

--HISTORY OF THE PUBLIC DOMAIN--

IN OREGON

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Including an Abstract of all Federal Laws that
have affected, or that do now affect lands in the State
of Oregon, showing how title has been acquired to
Public Land in said State, together with
Statistics and Diagrams.

Prepared at the University of Oregon, 1906, 1907,

By

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- 2- United States Statutes at Large.
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- 6- "Reports of Department of Interior 1904-1905"
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- 7- All Articles relative to Land Law Reform and Public Domain
in the Oregonian from September 1906 to June 1907.
- 8- Recent Issues of the "Oregon Historical Quarterly".
- 9- United States Laws in Pamphlet form, relating to;
 - (a) Mines and Mining
 - (b) Homesteads
 - (c) Forestry)
 - (d) Swamp and Overflowed Lands
 - (e) Scrip and Lieu Lands
 - (f) School Land
 - (g) Military and Indian Reservations
 - (h) Town site and County seat Acts
 - (i) Timber and Stone Acts
 - (j) Desert Lands
- 10- "Congressional Grants of Land in Aid of Railways,"
by John Bell Sanborn Ph.D.
- 11- Bullock's Finance
- 12- Adams' Finance
- 13- "Land Laws of United States Volume 1"
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--Introductory--

A history of the Public Domain in Oregon is a treatise of utmost importance to the people of this State today. Such a subject has never been written "from the ground up" by any one who has thoroughly investigated the laws as they now exist relative to the public land question in Oregon.

Some of our representative citizens are now before the people of other States, formed into a ring of conspirators, making predatory raids on the government lands. Why does this state of affairs exist? Because the present laws governing the disposition of the Public Domain are cumbersome. They are easily evaded by individuals and corporations wishing to take advantage of the blunders of Congress. To get at the root of the evil it is necessary to trace the land policy of the Federal Government, since that policy became one of national importance, as would be traced a history of the title to a piece of land; therefore it has been my object to make an abstract of all Federal Laws, and special Acts of Congress pertaining to lands in Oregon, meaning to show thereby the rights of individuals and corporations to lands in this State.

Very few of the conclusions, inferences and suggestions are mine, but rather are taken from authorities who are most capable of expressing opinions; but these suggestions and opinions which have made such an impression on my mind as to the existing evils of the present system of public land laws, are the foundation of what I hope to make an extensive investigation toward land law reform in this State.

The land question is one of vast importance to the settler and the homeseeker. The public land is the people's heritage. Here in Oregon where so much has been "gobbled up" remorselessly by the land barons, there is a righteous belief that the people have been robbed of such a heritage. Many millions of acres of land are held against the public through land grants, lieu scripping and fraudulent entry. It can clearly be seen that unless Congress takes steps to stop such depredations on the Public Domain, it will be but a few years until this country will be "land poor". President Roosevelt's land policy is well known so needs no comment here. Suffice it to say, he is very anxious for reform of the land laws, and earnestly petitioned Congress to aid him in such a work during the last Session. Nothing of importance was done however except that the President was relieved of the responsibility of creating public reservations of land, Congress assuming that power, and a few minor changes made in the various laws for the disposition of the Public Domain.

The people of Oregon should be acquainted with the facts as they are; therefore should this thesis come into the hands of those interested in the great land question, I ask that such persons pay special attention to statistics as compiled, and to special Acts of Congress granting enormous subsidies of public land to Corporations. These subsidies of land inured to the Corporations in performance of some trust and although in most cases specially stipulated that such lands should be sold at a certain price for the benefit of the actual settler, they have been held for years waiting for the rise in value which was bound to come as the country became more thickly populated. Unless laws are framed com-

selling these Corporations to throw their lands upon the market at reasonable rates, there will result a veritable gold mine to the recipients of such grants.

The investigation which has culminated in this thesis was carried on at the University of Oregon during the years 1906 and 1907. On account of the Law Department of the University being located in Portland, the library facilities in Eugene for such a work are limited, consequently much of my research has been done at various points in the State offering the best authority on the subject.

Eugene, Oregon, May 15-1907.

CHAPTER I.

Methods of Sale and Disposal of the Public Domain from
1808 to 1906.

Congress, having complete control over the Public Domain, can sell it, give it away, or make such other disposition as it likes, and as it believes best for the general welfare of the public good. The early ideas as to the disposition of the Public Domain, were ideas of raising revenue for the national government. Public lands were looked upon as an asset to be cashed at once for payment of current expenses of government, and extinguishment of national debt. Alexander Hamilton's views of disposition of the domain were set out in his report submitted to Congress July 20-1790, in which he said there were two principal objects to be considered.

- 1- Facility of Advantageous sales.
- 2- Accomodation of individuals inhabitating the western country.

Primary emphasis was laid upon the first object, or the means of raising revenue.

--Several Prices of Public Lands at Various Periods--

The United States from 1785 to 1880 sold lands at various prices as follows:

Agricultural Lands, at rates between 12 1/2 cents and 75 cents; \$1.00, \$1.25, and \$2.50 per acre.

Mineral Lands, at rates of \$5.00 and \$2.50 per acre, special mention being made as to the kinds of mineral in each case.

Coal Lands, At the rate of \$20.00 per acre where situated within 15 miles of a completed railroad, otherwise at

\$10.00 per acre.

Desert Lands, at \$1.25 per acre.

Saline Lands at \$1.25 per acre.

Timber and Sone Lands at \$2.50 per acre. (a)

 --Acts Relating to the Sale and Disposal of Public Lands--

The Act of March 31-1808 provided, that whenever the President is authorized to cause the public lands in any land district to be offered for sale, he may offer for sale, at first, only a part of the lands contained in such district, and at any subsequent time or times he may offer for sale in the same manner any other part, or the remainder of the lands contained in such district. (b)

The Act of April 24-1820 provided, that all the public lands, the sale of which is authorized by law, shall when offered at public sale to the highest bidder, be offered in half quarter sections. This act further provided that the price at which the public lands are offered for sale shall be \$1.25 per acre, and at every public sale the highest bidder shall be the purchaser, but no lands shall be sold for less than \$1.25 per acre. And lands offered at public sale and not so sold, shall be sold at private sale by entry at the land office at \$1.25 per acre. Provided, that the price to be paid for alternate sections, or reserved lands, along the line of railroads within the limits granted by any act of Congress, shall be \$2.50 per acre. (c)

The act of April 5-1832 provided, that all public lands, when offered at private sale, may be purchased at the option of the purchaser, in entire sections, half sections

(b) 2 Stat L. 479.

(c) 2 Stat L. 566.

(a) H.M.Doc 1382,83 Vol 19-Donaldson Public Domain-208

quarter sections, half quarter sections, or quarter quarter sections. (a)

Section 3 of the Act of June 15-1880, reduced the price of alternate sections of railroad lands to \$1.25 per acre.

Section 4 recites, That this act shall not apply to any of the mineral lands of the United States, and no person who shall be prosecuted for, or proceeded against on account of any trespass committed, or material taken from any of the public lands after March 1-1879, shall be entitled to the benefits thereof. (b) The provisions of this section would seem more especially applicable to section 1 of the act, but as they apply in terms of the whole act they are here retained. (c)

Section 9 of the Act of March 3-1891 provided, that hereafter, no public lands, except abandoned military reservations or other reservations, isolated and disconnected fractional tracts, authorized to be sold by Sec. 3455 R.S., and mineral lands and other lands, the sale of which at public auction has been authorized by acts of Congress, of a special nature having local application, shall be sold at public sale. (d)

From July 1-1880 to June 30-1904, the number of acres of land subject to private entry in Oregon, sold by the government, aggregated 54,551.13, amounting to \$69,759.35, number of entries 430. Number of acres of land subject to sale at public auction, sold; aggregated 31,546.41,

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- (a) 4 Stat L. 503.
 - (b) 21 Stat L. 238.
 - (c) Fed. Stat Annotated Vol. 6 page 334.
 - (d) 26 Stat L. 1099.

amounting to \$54,363.24, number of entries 461. (a)

Land disposed of for cash under act of March 3-1887, (special in character), 1,703.23 acres, amounting to \$2,360.45 number of entries, 10.

Land disposed of under act September 29-1890, (special in character), 148,311.52 acres, amounting to \$133,855.84, number of entries, 883. (b)

Land disposed of under Act August 15-1894, (special in character), 7,92 acres, amounting to \$3,551.43, number of entries, 59. (c)

Total cash sales in Oregon, from July 1-1880 to June 30-1904, aggregated 4,211,483.51 acres, amounting to \$8,855,452.01, number of entries 39,225. (d)

Lands withdrawn for National Reclamation Service in Oregon to June 30-1904, none of which have been restored, aggregated 1,413,080 acres. (e)

Unappropriated Lands June 30-1904.

Land District,	Area Unappropriated,	Reserved,	Appropriated,
Oregon City	489,671 acres	1,238,070	5,740,509
Roseburg	1,316,102	3,429,531	7,135,637
The Dalles	2,395,263	1,348,217	4,512,020.

(f)

(a)	Report Land Comm, 1904-1905 Sen. Doc. Vol 4 page	200.
(b)	Do	204.
(c)	Do	206.
(d)	Do	208.
(e)	Do	198.
(f)		348- 350.

