

TED EMERSON
1952
by Bill Finley

One kind of livestock trespass on public lands is the guy who turns his cattle, horses, milk cow, burros, or whatever out to graze on the National Forest and who has no permit and pays no fees.

When I arrived in Glenwood, New Mexico in 1951 there were many such individuals. Glenwood was located in Catron County, still the most backward county in the entire Southwest. It was even worse in 1952. I think about the time I arrived there the local residents had probably just heard about Abe Lincoln gettin' shot.

Trespass livestock grazing on the National Forest was so common at that time, most of the locals were prone to regard it as local custom and acceptable activity, even though they knew it was illegal.

One such individual on the Glenwood District was a fellow named Ted Emerson who worked at the copper smelter in Morenci, 10 miles east of Silver City. Ted owned a 40-acre parcel of land on Mineral Creek a few miles East of Alma, New Mexico.

Ted fostered the myth that, if you owned at least 40 acres of land within the National Forest, the Forest Service was legally obligated to give you a grazing permit just for the asking. Of course, this was pure baloney, but it was a myth readily championed by those locals who had no grazing permit but would like to have one. All of the range had been allocated at the time the National Forests were created and the only way a newcomer could acquire a permit was by virtue of buying out an existing ranch that already had a permit.

I have no idea where the notion originated that, if you owned 40 acres or more, the Forest Service was obligated to grant you a permit. I never heard it expressed in any part of the country except Glenwood. Maybe Ted just plain made it up, or maybe it was just wishful thinking. The only way we could give him a permit would be to take it away from someone else.

In any case, before I moved there, Ted had applied for a grazing permit on the basis of his ownership of a cabin and 40 acre parcel of land in Mineral Creek. His application was of course turned down.

After several fruitless attempts, he finally began writing complaining letters to the Regional Office, the Governor, his Senator and Congressman, and anyone else he thought might be able to make the Forest give him a grazing permit simply for the asking. He was

repeatedly told all the grazing capacity and more was already allocated and the only way he could obtain a permit was to buy out someone who already had a permit.

Apparently, he finally decided "to hell with it", he'd just turn his cattle out on the Forest anyway. So he began moving cattle to Alma in a horse trailer at night, a few head at a time, and had built up a sizeable herd before my predecessor learned of it.

When the Ranger, Ernie Perry, discovered Ted's cattle on the Forest he began gathering them up and had impounded 32 head before Ted got wind of it and came up to protest.

Ernie let him take the 32 head without penalty after Ted agreed to gather the rest of his cattle and remove them from the Forest and keep them off.

Well, after Ernie was transferred and I was moved in to replace him, Ted apparently figured he could start over with a clean slate. He hit me up for a permit within a week after my arrival and got the usual refusal. So, once again, he started bringing cattle up from Morenci in a horse trailer.

Kenneth Shellhorn, my GDA at that time, and I were riding the Mineral Creek Allotment when we spotted seven head of Brahma steers. .

I had no idea who they belonged to, although I suspect Kenneth may have known. However, if he did, he remained mute. One of Joe Morgan's corrals was nearby, so we conveniently herded them into the corral and penned them up for the night.

We might not have noticed the trespass steers as readily except, the permittee, Joe Morgan, ran Hereford cattle. Those stark white Brahma cattle grazing among Joe Morgans' red and white Herefords, loomed up like a turd in a pan of milk and it was impossible not to notice them.

I checked the brand in the brand book I always carried in the pickup, then I drove to town and phoned the livestock inspector who confirmed Ted's ownership of the brand. This done, I sent Kenneth back to the corral with some hay and water for the cattle while I phoned Stan Wallace, the Forest Range Staff Officer, and told him what we had done. Stan advised me how to proceed.

That night, I was able to contact Ted by telephone and told him we'd corralled his cattle and he could come and redeem them by paying for the hay and the time we'd spent impounding and feeding them, but he'd have to remove them from the forest.

Ted blew up at this news and told me I'd damned well better turn his cattle loose or he'd "have the law on me." I told him I couldn't do that and he'd be better advised to come and remove them himself rather than have us do it.

At the time this happened, such incidental trespass was so common and so rampant, we had a Secretary of Agriculture's "Regulation T-12" impoundment order in effect on the entire Forest for the whole year.

Under the T-12 Regulation the Forest Service is allowed to impound any non-permitted livestock found grazing on the Forest. The owners of such impounded stock were given five days in which to come and remove the livestock after paying for the impoundment and feeding costs. If the owner failed to claim and redeem the stock they were advertised for sale at the local post offices and in the local newspapers for ten more days.

If at the end of this time, the owner didn't show up or failed to redeem them, the stock were to be sold at public auction to the highest bidder. If no bids were obtained, the stock could be destroyed. The owners could still redeem their livestock at any time, including the day of the sale.

Proceeds from the redemption or sale were retained to offset the costs of feeding and impoundment. If more money was collected at the sale than were needed to cover the impoundment costs, the difference was refunded to the owner, provided he made application for refund.

Copies of the Regulation were supplied to Ted and it was all explained to him and he was repeatedly requested to come redeem and remove the impounded cattle. All of these requests were angrily refused and I was repeatedly threatened with legal action if I didn't turn his stock back out on the range. As I recall, he had ten days to come and claim his livestock after which time, if he didn't pick them up and pay the impoundment fees, we'd publicly advertise them for sale for another 15 days. At the end of that 15 days, if he still hadn't redeemed them, we'd offer the stock for sale at public auction.

Ted sat on his thumbs until the time ran out, deliberately forcing us to hold the auction. He was convinced, as were most of the locals, that we were just bluffing. ("Hell! You can't sell another man's cattle! Any dumb "sum-bitch" knows that!").

