to another, in which some of the local supervisory officers are practically interested, much to the triumph of one class of stock-growers over another class, and virtually deciding a conflict of local interests so far as it exists--not impartially.

Range stock of any kind, for obvious reasons, is in no condition in winter for transportation to market or deportation to other ranges.

The upper waters of the Big Horn on the east slope of the Absaroka division of the Rocky mountains form numerous bottoms at high elevations void of timber, as readily shown by photograph, but affording forage of indifferent quality. Of these basins that of the Sunlight is the largest and it is typical of all the others. Sheets of the Geologic Atlas of the United States well exhibit the topography of this mountain region.

The Absaroka Forest Reserve of Carbon County embraces the high mountains and snow and glacier fields of the Snowy Range culminating in Granite Peak--known by me in a special publication as The Granites. Except the foothills of this division of the Rocky mountain area, this particular part is above the timber line, and void of vegetation. The only instrumental topographical map of this region is one made by myself in the year 1898 uniform with sheets of the Geologic Atlas--and engraved in proof as a private contribution by the U. S. Geological Survey. In the course of my survey no signs of game or of

animal life were observed, nor indeed of other than aboriginal occupation.

The reserve embraces likewise the Beartooth Plateau as known by me in distinction from the rest of the range north of Clark's Fork of the Yellowstone. Particular objection arises to the exclusion of this plateau from grazing facilities. In spite of its elevation (11,000 feet) it has been during the last few seasons the main and last resource of growers of stock in Carbon County, Montana. As it is practically void of timber except on its precipitous north and east slopes, it is generally still hoped and expected that this resource be left open--at least under permissive rules of the department, for the benefit of stock-growers in Carbon County, where the public range has become greatly reduced in area. The same remark applies to marginal areas on the waters of the East and West Rosebud, the Fishfall and Stillwater, in Carbon and Sweetgrass counties. The physical character of the rest of the Absaroka Forest Reserve of Park county is well exhibited by publications of the U. S. Geological Survey. It contains numerous grassy openings which have long been the last resort of stock in seasons of drought.

Recurring to the Big Horn Basin of Wyoming, which abounds in so-called bad lands, and on the whole is far more arid than the areas above indicated, I beg for consideration of the effect of curtailment primarily of the wool growing industry through summary subversion of existing conditions--especially from overcrowding of the surviving range, to its total and rapid degeneration, including extirpation of grasses, and exposure of the soil to the exceptionally high winds of the basin--whence shifting of sands, and failure of springs and streams. From such a blight as it progresses, cattle will suffer more than sheep.

The designation of grazing limits, if later allowed at all, is of course within the discretion of the department, whether applications for such limits overlap, or whether confined or not to timberless areas.

In conclusion, I beg to advert to the uncertainty as to the legal force of departmental rules, regulations and orders controlling forest reserves, for want of definite statutes, both empowering and governing, much to the confusion of the public, as well as to the embarrassment of the Department of the Interior. It can be shown, as here briefly indicated, and by others more authoritatively and effectively than by myself, that the Rules and Regulations together with supplementary orders and circulars issued by the department in administration of forest reserves, are without force of law, although not popularly so understood, and that in default of empowering statutes back of administrative discretion, their observance is practically by consent of the governed. This is practically conceded by the Department in inserting in all printed application forms issued by the Department a clause exacting compliance with all rules and regulations as a condition of permits granted. As these are often conflicting and in not a few requirements unreasonable, and in some even illegal, (as when for instance what is granted to the individual is denied to a corporation) compliance is sometimes far from certainty, even on the part of the most scrupulous.

The point above mentioned is sustained by several positive decisions of United States courts in different states in cases involving criminal punishment for violation of orders of the Secretary of the Interior--affecting use of timber, and again, the grazing of sheep.

The only judicial decision cited by departmental officers in support of the power of the Secretary of the Interior to punish offenders against administrative orders, or rules and regulations governing forest reserves; or, in general terms, to declare to be a crime a violation of orders of an administrative officer of the general government, is most remotely deduced from a case turning strictly on the conferred or delegated specific power of the Secretary of the Treasury to enforce collection of internal revenue. (Chief Justice Fuller in re Hollock, 155 U. S., 526). No similar power has yet been conferred on the Secretary of the Interior for administration of forest reserves. Nor has criminal prosecution for grazing stock in forest reserves without special permit yet been sustained by a United States court.

Again as, I believe, no warrant not found in the general land laws has

been found by a United States court to inflict punishment for violation of forest reserve rules and regulations--in respect to reasonable local use of timber.

To citizens persisting in the enjoyment of rights long exercised, as derived from the general land laws but denied within forest reserves by administrative rules, or else granted at the cost of much circumspection, suspense and delay, no little trouble and annoyance in localities remote from recourse to United States courts may be caused by United States District Attorneys, who, acting perhaps on the opinion of the Solicitor General as approved by the Attorney General, that criminal prosecution "would (sic) be sustained" against violation of departmental orders are not unable to employ official process to that purpose, with or without power or support of law.