C H A P T E R I I.-Pre-emption Acts-

The pre-emption, or preference right to settlers was first established by the Act of March 3-1801, and was a system for disposition of public land, which arose from the necessities of the settlers, and through a series of more than 57 years of experience in attempts to sell or otherwise dispose of the Public Domain. The early ideas of sales for revenue were abandoned, and a plan for disposition for homes was substituted. The pre-emption system was the result of law, experience, executive orders, departmental rulings and judicial construction. It has been many-phased, and was applied by special acts to special localities, with peculiar or additional features, but it always pretended to contain the germs of actual settlement, under which thousands of homes have been made and lands made productive, yielding a profit in crops to the farmer and increasing the resources of the Nation. The necessity of protecting actual settlers on the Public Domain and giving a preference right to actual settlers who were desiring to make homes thereon became more apparent in the years from 1830 to 1840, during which period citizens were crazed with the ambition to become "rich quick" by purchasing land from the government and holding the same for investment or speculation.

The essential conditions of pre-emption, were actual entry upon, residence in a dwelling, and improvement and cultivation of a tract of land. Pre-emption was a premium in favor of, and condition for making permanent settlement and a home. The original act was followed through the period from 1801 to 1841-forty years- by sixteen acts.

June 1-1840, and a more complete act of September 4-1841 gave a preference right only where the settlement was made subsequent to survey, which acts were amended and approved by acts of March 5-1843, March 3-1853 and March 27-1854. The two later acts modified this rule as to settlement, so as to permit pre-emptions to extend to unsurveyed lands in California, Oregon and other States.(a) The act of May 30-1862, and sundry bills for the relief of settlers passed at different times, extended the times of payment on account of drought, plague etc. The act of March 3-1873, authorizing joint entries, and the act of March 3-1879, prescribed the manner of making final proof. By the act of March 3-1853, preference rights attached to alternate even-numbered sections along the lines of railroads, if they were settled upon and improved prior to final allotment of the granted sections, and to lands once covered by French, Spanish or other grants declared invalid by the Supreme Court of the United States. By the act of March 27-1854, persons were secured in lands withheld for railroads, where their settlements were made prior to the withdrawal from market. The municipal town site law of 1844, and the pre-emption provisions in the graduation act of 1854, gave way, the former to the town property and coal land legislation of 1864 and 1865, and the latter to the homestead statutes of 1862, 64, 66, the law of May 30-1862 intervening in regard to pre-emption and other important interests. By the law in existence in 1830 the privi-

(a) At the time of admission of Oregon into the Union, 1859, the area was estimated at 95,746 miles, 61,277,440 acres. Timber land 13,459,520 acres, agricultural land 42,817,320 acres. Total area including water surface 61,976,320 acres. (See Publ. Land Comm. Report 1904-1905 Sen. Doc Vol 4-139)

lege of pre-emption was generally extended to settlement on unsurveyed as well as surveyed lands, and a credit of from twelve to thirty-three months given the pre-emptor by residence thereon. (a)

Section 4 of Chapter 561 of the Act of March 3-1891, entitled "An act to repeal Timber culture Laws, and for other purposes", repeals the pre-emption laws, excepting sections 2275, 2276, 2286 R.S., but all bona fide claim lawfully initiated before the passage of this act, under any of the provisions of the law so repealed, may be perfected upon due compliance with law, in the same manner, upon the same terms and conditions, and subject to the same limitations, forfeitures, and contests, as if this act has not been passed. (b)

Sections 2275 and 2276 as above excepted, pertain to School lands and will be treated under such title. Section 2286 pertains to pre-emptions by Counties for Seats of Justice and is treated under "Grants for Town site and County seats."

Statistics are not available for the disposal of land in Oregon prior to 1880, under the pre-emption act.

From July 1-1880 to June 30-1904 there was disposed of for cash under this act, in Oregon, 1,625,292.32 acres, at a price of \$2,390,375.92, No. of entries 10,916. (c)

(a) Donaldson Public Domain-1883, pages 214, 215

(b) 26 Stat L. 1907

(c) Public Land Comm. Report 1904-1905 Sen. Doc. Vol. 4-201.

CHAPTER III.

--SALINE LANDS--

The acts for the admission of all the public land States, gave to them all the saline springs not exceeding twelve in number in the respective States together with six sections of land with each spring for school purposes and public improvements.

The pre-emption act of 1841, ordered that no lands on which are situated any known salines, or mines, shall be liable to entry under and by virtue of said act. The homestead act of 1862 reaffirmed the exemptions in the pre-emption act of 1841, and its amendments. Salines were disposed of by special acts of Congress until after the admission of Nebraska into the Union in 1867.

The act of Jan. 12-1877, provided a new mode of proceeding, by which such lands are rendered subject to disposal as other public lands. Under its provisions a hearing is ordered, and witnesses are examined as to the character of the land in question, and the testimony taken at the hearing is submitted to the General Land Office for its decision. Should the tracts be adjudged agricultural, they will be subject to disposal as such. Should the tracts be adjudged saline in character they will be offered at public sale to the highest bidder for cash, at the price of not less than \$1.25 per acre. In case they are not sold, they will be subject to private sale at a price of not less than \$1.25 per acre, and in the same manner as other public lands are sold.

By the act of Feb. 14-1859 Oregon was granted twelve saline springs, together with six sections of land lying

contiguous thereto. Total amount of land granted to Oregon by said act, 46,080 acres. (a)

Jan'y 31-1901 Congress passed an Act, providing that all of the unoccupied public lands of the United States containing salt springs, or deposits of salt in any form, and chiefly valuable therefor, are hereby declared to be subject to location and purchase under the provisions of the law relating to placer-mining claims. Provided that the same person shall not locate or enter more than one claim hereunder. (b)

(a) Donaldson Public Domain-1883 pages 217-218
(b) 31 Stat L. 745.

CHAPTER IV.

---SWAMP AND OVERFLOWED LANDS---

The attention of Congress was early called to the fact of vast areas of worthless public lands, lying as marshes or subject to the periodical overflow by adjacent water-courses. Several efforts were made to make these lands the subject of national legislation, but no definite act was passed until the law of Sept 28-1850, which extended the grant made to Arkansas to each of the other States of the Union in which such swamp and overflowed lands, may be situated. The spirit and intent of the act as to the disposition of the proceeds from the sale of said lands may be seen by the following quotation from Sec. 2480, R.S. "The proceeds of said lands, whether from sale or by direct appropriation in kind, shall be applied exclusively, as far as necessary, to the reclaiming of said lands, by means of drains, levees etc".

In extending by act of March 12-1860, the swamp grant of 1850 to the States of Minnesota and Oregon, which States had been admitted into the Union subsequent to the original grant, Congress laid down two important and just principles, essential to the harmonious administration of the various laws under which the land system is in operation; and these are, first, that the grant shall not include any lands which the government "may have reserved, sold or disposed of prior to the confirmation of title to be made under the authority of said act", second, there shall be limitation for the time of selection. (a)

(a) Donaldson Public Domain-1883, pages 219-220.

Up to June 30-1883, there had been selected for the State of Oregon, by virtue of the above act, 174,205.92 acres. there had been approved to the State 125,594.26 acres, and there had been patented to said State 27,685.10 acres. (a)

Statistics to June 30-1904 show:-

526,903.63 acres selected, 351,743.16 acres approved,
249,244.82 acres patented, 152,151.41 acres rejected. (b)

(a) Donaldson Public Domain-1883 pages 1248-1249.

(b) Pub. Land Comm. Report 1904-1905 Sen. Doc Vol 4-156.

CHAPTER V.

-- EDUCATIONAL, LAND GRANTS BY THE UNITED STATES--

The lands granted in the States and reserved in the Territories for educational purposes by acts of Congress from 1785 to June 30-1830, were for public or common schools, every sixteenth section of public land admitted prior to 1848 and every sixteenth and thirty-sixth section in States and Territories since organized. For seminaries or universities the quantity of two townships, or 46,080 acres in each State or Territory containing public land, and in some instances a greater quantity for the support of seminaries or schools of a higher grade. For agricultural and mechanical colleges, there was a grant to all the States by act of July 2-1862, and its supplements, of 30,000 acres for each Representative and Senator in Congress, to which the State was entitled, of land "in place" where the State contained a sufficient quantity of public land; subject to sale at ordinary entry at the rate of \$1.25 per acre, and of scrip representing an equal number of acres, where the State did not contain such description of land; the scrip to be sold by the State and to be located by its assignees on any land in other States and Territories, subject to certain restrictions. The lands thus ceded to the several States, were disposed of or held for disposition, and the proceeds were used as permanent endowments for common school funds. (a)

In the act for the Organization of the Territory of Oregon, Aug 14-1848, Senator Stephen A Douglas, inserted an

(a) Donaldson Public Domain-1835 page 223.

additional grant for school purposes of the thirty-sixth section of each township, with indemnity for all public-land States thereafter to be admitted, making the reservation for school purposes the sixteenth and thirty-sixth sections, or 1,280 acres in each township of six miles square reserved in public land States or Territories, and confirmed by grant in terms in the act of admission of such State or Territory into the Union. (a)

On Jan'y 7-1853 Congress passed an act to amend an act entitled "an act to establish the Territorial government of Oregon", approved Aug 14-1848, which amendment provided for the selection in Oregon of other sections in lieu of the sixteen and thirty-sixth sections, when those were located upon; and further provided that the lands so selected were to be set apart for the benefit of the common schools. (b)

The act of Feb'y 26-1859, Chapter 58, 11 Stat L. 395, relating to settlements before survey, on sections sixteen and thirty-six, and deficiencies therefor, was amended by act of Feb'y 28-1891, chapter 384, Stat L. 26-796, and provided, that where pre-emption or homestead entries have been made on public land before survey, and are found after survey to have been made on sections sixteen and thirty-six, those claims shall be subject to the rights of settlers, and when such sections have been granted for educational purposes, other lands of equal acreage may be selected by the State or Territory in lieu of such land so settled upon.