Well, the day of the scheduled auction arrived, and many of the locals came out to watch the Forest Service "get backed down." or just to watch the fun. Ted didn't show up for the auction, but some of his

rowdy friends were there, giving me hostile looks and openly displaying switch-blades and un-sheathed hunting knives. No verbal threats were made, but the message was clear.

Shortly after my arrival, Stan Wallace, the Forest Range Staff Officer from the Supervisor's office showed up accompanied by the State Livestock Inspector. Stan opened the bidding but we got no bids from the locals who were convinced we couldn't do it. The only one who would bid was a guy from Cliff, 30 miles away, who didn't know how the local betting was going and, who only wanted a couple of steers to butcher for his own use. He wasn't aware of the local opinion that "Any damn fool knows you can't sell another man's cattle." The guy from Cliff bid \$20 apiece for two steers.

Stan asked for more bids but got none, so he finally announced acceptance of the bid. To everyone's amazement, Stan wrote out a bill of sale, the livestock Inspector inspected the two yearlings, gave the guy an inspection slip, and he loaded two steers in his bob-tailed truck to go home. Stan then opened the bidding on the other five head, but again got no bids from the now thunderstruck spectators.

After waiting in silence a few moments, Stan turned to the guy from Cliff and told him we had \$87.20 invested in impoundment and feeding costs and would sure like to get our money back and, "Would he be willing to pay another \$50.00 for the remaining five head?" The guy eagerly accepted and wrote out a second check for \$50.00, got his bill of sale and inspection certificate, loaded the other five head, piled in his truck and happily drove off with seven head of yearlings for a total outlay of only \$90.00.

As he drove away, the spectators stood around the corral in open jawed disbelief at what had just transpired. This laid to rest any speculation as to whether or not the Forest Service could sell another man's cattle.

It also helped me with the incidental milk cow, burro, saddle horse type of trespass problem far more than if Ted had quietly redeemed his stock. For several months after that, all I had to do was load my horse in the trailer and drive through the countryside and the locals fell all over themselves scrambling to gather up their trespass milk cows and burros.

Ted was infuriated when he learned the outcome of the auction. He was betting we'd have to back down and turn his cattle back out on the range. He immediately contacted a series of lawyers, one after the other, in an attempt to sue us. Each of the lawyers would make

inquiring phone calls or write inquiring or even mildly threatening letters on his behalf, but all of them, after becoming acquainted with the full facts of the situation, quietly dropped him.

But he kept on hiring lawyers and we began to wonder how he could afford to continue. Finally, someone in Silver City tipped off Stan Wallace that Fred Hollimon, one of our grazing permittees in Alma, was giving Ted money for lawyers to fight the Forest Service. Stan relayed this information to me and told me what to do about it. So, I drove to Alma to see Fred and followed Stan's instructions.

Fred was a cripple. According to local gossip, this was the end result of a drunken weekend binge with some friends many years before.

According to the story, on a drunken bet, Fred had agreed to climb aboard an unbroken, rough, mean moving, bucking horse, with nothing but a saddle. No bridle, no halter, no hackamore, no rope, no nuthin' to guide or restrain the horse. Just pile in the saddle and try to hang on. It was the last horse he ever rode.

The horse bucked wildly around the corral with him and finally plunged through the pole corral, crushing Fred's legs and crippling the horse so badly it had to be shot. They should have shot Fred at the same time.

After crushing his legs, Fred had plenty of time to sit around and brood and nurse grudges, real or imagined, against his neighbors, the world in general and the Forest Service in particular.

When I confronted him about financing Ted to fight us, Fred was surprised and defensive but readily admitted he'd been paying Ted's legal bills. When I asked him why he was doing this, he responded he and Ted were life-long friends and Ted was a "good ol' boy" and he thought the Forest Service should give him a grazing permit. After some more discussion, I finally asked him how many head he felt we should permit to Ted.

At this inquiry a fleeting look of triumph flicked across his face and left him happily surprised. After thinking it over a few seconds, he replied he thought we should let Ted have a permit for at least 50 head.

Following Stan's instructions, I responded "OK Fred, if you really feel this strongly about it, we'll give Ted a 50 head permit."

A second look of triumph flicked across his face at this announcement, and he beamed with pleasure, instantly becoming warm and friendly, until I added, "We'll put him on your Allotment and take the 50 head off of your permit!"

This was a bluff. There's no way the Forest Service would ever have approved such an action and Stan Wallace had no intention of giving Ted a permit on Fred's Allotment or anywhere else. But the bluff worked. The friendliness and look of triumph quickly vanished, replaced by a thundercloud.

Enraged at this suggestion, he threatened to send his own lawyer after us if we took 50 head away from him to give to Ted. I was beginning to enjoy this discussion.

So, I innocently inquired, "Hell, Fred, I thought you wanted Ted to have a permit. If we don't take it from your permit on your Allotment, who should we take it from?

Still red faced with rage, he responded we should take the 50 head from Bob Claus and let Ted graze on Bob's Allotment. (Bob was an Easterner and therefore an outsider and fair game for the natives.) I told him, "Bob doesn't want him either and, if we take 50 head away from Bob, I'm sure we'll be talking to his lawyer too. If we're gonna have to slug it out with some lawyer, we'd rather face off with yours."

Well, this discussion ended the financial support from Fred and we ceased getting phone calls and letters from lawyers. Ted then resumed writing complaining letters to the Governor and Congressmen, and seemingly anyone else he could find an address for, but after a few more months, even that ceased.

He never did put in a claim for the two dollar and eighty cent refund he had coming from the auction proceeds, and to my knowledge, he never turned any more cattle out on the National Forest. This ended it.