**Survey Act of March 3, 1853 (10 Stat 247)**, granted the “right of occupancy and cultivation only” to settlers on or near the “mineral lands”, prior to this it was illegal to settle on “mineral lands” (United States v Gratiot, 39 US 596 (1841)).

**Mineral Land Act of 1866 (14 Stat 253)**, opened all “mineral lands’ to development and settlement both, and made a legislative grant recognizing stockwater rights under section 9, as well as the right of individual agricultural stockraisers to claim 160 acres of land. This Act also clearly recognized “surface” claims to land separate from the underlying minerals. The **Mineral Land Acts of 1870 (16 Stat 218) and 1872 (17 Stat 91)**, were amendments to the 1866 Act. These Acts further extended the split surface-mineral deposits policy and contained additional language dividing the “surface” from the “mineral deposits” in the land. The Mineral Land Act of 1870 made the “survey” laws applicable to “mineral lands”. This made it possible for 2 or more “associated” claimants to obtain title to the surface of mineral land under section 10 of the 1866 Mineral Act together with section 13 of the 1870 Mineral Act.

The **Act of March 3, 1875 (18 Stat 481)**, specifically authorized “grazing” on all land open under the Homestead, preemption, and Mineral Land laws.

The case of **Atherton v Fowler, 96 US 513 (1877)**, held that where land claimed under a Mexican Land Grant (later proven to be defective and void), the settler that had purchased, settled on, improved and enclosed it had legally taken that claimed land out of the class of “public lands” and that the occupying settler had the preference right to obtain the government’s title. The settler’s occupancy was sufficient to prevent anyone from trying to claim it under the land disposal laws. The **Desert Land Act of 1877 (19 Stat 377)**, was passed about this same time and allowed a single individual to obtain title to 640 acres of land by conducting water onto the land to “irrigate” or to “reclaim” the land (which included “grazing”).

In **Smelting Co v Kemp, 104 US 636 (1881)**, the Supreme Court explained that the acreage limits Congress put into the land disposal laws of 160 acres was merely to keep a single individual from obtaining a monopoly over a huge area of land that would prevent other claimants from attempting to settle under the Mineral land laws. ***The Court said this acreage limitation was not intended to apply where 2 or more “associated” locators claimed much larger areas of land together under the mineral land laws****.*

Therefore, “associations” of actual stockraising settlers would claim a “homestead” as a home-ranch or headquarters and would then make “surface” “locations” of stockwaters under the Desert Land Act and would jointly claim a “stock range” of a size sufficient to support their families in accordance with State and Territorial range laws. See **Griffith v Godey, 113 US 89 (1885), Cameron v United States, 148 US 301 (1893), Grayson v Lynch, 163 US 468 (1896), Salina Stock Co v Salina Creek Irr Co, 163 US 109 (1896), Ward v Sherman, 192 US 168 (1904)**. About the same time the Supreme Court upheld a “stock range” as property rights, Congress passed the **Enclosure Act of 1885 (23 Stat 321)**, which specifically made it legal for persons having a “claim” under any of the US land laws to enclose their grazing lands (Cameron v United States, supra).

From the Mineral Land Act of 1866 (supra), forward Congress intended to dispose of the surface of mineral lands separate from the mineral deposits/mineral rights **(Barden v Northern Pacific RR, 154 US 288 (1894), Great Northern RR v United States, 315 US 262 (1942), United States v Union Pacific RR, 353 US 112 (1957))**.

The **Validation Act of 1890 (26 Stat 391)** “validated” all occupancy, entry and settlement West of the 100th Meridian, and the **General Revision/Forest Reserve Act of 1891 (26 Stat 1099)**, directed the Secretary of Interior to “confirm” withing two years all prior existing settlement claims. Thereafter, the Interior Department could not challenge any claimant’s title after 6 years. **Lane v Hoglund, 244 US 174 (1917), Payne v United States, 255 US 438 (1921), Stockley v United States, 260 US 532 (1923)**. The 1897 **Forest Organic Act (29 Stat 484)** required the Secretary to “survey” all land occupied by actual settlers, to issue them an official survey map, and those maps would have the force and effect of perfecting and recording the stockraising settler’s surface title **(Whitney v Morrow, 112 US 693 (1885), Shaw v Kellogg, 170 US 312 (1898))**. Once an “allotment” was made it could not be rescinded **(Ballinger v Frost, 216 US 240 (1910))**.

Teddy Roosevelt recommended amending all the land settlement laws to conform them to the overall split surface-mineral-timber policy of the mineral land laws in 1910. The **National Forest Homestead Acts of 1899/1904/1906/1908** construed together were split-estate land disposal laws that instead of requiring payment of $1.25 per acre, reserved minerals and merchantable timber while requiring construction of improvements worth $1.25 per acre **(30 Stat 1095, 33 Stat 547, 34 Stat 233, 35 Stat 554)**. As the result of Teddy Roosevelt’s recommendations to Congress all the land disposal laws were amended and revised to adopt the split-estate policy beginning with the **Act For Protection of Surface Rights of Entrymen of 1909 (35 Stat 844)** In 1912 Congress directed and required the Secretary of Agriculture identify all unsettled land in National Forests for disposal **(Acts of 1912 and 1913, 37 Stat 287, 37 Stat 842, 38 Stat 113)**. Congress amended and revised all the land disposal laws to reflect the intent to grant stockraising settlers the surface while retaining the minerals and merchantable timber for separate disposal. The culmination of these laws was the **Agricultural Entry Act 1914 (38 Stat 509) and StockRaising Homestead Act of 1916 (38 Stat 862). See Kinney Coastal Oil v Kieffer, 277 US 488 (1928), and Watt v Western Nuclear, 462 US 36 (1983)**.

The **Stockraising Settlers Relief Act of 1923 (42 Stat1445)**, cured all defects in title for all allotment owners both inside and outside of National Forests. The **Pickett Act of 1910/1912 (36 Stat 847, 37 Stat 497, 41 Stat 1089)**, clearly intended to dispose of land as split-estates and the President began creating Grazing Districts outside National Forests in 1921 (EO 3450). See also EO 5004 (1928), EO 5428 (1930), and EO 5711 (1931). The **Clarke-McNary Act of 1924 (43 Stat 653)** authorized the Secretary of Agriculture to create a **“national forest system”** by entering into voluntary cooperative agreements with allotment owners to provide fire-fighting service and forestry or range management advice. The **Taylor Grazing Act of 1934/1936 (48 Stat 1269, 49 Stat 1976)** authorized the Secretary of Interior to dispose of land outside National Forests as split-estate Grazing Districts under the Pickett Act while offering cooperative agreements to grazing allotment owners. See EO 6910 (1934) and EO 7048 (1935).

**Grazing Allotments are split estate property rights where the stockraiser is the “surface owner for all agricultural and ranching purposes” Watt v Western Nuclear, supra. See also Kinney Coastal Oil v Kieffer, supra, and United States v New Mexico, 438 US 696 (1978). Therefore Congress protected all of allotment owners valid existing rights by Section 6(i) of the National Forest Management Act (90 Stat 2955) “revision of all present or future permits, contracts and other instruments shall be subject to valid existing rights”; and Title VII of the Federal Land Policy Management Act (90 Stat 2786) “all actions by the Secretary concerned under this Act shall be subject to valid existing rights”.**