Provision is made for the selection of additional lands,

(a) Donaldson Public Domain-1833 page 226

(b) H.M. 1882-1883 Vol 18, part 2 page 988.

where said sections sixteen and thirty-six are mineral, or are included in any Indian, Military or other reservation, or are otherwise disposed of by the United States. Provision is made for additional selection by State or Territory where said Sections are fractional in quantity. (a)

---Selections to Supply Deficiencies of School Lands---

That lands appropriated by the preceding section shall be selected from any unappropriated, surveyed public lands, not mineral in character, within the State or Territory where such losses or deficiencies of school sections occur; and where the sections are to compensate for deficiencies of school land in fractional townships, such selections shall be made in accordance with the following principles of adjustment, to-wit; For each township or fractional township containing a greater quantity of land than three-quarters of an entire township, one section; for a fractional township containing more than one-quarter and not more than one-half of a township, one-half section; and for a fractional township containing more than one section, and not more than one-quarter of a township, one-quarter section of land. And States entitled to both sections sixteen and thirty-six, shall select double that amount. (b)

The act of March 2-1895 for Indian Appropriation, provides that any State or Territory entitled to indemnity school lands or entitled to select lands for education purposes under the existing law, may select such lands within the boundaries of any Indian Reservation, in such State or Territory from the surplus lands thereof, purchased by the

(a) Sec. 2275 R.S.

(b) Sec. 2276 R.S.

United States after allotments have been made to the Indians of such reservation, and prior to the opening of such reservation to settlement. (a)

The act passed by Congress April 21-1904, making appropriations for the expenses of the Indian Department, and for other purposes, provided, among other things, that all indemnity school land sections made by the State of Oregon in lieu of Sections sixteen and thirty-six in place, between the boundary of the Klamath Indian Reservation, as fixed in 1888, and the boundary agreed upon in the treaty with the Indians in 1864, as confirmed by the Klamath Boundary Commission, which are otherwise regular and free from any prior claim are hereby confirmed to the State of Oregon as School lands.

Statistics are as follows:-

By act of Feb'y 14-1859 Oregon received for school purposes, 3,329,706. By said act and act of March 2-1861 there had been granted for University purposes, 46,080 acres. (b)

The above statistics include lands patented to the State up to 1883.

Number of acres patented for common schools to June 30-1904, Sections 16 and 36, 3,404,302.00 acres. For charitable, educational, penal, and reformatory institutions, 136,080.00 acres. For internal improvements, 500,000.00 acres For Public Buildings 6,400 acres. (c)

(a) 28 Stat L. 899.

(b) Donaldson Public Domain-1883 page 228

(c) Pub. Land Comm. Report 1904-1905 Sen. Doc Vol 4-157.

--AGRICULTURAL AND MECHANICAL COLLEGE GRANTS--

July 2-1862, Congress enlarged the National endowment system by the Donation to each State, of thirty thousand acres of public land, not otherwise reserved--no mineral lands could be selected, and selections must be of quarter-sections-- for each Senator and Representative--to which such State was entitled under the apportionment of 1860-- for the support of colleges for the cultivation of agriculture and mechanical science and art. The law contained provisions for location in place, and an issue of scrip in lieu of place locations. The Commissioner of the General Land Office in 1875, in the case of the new State of Colorado, ruled that the grant attaches to a new State without further legislation. The scrip could be located upon land subject to sale at ordinary private entry, at \$1.25 per acre, or could be used in the payment of pre-emption claims and the commutation of homestead entries. The lands entered "in place" were sold by the several States, and the proceeds thereof used to endow agricultural colleges. The scrip was sold by the several cases--in most cases-- and the proceeds of the same used for the same purposes.

Oregon was one of those States having land subject to selection "in place", and was granted under the act of July 2-1862. 90,000 acres. (a)

By act passed March 3-1883 the act of July 2-1862 was amended and read as follows:-

That the fourth section of the act donating public land to the several States and Territories,

which may provide colleges for the benefit of agriculture and mechanical arts, be and the same is hereby amended as follows:

"Sec 4. That all moneys derived from the sale of lands aforesaid, by the States to which the lands are apportioned, and from the sales of land-scrip hereinbefore provided for, shall be invested in stocks of the United States or of the States, or some other safe stocks, or the same be invested by the States having no State stocks, in any other manner after the Legislatures of such States shall have assented thereto, and engaged that such funds shall yield not less than five per centum upon the amount so invested, and that the principal thereof shall forever remain unimpaired: PROVIDED, that the moneys so invested or loaned shall constitute a perpetual fund, the capital of which shall remain forever undiminished- except so far as may be provided in Section five of this act-, and the interest of which shall be inviolably appropriated, by each State which may take the claim the benefits of this act, to the endowment, support and maintenance of at least one college where the leading object shall be, without excluding other scientific and classical studies, and including military tactics, to teach such branches of learning, as ~~are~~ related to agriculture and the mechanic arts, in such manner as the legislatures of the States may respectively prescribe, in order to promote the liberal and practical education of the industrial classes in the several pursuits and professions of life". (a)

CHAPTER VI.

--LAND BOUNTIES FOR MILITARY AND NAVAL SERVICES--

From the earliest era of our history, the policy of rewarding the defenders of our country, has been marked by great liberality. Land bounties were even promised at a period prior to the Nation's possessing public domain. Grants have been made under the acts of 1874, 1850, 1852 and 1855, which included nearly all the wars of the United States up to 1883. (a)

Following, are a few of the essential points stated, in a circular respecting the location of land warrants, issued July 20-1875, and in effect December 1-1883.

"II as to Locations"

" 27. Military bounty-land warrants may be located upon any vacant public lands of the United States that are subject to sale at private entry, and they may be used in payment of pre-emption claims, or in commutation of homestead entries, even when the same embrace unoffered lands..... A Warrant issued to several parties, or assigned to three or more persons, cannot be located if assigned by one of the owners of another, or of other persons, so as to invest any one of the parties with the greater interest than the other. In other words, each owner of a warrant, at the time of its location, must have an equal share of interest therein..... Each warrant is required to be distinctly and separately located upon a compact body of land; and if the area of the tract claimed should exceed the number of acres called for

(a) Donaldson Public Domain-1883 page 232

in the warrant, the locator must pay for the excess in cash, but if it should fall short, he must take the tract in full satisfaction for his warrant. A person cannot enter a body of land with a number of warrants without specifying the particular tract or tracts to which each shall be applied, and for each warrant there must be a distinct location, certificate and patent," etc, etc. (a)

Up to 1880, by the several acts above mentioned, there had been located in Oregon with military-bounty land warrants, 680 acres. (b)

By the act of December 13-1894, the receivability of military-bounty land warrants, as a consideration for public lands, is affected. Under previously existing laws, the said warrants were located on any land subject to sale at ordinary private entry, and also in payment of pre-emption claims or in commutation of homesteads, as above mentioned. By the act of 1894, 28 Stat L. 594, it was further provided that said warrants may be located in certain other cases, viz- In payment, or part payment for any lands entered under the desert-land law of March 3-1877, and the amendments thereto; in payment ~~of~~ part payment, for lands entered under the timber culture law of March 3-1873, and the amendments thereto; in payment or part payment, for the lands entered under the timber and stone law of June 3-1873, and the amendments thereto, and in payment or part payment for lands sold at public auction, except such lands as shall have been purchased from any Indian Tribe within ten years last past. (c)

(a) Donaldson Public Domain-1883 page 715.

(b) Donaldson Public Domain-1883 page 236

(c) Circular U.S. Land Office Mch 23-1902 pages 7 and 8

CHAPTER VII.

-- TWO, THREE AND FIVE PER CENT FUNDS--

Congress, by several acts, granted and allowed to the several States containing public lands, with the exception of California, two, three and five per cent upon the net proceeds of the sales of public lands therein. These allowances were in lieu of State taxation of the United States public lands within said States, and in many instances took effect from the date of admission, into the Union. (a)

Article five of Section four of an act for admission of Oregon into the Union--approved February 14-1859 reads as follows: "That five per centum of the net proceeds of the sales of all public lands lying within said State, which shall be sold by Congress after the admission of said State into the Union, after deducting all the expenses incident to the same, shall be paid into said State, for the purpose of making public roads, and internal improvements, as the Legislature shall direct".

The amount which accrued to Oregon on account of the above mentioned act to June 30-1882 was \$34,911.⁰⁹ (b)

In 1883 the practice was as follows: After the Register's certificate and receiver's receipt had been issued for lands purchased of or acquired from the United States, the authorities of the States or Territories in which they lay, listed them for taxation, although no patent had been issued. Prior to this only the value of the improvements was taxed, not the land as the fee was still in the United

(a) Donaldson Public Domain-1883 page 238.

(b) Donaldson Public Domain-1833 page 721.

States. States containing public land renounced their right to tax the Public Domain at their time of admission into the Union. A State could tax land after it had been entered and paid for, although no patent had been issued therefor.
(a)

(a) Donaldson Public Domain-1883 page 239.

CHAPTER VIII.

--INDIAN RESERVATIONS FROM THE PUBLIC DOMAIN--

-Extinguishing the Indian Title to Lands-

Preliminary to the survey of lands within the public Domain, the United States requires the extinction of the Indian Title or Indian right of occupancy thereof. Without this being done, the surveys will not be made.

- The ninth Article of the Articles of Confederation declared:-

The United State in Congress assembled, have the sole and exclusive right and power of regulating the trade, and managing all affairs with the Indians not members of any of the States; Provided, that the legislative right of any State within its own limits be not infringed or violated.