For this reason, if for no other less personal motive, everybody having relations with forest reserves is anxious, as I believe, for further specific legislation supplementary to the statute cited; for it is a general belief on the Pacific coast, as in the Rocky mountain region, that its declaratory clause, without which, as I have above expressed the belief, it could scarcely have been enacted, is rendered nugatory by departmental practice. This I am able to affirm by personal experience in both regions of the country where agricultural and mining interests which are given precedence by this declaration, have been subordinated by administrative officers to forestry purposes, and so continue to be in spite of appeals through the Department of the Interior for remedial measures at the hands of the President as provided by the statute, but from whose hands such appeals are effectually diverted when returned with negative action on the part of the Secretary by deputy in the manner above indicated.

So far as known to myself, resident citizens in both states have been disposed to yield compliance with general administrative orders limiting grazing of stock within assigned limits as provided by the rules and circulars of the department; the more so from expectation of relief from some of the abuses of the public ranges on the part of non-residents and unscrupulous persons, and from the further assumption that the same privileges granted for one reserve would not be withheld and denied for another.

That all will remain so disposed in view of unexpected special and discriminative prohibitions, is more than may be affirmed.

It can scarcely be conceived that the entire subversion of the woolgrowing industry of the Big Horn Basin of Montana and Wyoming, by the enormous encroachment upon its grazing resources through the new reservations, be regarded with complacency, except by the preferred few pursuing a collateral industry and benefited, not only by immunity from grazing prohibitions, but by the prohibitions now ordered against an equally important industry. These prohibitions have yet to come home to the particular industry affected, though fully appreciated by representatives of the preferred industry whose activity in promotion of the present situation sufficiently accounts for their superior alertness. Whether intentional or not, the whole force of authority at Washington has been given to the local domination of the cattle interest over the wool growing interest.

As prohibitions have not yet been announced for the Absaroka Reserve an appeal for their prevention or deferment to the Executive by whose action the reserve has been created, will not, I trust, seem untimely or unreasonable; as well as for modification of administrative orders for the Yellowstone reserve which will not become other than nominally operative before the advanced season of 1903.

Withdrawals of grazing territory inside the immediate boundaries of reserves are at the discretion of the President. Such withdrawals it is no part of my present purpose to advocate, but simply restricted use by the public of all grazing territory not subserving practical forestry purposes of importance.

In present circumstances the least relief that can be expected is postponement of the prohibition ordered (in the beginning of the year 1904, by which time wool-growers may find measures to safeguard transition from their present course of business, which business, in the majority of instances, if not in all, has been built up by exertions the most strenuous,

and by the use of comparatively large capital--often at high rates of interest.

It is equally desirable that prohibitions, and all but reasonable restrictions, if applied to the Absaroka Forest Reserve, the same as to the adjoining Yellowstone Reserve likewise be deferred to a date beyond the near future.

Whatever relief may yet be afforded by the authorities at Washington by suspension of the prohibitory orders of the Department of the Interior to enable flock masters on the west side of the Big Horn Basin in Wyoming, and, in case of the same orders applying to the Absaroka Forest Reserve, likewise in the Yellowstone basin of Montana, to wind up their business, the term of suspension should at least extend over the producing season of 1903, as well as the season for weaning of lambs and for marketing both sheep and lambs.

As the Big Horn Forest Reserve still remains open for limited sheep grazing, the woolgrowing industry of the east side of the Big Horn Basin will yet have a term of probation before it. But without continued access to watered uplands, where growth of grasses is annually renewed under unflinching precipitation, the industry of the west side will necessarily have come to an end before the snowfall of another winter--at least as a local industry of anything like its past importance. In the mean time prudent flock-masters will be compelled to seek other ranges, or else resort to other occupations. Whatever be individual alternatives--time is wanted for the change.

I have the honor to be, Mr. President, most respectfully,

Your obedient servant,

JAMES P. KIMBALL.

### Poor Farm Proposals.

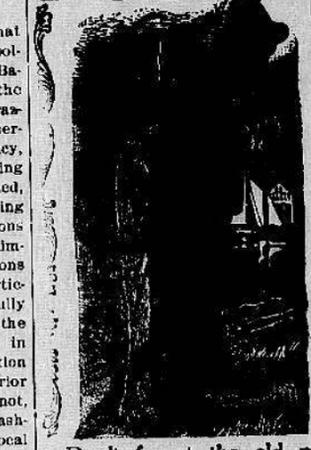
Office of the County Clerk, Red Lodge, Mont., Dec. 18, 1902. In accordance with an order of the board of county commissioners, made on Dec. 6, 1902, notice is hereby given that sealed bids will be received at this office until Jan. 7, 1903, for the purchase of the county poor farm, or for its cash rental for the period of one year. The right to reject any and all bids is hereby reserved.

Dated Dec. 18, 1902.

JESSE L. SMITH,

County Clerk.

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