Under this, September 22-1783, Congress issued a proclamation prohibiting and forbidding all persons from making settlements on lands inhabited or claimed by Indians without the limits or jurisdiction of any particular State and from purchasing or receiving any gift or cession of such lands or claims, without the express authority and direction of the United States in Congress assembled.

It further declared that every such purchase or settlement, gift or cession, not having the authority aforesaid, should be null and void, and that no right or title should accrue in consequence of any such purchase, gift, settlement or cession.

From the organization of the National government, it has been the rule of the Nation to purchase the occupancy right from the Indians, generally giving them more value in,

the compensation than the use of the ceded lands is worth to the Indians. The Government has never attempted to survey and dispose of lands prior to their cession by the Indians. The Civil status of the Indians has been defined by a long series of statutes and court rulings.

The Constitution of the United States gives to Congress- "the power to dispose of and to make all needful rules and regulations respecting the territory, or other property belonging to the United States". The question arises whether Indian occupancy in an indefeasible right, or whether it is merely a privilege which the Government may withdraw when the interests of civilization or the pressure of immigration may demand it. According to the ruling in the case of Johnson v McIntosh (8 Wheaton 543), the General Government has the right to terminate the occupancy of the Indians by "conquest" or "purchase". A very large portion of the Public Domain has been acquired by peaceable purchase; other portions have been acquired by conquest.

--Indian Homesteads--

The fifteenth and sixteenth sections of the Act of March 3-1875, extends the benefits of the homestead act of 1862, and the acts amendatory thereof, to any Indian born in the United States, who is the head of a family, or who has arrived at the age of twenty-one years, and who has abandoned or who may hereafter abandon his tribal relations, with the exception that the provisions of the eighth section of said act of 1862, shall not be held to apply to the entries made thereunder, and with the provision that the title to lands acquired by the Indian by virtue thereof, shall not be

subject to alienation or incumbrance, either by voluntary conveyance, of the judgment, decree, or order of any Court, and shall be and remain inalienable for a period of five years from the date of the patent issued therefor. (a)

Section 1 of the act of February 8-1887 is amended to read as follows: That in all cases where any tribe or band of Indians has been, or shall hereafter be located upon any Reservation created for their use, either by treaty, stipulation or by virtue of an act of Congress or Executive order, setting apart the same for their use, the President of the United States be, and is hereby authorized, whenever in his opinion, any Reservation, or any part thereof of such Indians, is advantageous for agricultural or grazing purposes, to cause said Reservation, or any part thereof, to be surveyed or resurveyed, if necessary, and to allot to each Indian located thereon one-eighth of a section of land. (b)

Section 2 of same act of 1887, provides that allotments shall be selected by Indians, heads of families selecting for their minor children, and the agents shall select for orphan children.

Section 3 provides, that allotments shall be made by special agents appointed by the President.

Section 4 provides, that when any Indian not located upon a Reservation shall make settlement upon any surveyed or unsurveyed lands, not otherwise appropriated, he shall be entitled to have such land allotted to him or his children.

Section 5 provides, that when patent issues from the Government to such lands allotted, it shall be stipulated

(a) Donaldson Public Domain-1883 pages 240-243

(b) Act Feby 28-1891, 26 Stat L. 794.

therin, that the United States shall hold the land in trust for a period of twenty-five years, and at the expiration of that period the United States to convey the land by patent to said Indian or his heirs. At any time after the lands have been allotted to all the Indians of a tribe as herein provided, or sooner if in the opinion of the President it shall be for the best interests of said tribe, it shall be lawful for the Secretary of the Interior to negotiate with said tribe for the purchase of parts of its Reservation not allotted, as the tribe shall from time to time consent to sell on certain terms and conditions. Such lands purchased by the United States shall be held in reserve for the sole purpose of securing homes for bona fide settlers, only in tracts not exceeding 160 acres to any one person. That if any religious society or other organization is now occupying any of the public lands to which this act is applicable, for religious or educational work among the Indians, the Secretary of the Interior is hereby authorized to confirm such occupation to such society or organization, in quantity not exceeding 160 acres in any one tract. (a)

Section 2 of the act of Oct 19-1888 provides, that any Indian to whom land has been allotted on a Reservation, and patent issued therefor, may surrender said patent to the United States with formal relinquishment for the land covered by the same, and receive in lieu thereof patent for other public lands. (b)

Section 9 of the Indian Appropriation Act of March 3-1901, amends section 5 of the act of Feby 8-1887, by adding

(a) 24 Stat L. 389

(b) 25 Stat L. 612.

a proviso; That whenever the Secretary of the Interior shall be satisfied that any of the Indians of the Siletz Indian reservation, in the State of Oregon are fully capable of managing their own affairs, and being of the age of twenty-one years or upward, shall, through inheritance or otherwise become the owner of more than eighty acres of land upon said Reservation, he shall cause patent to be issued to such Indian for all of such lands over and above eighty acres thereof. (a)

On May 16-1896, a Proclamation was issued by President Cleveland, throwing open to settlement, under and by virtue of the power vested in him, and by a certain agreement made by and between the United States and Indians of the Siletz Reservation, October 31-1892, the lands purchased from said Indians. That the Secretary of the Interior is hereby authorized to throw open said lands for settlement, after Proclamation by the President and after sixty days notice. (b)

(a) 31 Stat L. 1085.

(b) 29 Stat L. page _____

Name of Reservation	Agency	Denomination	Name of tribes	Square Miles	Area in Acres	Date of Treaty Law or other authority establishing Reserve
Grand Ronde	Grand Ronde	Catholic	Kolumiya, Klakama Luckiamute, Molele Neztucca, Rogue R. Santiam, Shasta, Tumwater, Umpqua	96	61,440	Treaty of Jany 22-1855, and of Dec. 21-1855, Executive Order June 30-1857
Klamath	Klamath	Methodist	Klamath, Modak, Palute, Walnap and Yuhuskin band of Snake (Shoshoni)	1650	1,056,000	Executive Order Oct.14-1864
Malheur	None		Pai-Ute & Snake (Shoshoni)	648	* 414,720	Executive Order Mch 14-1871 Sep 12-1872, May 15-1875, Jan 28-1876 July 23-1880-Sep. 13-1882
Siletz	Siletz	Methodist	Alsiya, Coquell, Kusa, Rogue River, Skoton, Shasta, Saiustkla, Siuslaw Toctoonta, Umpqua, etc.	351 $\frac{1}{2}$	225,000	Unratified Treaty Aug. 11-1855, Executive Orders Nov. 9-1855 & Dec. 21-1865 & Act of Congress Mch. 3, 1875
Umatilla	Umatilla	Catholic	Cayuse, Umatilla & Walla-Walla	420	268,800	Treaty of June 9-1855, & Act of Congress Approved Aug. 5, 1882
Warm Springs	Warm Springs	United Presbyterian	John Day, Pai-Ute Tenino, Warm Springs & Wasco	725	464,000	Treaty of June 25-1855
* Malheur	(Reduced by Executive Orders		Sep.3-1882) May 21-1883)		320	Reduced 414,400 acres
		Total to	1883		2,075,580 acres 3,243 Square miles	

CHAPTER IX.

--MILITARY RESERVATIONS UPON THE PUBLIC DOMAIN--

The method of creating Military Reservations, from the lands of the Public Domain, in operation in 1883 was:-

The commanding officer of a Military department recommends the establishment of a Reservation with certain boundaries; the Secretary of War refers the papers to the Department of the Interior to know whether any objection exists to the declaration of the Reservation by the President. If no objection is known to the General Land Office, and it is so reported, the Reservation is declared by the President, upon application by the Secretary of War for that purpose, and the papers are sent to the General Land Office, through the Secretary of the Interior for annotation upon the proper records. If upon surveyed lands, the United States Officers are at once instructed to withhold the same from disposal and respect the Reservation. If upon unsurveyed land, the United States General is furnished with a full description of the tract and is instructed to close the lines of public survey upon the out-boundaries of the Reservation; the United States Land Officers are also instructed not to receive any filing, of any kind for the reserved lands. (a)

The method existing at that time for unmaking a Military Reservation, or throwing the lands therein into the market for sale, was usually by act of Congress, passed specially for that Reservation in question. Congress acted upon information received from the War department as to a Reservation being no longer necessary for Military purposes.

According to the above method for establishing Reservations, four have been so established in Oregon, viz; Fort Klamath having an area of 3,125.68 acres, Sand Island containing 192.07 acres, Point Adams containing 1,250.11 acres and Port Orford, area unknown. (a) The Dalles Reservation was established in 1859 by Brigadier General W.S. Harney. March 3, 1877 Congress passes an act throwing this Reservation open for sale, at a price of not less than \$1.25 per acre.

The act of Feb'y 28-1877 provided, that the claims of such persons who made bona fide settlements on lands in Oregon under the provisions of the act of Sept 27-1850, and the legislation supplemental thereto, which have been included in whole or in part within the limits of any Reservation made by the United States for Military purposes, subsequent to the date of such settlement and prior to the completion of the period of residence and cultivation required by said act, which Reservation has been or may hereafter be declared abandoned by the Secretary of War, shall be adjudicated and patented the same as other donation claims arising under said act and supplemental legislation, as though such Reservation had never been made. (b)

The act of July 5-1884 gave the President of the United States the power to place any Military Reservation under the control of the Secretary of the Interior for disposition, whenever in his opinion said Reservation was no longer needed for Military purposes. (c)

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- (a) Donaldson Public Domain-1883 page 253.
 - (b) 19 Stat L. 264
 - (c) 23 Stat L. 103.

The Sundry Civil Appropriation Act of March 3-1893 provides, among other things, that the President is hereby authorized by Proclamation to withhold from sale and grant for public use to the municipal corporation in which the same is situated, all or any portion of any abandoned Military Reservation not exceeding twenty acres in one place.

(a)

Feb'y 15-1895 an act was passed to amend an act entitled "an act to provide for the opening of certain abandoned military reservations, and for other purposes", approved August 23-1894, which act provided that all such Reservations having an area of over 5,000 acres should be thrown open for settlement (As there were no Military Reservations in the State of Oregon of that area, such a law would not apply to this State, however this amendatory act provided that all abandoned Military Reservations which are placed under the control of the Secretary of the Interior shall be thrown open to settlement). And that the preference right mentioned in the Act of August 23-1894 be extended until six months from the date of this act. (b)

Congress passed an act April 19-1904, granting to the Oregon Historical Society, of Oregon, lots marked A,B,K, and L in Block Numbered 39, in Fort Dalles Military Reservation, with certain provisions, viz; that said transfer should be in effect only when said society should offer to the Department of the Interior proofs of its incorporation, and such grant to be conditioned, that the said lots and buildings thereon should be held and maintained solely for Historical purposes. (c)

(a) 27 Stat L. 593

(b) Stat L. Vol. 28 page

(c) 32 STAT L. 155.

The sales by the Government on abandoned Military Reservations in Oregon, from July 1-1880 to June 30-1904 amounted to \$24,536.00; Number of entries 493; acreage not given. (a)

(a) Report Pub. Land Comm. Sen. Doc. Vol 4 page 207 (1904-5)

C H A P T E R X.

---STATE SELECTIONS---

On September 4-1841, Congress granted by the eighth section of the "State Selection Act", to each State therein named, "and to each new State that shall hereafter be admitted into the Union", 500,000 acres of public lands for Internal Improvements, which included the quantity that was granted to such State before its admission, and while under a Territorial government, for such purpose.

Oregon was among this list of States, and was granted the full amount, 500,000 acres. (a)

(a) Donaldson Public Domain-1883 page 255.

CHAPTER XI.

--CANAL, WAGON AND RAILROAD GRANTS--

The granting of subsidies of public land to aid in the construction of canals, wagon and railroads, grew out of the fierce political struggles after the year 1803, on the subject of internal improvement by the aid of the National government. Until recent years it has been the policy of the National government to aid in the construction of roads and canals in order to advance the industrial pursuits of the Nation as fast as possible. (a)

As Oregon has never built a canal and therefore has never received a subsidy of land for such a project, there remain then but Military Roads and Railroads to consider in this phase of the disposition of public land in this State.

Wagon Roads.

Date of Laws	Statutes	Page	Name of Road	No. of Acres certified or patented to 1883	
				Limits	Acres
July 2-1864	13	355	Oregon Central Military Road	3	361,327.43
Dec. 26-1866	14	374	Act for Indem. Lim.	6	
Mch 3-1869	15	338	Act to extend time for Completion		
July 4-1866	14	86	Corvallis & Acquina Bay	3	76,885.98
(Alternate sections to be selected within 6 miles.)					
July 5-1866	14	89	Willamette Valley & Cascade Mtns.	3&	
Mch 3-1869	15	340	Coos Bay Military Road	10	107,893.01
Feb 27-1867	14	409	Dalles Military Road	3&	
Patented during 1883 (b)			Will. Valley & Cascade Mtns.	10	104,080.11
					126,910.23
					440,856.52
Total including year 1883, patented lands					1,217,953.28

(a) Donaldson Public Domain-1883 page 257

(b) Donaldson Public Domain pages 260-1260.

--ACTS GRANTING SUBSIDIES FOR CONSTRUCTION OF MILITARY ROADS--

July 2-1864, an act was passed by Congress granting to, the State of Oregon, to aid in the construction of Military road from Eugene City by way of the Middle Fork of the Willamette River, and most feasible pass of the Cascade Range, near Diamond Peak, to the eastern boundary of the State, alternate sections of Public land, designated by odd numbers for three sections in width on each side of said road. The lands were to be exclusively applied in the construction of the road, and were to be disposed of only as the work progressed. The land so granted to the State should be disposed of by the Legislature thereof for the purposes aforesaid. If said road was not completed within five years, the land remaining unsold should revert to the United States. (a)

By the act of July 4-1866, Congress granted to the State of Oregon, to aid in the construction of a Military Road from the town of Corvallis to Acquinna Bay, three alternate Sections of land per mile from the unoccupied public domain, designated by odd numbers and not more than six miles from said road. The land was to be applied in the construction of the road, and were to be disposed of only as the work progressed. The lands so granted to the State should be disposed of by the Legislature of said State in manner aforesaid. If the road was not completed within five years, the lands remaining unsold at that time to revert to the United States.(b)

(a) H.M.-1882-1883 Vol. 18 part 2-995
 (b) H.M.-1882-1883 Vol. 18 part 2-996.

By act of July 5-1866, Congress granted to the State of Oregon, to aid in the construction of a Military road from Albany, Oregon, by way of the most feasible pass in the Cascade Mountains, to the eastern boundary of the State, alternate sections of public lands designated by odd numbers three sections per mile to be selected within six miles of the road. (Same provisions and restrictions as above) (a)

By the act of Feb'y 25-1867, Congress granted to the State of Oregon, to aid in the construction of a Military road from Dalles City on the Columbia River by way of Camp Watson, Canon City, and Mormon or Humbolt Basin, to a point on the Snake River opposite Fort Boise in Idaho Territory, alternate sections of public land, designated by odd numbers to the extent of three sections in width on each side of the road. Indemnity limits were to extend ten miles on each side of the road. The other provisions, as to method of disposal of lands, time of completion of road, etc, the same as above mentioned. (b)

By act of March 3-1869, Congress granted to the State of Oregon, to aid in the construction of a Military road from navigable waters of Coos Bay to Roseburg, Oregon, alternate Sections of land, designated by odd numbers, to the extent of three sections in width on each side of the road. The lands were to be used exclusively in the construction of the road. The grant was made upon the condition, that the lands were to be sold to any one person, only in quantities not greater than one-quarter section, and for a price

(a) H. M. 1882-83 Vol 18 part 2 page 997.

(b) H. M. 1882-83 Vol 18 part 2 page 998.

not exceeding \$2.50 per acre. The grant was not to embrace any mineral lands, or any lands to which homestead or pre-emption rights had attached. Indemnity limits extended to six miles on each side of the road. If the road was not completed within five years, all land remaining unsold was to revert to the United States. The Surveyor-general was to cause the lands granted to be surveyed as soon as possible. The entire amount of land granted by the act was not to exceed more than three sections per mile for each mile of road actually constructed. (a)

By the act of December 26-1866, the act of July 2-1864 granting lands to aid in the construction of a road from Eugene to the Eastern boundary of the State was amended as follows: That there be and is hereby granted to the State, for the purposes aforesaid, such odd sections or parts of odd sections not reserved or otherwise legally appropriated, within six miles of each side of said road, to be selected by the Surveyor-general of said State, as shall be sufficient as to supply any deficiencies in the quantity of said grant as described, occasioned by any lands sold or reserved, or to which the rights of pre-emption or homestead have attached, or which for any reason were not subject to said grant within the limits designated in said act. (b)

June 18-1874 Congress passed an act as follows:-

"That in all cases when the roads in aid of the construction of which said lands were granted are shown by the certificate of the Governor of Oregon, as in acts provided, to have been constructed and completed, patents for said lands

(a) H.M. 1882-1883 Vol 18 part 2-999

(b) H.M. 1882-1883 Vol 18 part 2-997

shall issue in due form to the State of Oregon, as fast as the same shall under said grants, be selected and certified, unless the State of Oregon shall by public act have transferred its interests in such lands to any corporation or corporations, in which case the patents shall issue from the General Land Office to such Corporation or Corporations under their payment of the necessary expenses thereof". etc.
(a)

--Wagon-road Construction Land Grants in Oregon--
to June 30-1904.

Name of Road.	Total Acres Patented.
Oregon Central Military Road	845,536.30
Corvallis and Yaquina Bay Wagon Road	90,240.00
Willamette Valley and Cascade Mountain Wagon Road	861,504.00
Dalles Military Road	556,832.67
Coos Bay and Wagon Road	<u>99,819.35</u>
(b)	2,453,932.32

(a) H.M. 1882-83 Vol 18, part 2 page 1004.

(b) Report Land Comm.-1904-05 Sen. Doc Vol 4 page 140.

(Note) See end of general acts for railroad lands, for act pertaining to grants of land to aid in construction of wagon roads.

---RAILROAD LAND GRANTS---

Railroads					
Date of Laws	Statu-Page- tes	Name of Road	Mile Limits	Acres paten ted to 1883	
July 2-1864 (No lands patented in Walulu and Portland)	13 365	Northern Pac. Oregon between	States 20,30,40 Territories 40,50,60	746,509.52	
April 10-1869	16 57	Res. authorizing enten. from Pug et Sound to Port.			
July 25-1866	14 239	Ore. & Calif	20 & 30	322,062.40	
June 25-1866	15 80	Act extend. time for Compl'n road			
April 10-1869 (a)	16 47	Amendatory, and provid. sale of land to settlers at fixed price and quantity.	20 & 25		

Table showing the time when the various railroad right attached to the lands granted, so far as at present determined (1883).

Name of Road.	Dates.
Oregon & California	From Portland Oregon, South to Tp. 10 S. R. 2 W., Feby 16-1870. From that point to the South line of Tp. 13 S., April 28-1870. From that point to the South line of Tp. 27 S. April 15-1870. From that point to near the South line of Tp. 30 S. April 13-1871.
Oregon Central (b)	From Portland to Yamhill River, near McMinville, and from a junction near Forest Grove toward Astoria, 20 miles, May 29-1871. From Astoria to Castor Creek in direction of Portland, Jany 31-1872.

(a) Donaldson, Public Domain 1883, page 248

(b) Donaldson, Public Domain-1883 page 284.

Names of Corporations to which grants have been made	Date of acts original & Supplemental	Statutes	Page	Effect of Acts	Location of Grant	Length in miles as located or proposed	No. Secs. Grant- ed for each mile of road	Estimated quantity of land embraced in each grant	Date when road should have been completed	Length completed before date fixed for Completion	Length completed before date fixed for Completion	Uncompleted at date fixed for Completion
Oregon Central now Oregon & California R.R.	July 25 1866	14	239	Granting Act Compl'n on or before July 1-1875								
	June 25 1868	15	80	Extending time July 1-1880								
Oregon Central R.R.	April 10, 1869	16	47	To amend Granting Act Sale of 160 acres at \$2.50 per acre	Oregon	315	20	3,701,760.00	July 1, 1880	197	118	
	May 4 1870	16	94	Granting Act Compl'n whole road within six years.	Oregon (M.L.) Oregon (B.L.)	122 22½	20 20	1,130,880.00 *	May 4- '76	25 22½	97	
N.P. R.R. Company	July 2 1864	13	365	Granting Act	Wisconsin	92	20	907,520.00	July 4- '79			92
	May 7 1866	14	355	Resolution extending Time	Minn.	236	20	4,301,440.00	.....	228		8
	July 1 1868	15	255	Do	Dakota	374	40	8,432,640.00	.....	197		177
	Mch '69	15	346	Res. to issue bonds	Montana	770	40	17,838,080.00	.....	...		770
	Apr. 10 1869	16	57	Res. extend. of Line from Puget Sound to Portland	Idaho	72	40	1,900,800.00	.....	.....		72
	May 31 1870	16	378	Resolution Extending indemnity Lin	Oregon Wash (ML) Wash (BL)	... 511 215	40 40 40	3,575,680.00 11,258,880.00	..... ....	..... 106	..... 405) 215)	
	July 15 1870	16	305	Proviso								

*The Branch is nearly all within the Limits of the Main Line (ML) and the estimate given is for the M.L. only

--THE NORTHERN PACIFIC GRANT--

As seen by the preceeding diagram, it was the intention of the Northern Pacific Railroad Company, to build together with other branch lines, a branch via the Valley of the Columbia River to a point at or near Portland in Oregon, and in fact the act of Congress chartering the Company, and setting aside the grant for the aid of construction of said railroad, specially stipulated that this branch should be built.

Section three of the original act of July 2-1864, grants to the Company "every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile on each side of said railroad line, as may be adopted by said Company, through the Territories of the United States, and ten alternate sections of land per mile on each side of said railroad whenever it passes through any State, and whenever on the line thereof" etc. etc.

By joint resolution Approved May 7-1866, time of completion was extended two years.

By joint resolution dated July 1-1868, among other things, the whole road was to be completed July 4-1877.

The joint resolution of April 10-1869, authorized the construction of a branch from Portland to Puget Sound (the line from Ralama to Tacoma, constructed and in operation).

By resolution dated May 31-1870, among other things, Congress authorized the Company to construct its main via the Valley of the Columbia River with a branch across the

Cascade Mountains to Puget Sound, and increased the indemnity limits to sixty miles on each side of the road.(a)

The Northern Pacific road was begun in 1870, and up to 1884 had completed 1,635 miles of subsidized road, but on account of failure to do construction work on what was at first termed a branch, and later the main line—the line via the Columbia River,—it never came into the rights of subsidized lands in Oregon between Walulu and Portland by virtue of the original granting acts, and amendments thereto. It will be seen later that what lands the road owns in Oregon, it has acquired through a process of lieu land scripping, and by joint Resenlution of May 31-1870, increasing indemnity limits.

---NORETHERN PACIFIC EXTENSION---

By the act of April 10-1869, Congress authorized the Northern Pacific to extend its branch line from a point at or near Portland Oregon, to some suitable point on Puget Sound, and also to connect the same with its main line west of the Cascade Mountains, in the Territory of Washington, etc, etc. Provided that said Company"shall not be entitled to any subsidy in money, bonds or additonal lands of the United States", in respect to said extension of its branch line, aforesaid, except lands for right-of-way purposes". Twenty five miles of said extension were to be constructed before July 2-1871, and forty miles per year thereafter, until the whole of said extension should be completed. (b)

(a) Donaldson, Public Domain-1883 page 912.

(b) H. M. 1882-83 Vol 18 part 2 page 1000.

OREGON CENTRAL
Later

-- OREGON AND CALIFORNIA --

The act of Congress approved July 25-1866 (14 Stat L. page 239), Congress made a grant of lands to aid in the construction of a railroad from the Central Pacific Railroad in California to Portland, Oregon. It provided that the portion of the road in Oregon should be built by, and the grant for the same conferred upon such Company as the Legislature of the State should designate.

The grant was of every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile (ten on each side) of said railroad. Indemnity was provided for lands lost to the grant by other grants, sales, reservations, homesteads, pre-emption or other claims out of alternate odd-numbered sections nearest to and not more than ten miles from the limits of the sections granted. The act required the completion of the entire road on or before July 1-1875. By the act of June 25-1868 the time for completion was extended to July 1,-1880.

The estimated length of the line in Oregon was 315 miles. Up to 1884 there had been completed 242 miles of road in that State.

By joint resolution of the Legislature of the State of Oregon October 20-1868, the Oregon Central Railroad Company was designated as the Corporation to take the benefits of the Act of Congress above mentioned. (a)

(a) Donaldson, Public Domain-1883 page 807.

--OREGON CENTRAL--

Portland to Astoria and McMinville.

By act of Congress, May 4-1870 (16 Stat L. page 94) a grant of land was made to the Oregon Central Company, to aid in the Construction of a railroad from Portland to Astoria, in Oregon, with a branch from a point near Forest Grove to the Yamhill River, near McMinville.

The grant of each alternate section of public land, designated by odd numbers, nearest to said road, to the amount of ten alternate sections per mile on each side thereof. Mineral lands and lands otherwise reserved or held by valid pre-emption or homestead rights at the date of the grant, are excepted. It is provided that in case the full quantity of ten sections per mile cannot be found on each side of the road, other lands designated as aforesaid, on either side of any part of said road nearest to, and not more than twenty-five miles from the track thereof, may be selected to make up the deficiency. The entire road was to be completed within six years from the passing of this act.

The length of the main line was estimated at 122 miles, and the branch 22 1/2 miles. Prior to the time fixed for the completion of the road, 25 miles of main line west of Portland, and the entire branch line were constructed and accepted. The limits of the grant were partly in Washington, but no lands were allowed to be withdrawn in that State, for the reason that the time fixed for completion in the granting act had expired, and the greater part of the road was uncompleted, and for that reason up to 1884 no lands in Oregon in the limits of the grant had been patented to the road. (a)

(a) Donaldson, Public Domain-1883 page 808.

---RAILROAD GRANTS IN OREGON---

To June 30-1904.

Name of Road.	Number of Acres.
Oregon & California	3,821,901.80
Oregon Central	387,711.90
Northern Pacific	<u>602,684.94</u>
Total acres patented	4,810,298.64

The Oregon and California Lands were patented under act of July 25-1866.

The Oregon Central Lands were patented under act of May 4-1870.

The Northern pacific lands were patented under act of May 31-1870, and July 2-1864. (a)

(a) Report Land Comm. 1904-1905, Sec. Doc. Vol 4-152.

GENERAL ACTS BY CONGRESS
Pertaining
To Railroad Lands.

The act of June 18-1874, provided that in case any of the lands granted to a railroad Company, be found in the possession of a settler, whose entry of filing has been allowed under the pre-emption or homestead law, subsequent to the time the right of said road was declared to have attached to said land, the grantees upon relinquishment of the lands so entered or filed upon, shall be entitled to lands in lieu thereof, not mineral, and within the limits of the grant, not otherwise appropriated. (a)

The act of August 29-1890 extended the privileges of the above act to all persons entitled to the right of homestead or pre-emption, who have resided upon and improved for five years, the lands granted to any railroad company, but whose entries or filings, have not for any cause been admitted to record. (b)

(The privileges of act of June 18-1874 further extended, see act of July 1-1902, relief of settlers on Wagon roads)

The act of March 3-1875 provided, that where settlers have bought lands from the railroad company, the price of such lands being fixed by law at double minimum rate, and much railroad lands have been forfeited to the United States, and restored to the Public Domain for failure to construct such railroad, such person or settler shall have the right

(a) 18 Stat L. 194.

(b) 26 Stat L. 369.

to locate on any unoccupied lands, an amount equal to his original entry without further cost, except certain fees. Provided that when such location is upon double minimum lands, one-half the amount only shall be taken. (a)

Section 1 of Act of April 21-1876, provided that all pre-emption and homestead entries, or other lawful entries of public lands made by actual settlers upon tracts of not more than 160 acres within the limits of any land grant, prior to the time when notice of the withdrawal of the lands embraced in such grant was received at the Local Land Office of the District in which such lands are situated, or after their restoration to market by order of the General Land Office, and where the pre-emption and homestead laws have been complied with, etc, etc, patents shall issue to the parties entitled thereto. Section 2 same act provided that in case re-entry of abandoned claims on account of decision of land office has been made, patents shall issue therefor to persons entitled thereto. Section 3 same act provided that in case where entries have been made in good faith within the limits of any land grant at a time subsequent to the expiration of such grant, such entries shall be deemed valid and that the entryman shall be entitled to patent therefor, upon compliance with the law, and upon making final proof.

(b)
Section 1 of the act of March 3-1887, authorized the Secretary of the Interior to immediately adjust in accordance with the decisions of the Supreme Court, each of the railroad land grants, made by Congress to aid in the construction of railroads, and heretofore unadjusted.

(a) 18 Stat L. 519

(b) 19 Stat L. 35.

Section 2 provides that in case certain lands shall have been found erroneously patented by the United States to said railroad companies, after the completion of such adjustment, then the company claiming such land, shall immediately reconvey to the United States, and further provides for suit or action in case of failure to reconvey. (a)

The Court held in *Kneppner v. Sands* (1904) U.S. 476, that a chief purpose of this act was to declare forfeited, unearned lands and restore them to the Public Domain, and not to give third parties and speculators an opportunity to purchase such lands from companies which had defaulted in the work of construction, and to whom the State had never conveyed, and thereby obtain a preference over actual settlers in possession. (b)

Section 3 of same act provides, that in case a claim of a bona fide settler has erroneously been cancelled on account of any railroad grant, or the withdrawal of public lands from the market, such settler upon application shall be reinstated in his rights, provided he has not made another entry in lieu thereof, ~~and provided he has not made another entry in lieu thereof,~~ and provided further that he did not voluntarily abandon his original entry. In case he should not renew his application within a reasonable length of time, then such unclaimed land to be disposed of in accordance with the public land laws, with priority of right given to bona fide purchasers of said unclaimed lands, if any, and if there be no purchasers, then to bona fide settlers residing thereon.

(a) 24 Stat L. 556

(b) Fed. Stat. Annotated Vol 6-435.

Section 4 same act provides, that as to all lands, except those mentioned in the forgoing section, which have been so erroneously certified or patented, and which have been sold by the grantee company to citizens of the United States, or to persons should have declared their intention to become such citizen, the person or persons so purchasing in good faith, shall be entitled to the land so purchased, upon making proof of the fact of such purchase, within such time and under such rules, as may be prescribed by the Secretary of the Interior, after the grants respectively shall have been adjusted, and patents from the United States shall issue therefor. The government shall demand payment from such company to an amount equal to the government price of similar lands.

Section 5 provides, that ~~where~~ any railroad company shall have sold to citizens of the United States, as a part of its grant, lands not conveyed to, or for the use of said company, such lands being the numbered sections prescribed in the grant, and being coterminous with the constructed parts of the road, it shall be lawful for the bona fide purchaser thereof, to make payment to the United States for said lands at the ordinary price for like lands, and thereupon patents shall issue therefor to said purchasers, their heirs or assigns. Provided that in case said lands were in bona fide occupation of adverse claimants under the pre-emption and homestead laws at date of such sales, and have not been since voluntarily abandoned by such claimants, then preference to be given to such bona fide claimant. (a)

(a) 24 Stat L. 557.

--NORTHERN PACIFIC LIEU LANDS--

Under act of March 2, 1899, creating the Mount Ranier National Reserve, section 4. provided:

That upon execution and filing with the Secretary of the Interior, by the Northern Pacific Railroad Company, of proper deed releasing and conveying to the United States the lands in the Reservation herein created, also the lands in the Pacific Forest Reserve, which have been heretofore granted by the United States to said Company, whether surveyed or unsurveyed, and which lie opposite to the Company's constructed road, said Company is hereby authorized to select an equal quantity of non-mineral land,--so classified as non-mineral at the time of the government survey, which has been or shall be made-, of the United States, not reserved, and to which no adverse right or claim shall have attached, or shall have been initiated, at the time of the making of such selection, lying within any State, into or through which the railroad of said Company runs, to the extent of the lands so relinquished and released to the United States. Provided, that any settler on lands of said National Parks, may relinquish their rights thereto, and take other lands in lieu thereof, to the same extent and under the same limitations and conditions as are provided by law for Forest Reservations and National Parks. (a)

By this act the Northern Pacific has come into possession of some of Oregon's choicest timber taken in lieu of reserved lands in Washington some of which were barren of timber, and worthless.

Section 1 of the act of Sept 29-1890 provides, that all lands heretofore granted to any State or to any corporation to aid in the construction of a railroad opposite to and coterminous with the portion of such railroad, not now completed and in operation, for the construction and benefit of which said lands were offered, shall be forfeited to the United States and be part of the Public Domain. Provided, that this act shall not be construed as forfeiting the right of way or station grounds of any railroad company heretofore granted. (a)

The Court held in *Williams Investment Co. v. Pugh* (1902), 137 Ala. 346, et al, that the effect of this act was to divest the legal title to lands out of the State and to invest them in the Government, and where a certificate or patent is subsequently issued for the lands, the patentee obtains the legal and equitable title.

The Court held *N.P. Co. v. Balthazar* (1897) 32 Feb. Rep. 270, since the Northern Pacific Railroad Company never made a definite location of any of the line of road between Portland and Walulu, the original land grant never took effect as to any lands between these places, therefore lands in controversy which were contiguous to the line built from Portland to Tacoma, within the grant of the joint resolution of May 30-1870, were public lands of the United States, not reserved, sold or otherwise granted or appropriated, and by said joint resolution the same were granted to the Company upon conditions^{which} having been performed, the title to the Company and its vendees became vested and protected, and not affected by the above act. (b)

(a) 24 Stat L 557

(b) Fed. Stat Annotated Vol 6-442.

Section 6 of same act last above, provides, that no lands declared forfeited to the United States by this act, shall by reason of such forfeiture inure to the benefit of any State or corporation to which lands may have been granted, except as herein otherwise provided, nor shall this act be construed to enlarge the area of land, originally conveyed by any such grant, or to confer any right upon any State, corporation or person, to lands which were excepted from such grant. Nor shall the moiety of the lands granted to any railroad company on account of a main and branch line appertaining to uncompleted road, and hereby forfeited within the conflicting limits of the grants for such main and branch lines, when but one of such lines has been completed, inure by virtue of the forfeiture hereby declared to the benefit of the completed line. (a)

The act of July 1-1902 provides that the provisions of the act of June 22-1874, entitled, "An act for the relief of settlers on railroad lands", and all acts amendatory thereof or supplemental thereto, including the act of March 3-1877 entitled, "An act to provide for the adjustment of the land grants made by Congress to aid in the construction of the railroads and for the forfeiture of unearned lands, and for other purposes", as modified or supplemented by other acts, shall apply to grants of land in aid of the construction of Wagon roads. (b)

(a) 26 Stat L. 498.

(b) 32 Stat L. 738.

--THE SOUTHERN PACIFIC LAND MONOPOLY--

By various acts, Congress has granted the Oregon Central and Oregon and California Railroad Companies approximately 500,000 and 5,000,000 acres respectively, which include some of Oregon's choicest timber and agricultural lands. The Southern Pacific as successor has come into possession of these 5,500,000 acres more or less.

There seem to be three questions of importance before the people of Oregon at the present time relative to these grants. First, How did the Railroad Company come into possession of this vast area of land? Second, What is the Company's intention regarding the disposition of the lands? Third, What should be done with the lands; i.e. should the company be allowed the permanent ownership, or should the lands be disposed of, and if so, to whom, and for what price?

The first question is in direct line with a history of the Public Domain, but it is impossible to deal with the other two on account of limited space and time. In showing how the Company secured title of the lands in question, some light may be thrown on the questions above however, that might aid in their solution: because a historical treatise will show that certain restrictions were intended to be placed on these companies which have received grants, by Congress, which would ultimately act as a safe-guard against a monopoly of lands.

Facts for the following have been secured largely from issues of the Oregonian, and for the Quarterly of the Oregon Historical Society for June 1906.

As has already been seen, the Oregon Central was designated by the Legislature of the State of Oregon as the recipient of the grant of land made by Congress. This Company was headed by John Gaston and was incorporated under the laws of the State of Oregon in 1866, the papers being filed November 21, 1866. The road was to be built on the West side of the Willamette River, where the same is now constructed, between Portland and Corvallis. Gaston's Company accepted the conditions of the grant, but did not build the twenty miles required, within the time specified, i.e. two years.

About this time Mr. S. H. Elliot of California appeared on the scene with a proposition to get control of the present Oregon Central and build to the California line. His scheme did not meet with the approval of the incorporators of said Oregon Central, so he with others incorporated the Oregon Central Railroad Company- adopting we see, the same name as the company headed by Gaston,-April 22-1867. It appears that this organization was fictitious, and was so located and built on the East side of the Willamette River. Elliot's financiering did not carry the proposition very far. The whole scheme collapsed and was turned over to Ben Holladay. This new financier was very energetic. So well did he "work" the people of Oregon, that the Legislature on October 20-1868 declared his East side Company, the recipient of the original grant by Congress, thereby completely reversing its former decision. Thus securing the help of the Legislature, Holladay pushed on his flimsy construction work and had in operation in December 1868, twenty miles of road. He had, in the meantime, agents in Washington trying to file

his acceptance of the land grant act.

In April 1869, Congress passed an act extending the time for filing acceptance of the land grant act, and providing that which ever of the two companies should put in operation first, twenty miles of railroad south from Portland into the Willamette Valley, should be entitled to file acceptance of the grant. Holladay first complied with the provisions of this act, so was thereby recognized as entitled to the land grant. The Supreme Court afterwards decided (see case Elliot v. Holladay et al page 91 Vol 18 Oregon Reports) that Holladay's East Side Company was not a corporation; that it had no legal rights, and could not take the land grant; and further, that one corporation could not take and use the name of a prior organization. This decision therefore established the fact that Gaston's Company was the legal recipient of the land grant. However the grant had been secured to Holladay's Company by the Federal Government so the only alternative left for Holladay, was to sell out the Salem Company, and incorporate under a new name. This he did, filing his articles of incorporation March 17, 1870 for the Oregon and California Railroad Company. This new Company immediately filed acceptance of the land grant, doing so under the act of April 10-1869 above mentioned. There was also included in this act, which amends the original granting act, limitations as to the price of lands, and amount of lands sold by the Company to individuals. The price at which lands were to be sold was never to exceed \$ 2.50 peracre, only actual settlers might purchase, and no one buyer should secure more than 160 acres.

Then it is plain which Company received the original grant. Holladay's east side Company built and operated the required length of road within the time limit. This the West side company failed to do, so consequently forfeited the right to the grant. Holladay went to the wall within the next few years, and it remained for the Southern Pacific Company to advance the capital to connect the Oregon and California road with the California line building North. After Holladay failed, Villard was put in control in 1876.

Returning now to the Oregon Central Company proper, we find it in 1869 without a grant of land. As was seen in the preceding pages, a grant of twenty sections per mile was obtained in 1870, to aid in construction of a road from **Portland** Oregon to McMinnville Oregon, with a branch from the line at Forest Grove through the Nehalem Valley to Astoria. The recipient of this grant was the original Oregon Central, or the West side Company. The road was built from Portland to Yamhill where it stood for ten years, but was later pushed on to McMinnville, and Corvallis the present terminus. Henry Villard secured control of this road together with the Holladay road, and proceeded on a plan to form the Oregon Railroad System, having transcontinental power. One of his ideas was to have the Northern Pacific grant, or so much of it as was located in Oregon, transferred to a company to be organized to build down the South side of the Columbia River. He failed in this plan to secure the grant, but subsequently bought controlling interest in the Northern Pacific, incorporated the Oregon Railway and Navigation Company, and built from Portland east to connect with

the Oregon Short Line, at Huntington.

So we have at an early date an Oregon System of railroads in possession of vast areas of timber and agricultural lands, such lands inuring to the railroads by virtue of various acts of Congress, which acts were never intended to grant this corporation the power to perpetrate upon the people of this State a great imposition, a land monopoly.

CHAPTER XII.

--SCRIP--

Congress in 1806 began the practice of ordering the issuing of indemnity scrip for confirmed private land and other land claims, which has been left partially unsatisfied as to location, by reason on non-location, conflict with other claims or grants, entries, or reduced by deficient surveys. This practice continued up to 1872. Many of these acts of Congress were for separate cases, were local or temporary, and were enacted from time to time to meet reported cases. (a)

By act of May 30-1894, Congress passed a law providing "that it shall be lawful for the Commissioner of the General Land Office to cause patents to be issued as evidence of title, for all valid locations made with land scrip issued pursuant to decrees of the Supreme Court of the United States, which valid locations were made prior to the approval of the Act of Jan'y 28-1879, entitled 'an act defining the manner in which certain land scrip may be assigned and located or applied by actual settlers, and providing for the issuing of patents in the name of the locator or his legal representative' to which this act is supplementary, in the same manner that patents are now issued under the provisions of section 3 of said Act." (b)

--Scrip for private claims located in Oregon to June

30-1904-

1. By General Act June 2-1858 by Sur. General of Louisiana 880 acres. 2. By General Act June 22-1860 by Commr. Gen. Land Office, 4,320.00 acres. 3. By act July 17-1854 by Indians of Lake Pepin, 80 acres (10 Stat L. 304) (c)

(a) Donaldson P.D. 1884-239 (b) Stat L. Vol 28

(c) Report Land Comm. 1904-1905 Sen. Doc. Vol 4-159

CHAPTER XIII.

—MINES ON THE PUBLIC DOMAIN—

The mining laws of the United States began with the reservation in the ordinance of May 20-1785, by the government, of one-third part of all gold, silver and copper mined. Subsequent laws governing certain districts pertained to the leasing and sale of certain mineral lands. The legislation of Congress from the period of 1785 to the discovery of the great gold fields of California in 1848, as to survey lease and sale of mineral lands, had been for lead, copper and other base metals, and applied to the territory in the region of the great lakes in the States of Michigan, Wisconsin, Minnesota, Iowa and Illinois.

In the precious metal bearing regions on the Public Domain in California, Oregon, Nevada, Colorado and the Territories, there had grown up a system of local regulations governing the location, size and possession of mining claims, with water rights appurtenant thereto. These regulations were not uniform but varied with different localities, and at first related only to placer claims. Quartz mining was a secondary stage, and regulations for this system were established as soon as required. Mineral districts were organized by the miners of each particular locality at meetings held for that purpose. In the Civil Codes enacted by the State or Territorial Legislatures, these local rules were respected and generally specifically recognized. These laws protected and controlled the possession, and provided for the distribution of hundreds of millions of dollars worth

of property, and affected the people of half a million square miles of territory.

--The Mining Act of July 26-1866--

This act ordered that the mineral lands of the Public Domain, both surveyed and unsurveyed, were to be free and open to exploration and occupation by all citizens of the United States, and those declaring their intentions to become citizens, subject to such regulations as might be prescribed by law, and subject also to local customs or rules of miners in the several mining districts, so far as the same would not be in conflict with the laws of the United States. Among other things, this law also provided with specialty, the mode of consummating individual rights, surveys etc, also in reference to conflicts, rights of way, priority "of possession", right to the use of water for mining, agricultural, manufacturing or other purposes, to homesteads existing prior to the date of the act, which are used for agriculture, on which valuable mines are not discovered, the law conferring authority on the Secretary of the Interior for setting apart, after survey, the agricultural lands so as to subject them to pre-emption and sale.

By act of July 9-1870, Congress provided for the class of "placer" mining not recognized in the lode act of July 26-1866. (a)

The mining act of May 10-1872, amended the original mining act of 1866, and constituted mineral lands a distinctive class, subject to special conditions of sale, and affixed prices differing wholly from the requirements in these

respects as to other lands. It provided for the survey and sale of mineral lands, fixing the price of placer lands at \$2.50 per acre, and \$5.00 for lode claims, and repealed in effect, the ditch and water rights' act of 1866. (a)

The present laws for the disposition of the mining lands of the United States are found in Chapter 6 of the Revised Statutes, title "Mining Lands and Mining Resources", and in the regulations of the General Land Office of various dates, but principally of date April 1-1879.

The policy of the United States in relation to the sale and disposition of the mineral lands of the Public Domain, beginning with its reservation of portions of the metal therefrom, next occupancy rights, then leases, followed by public offering and private entry and sale, thereafter culminating in the several mineral laws of 1866, 1870 and 1872 now permits their free exploration, and development by citizens, or persons who have declared their intentions to become citizens, and a nominal price for the lands is charged if the owner of the possessory title desires to procure a fee simple title. The United States protects exploration and developments by any miner on the Domain. (b)

There had been patented up to 1883 in Oregon, 69 placer mines, aggregating 3,785.83 acres, and netting to the government \$9,911.50. (c) There had been patented up to 1883 in Oregon, 2 lode claims, aggregating 41.28 acres, netting to the government \$210.00. (d)

(a)	Donaldson Public Domain 1883, page	322.
(b)	Do	324.
(c)	Do	1281
(d)	Do	1282.

The act of August 4-1892 provides, that any person authorized to enter lands under the lining laws of the United States, may enter lands that are chiefly valuable for building stone under the provisions of the law in relation to placer mineral claims; Provided, that lands reserved for the benefit of the public schools or donated to any State, shall not be subject to entry under this act. (a)

The act of February 11-1897, provides, for the entry of petroleum or other mineral oil lands under the placer claim laws.

From July 1-1880 to June 30-1904, there has been disposed of for cash lands in Oregon, under various mining laws, 18,296.55 acres, amounting to \$68,397.25; number of entries, 334. (b)

(a) 27 Stat L. 348.

(b) Report Land Comm. 1904-1905 Sen Doc. Vol 4, page 201.

---COAL LANDS---

Prior to 1864, coal lands were not specifically noted for reservation or sale, but were disposed of as other public lands under settlement or by other laws, until the passing of the pre-emption act of 1841.

The act of Congress July 1-1864 for the disposal of coal lands and townsite property on the Public Domain, authorized the sale of coal lands which had been excluded from sale as mines, by the pre-emption act of 1841. Under this act they became subject to pre-emption at the minimum price of \$20.00 per acre, after offering under proclamation by the President at public sale to the highest bidder, in suitable legal subdivisions.

March 3-1865 an act was passed by Congress supplemental to the act of July 1-1864, giving citizens of the United States, who were engaged in coal mining for commerce, the right to enter, at the proper district land office, 160 acres of land, or less at \$20.00 per acre.

The act of March 3-1873, gave a pre-emption right of 160 acres of coal land to a person, and 320 acres to an association, upon payment of not less than \$10.00 per acre, where the lands lie not more than fifteen miles from a completed railroad, and \$20.00 per acre where the lands lie within fifteen miles of such a road; and further provided that when any association of not less than four persons have expended \$5,000.00 in working and improving any mine, located within limits as above, they may make an additional entry of 640 acres at the several limit prices.(a)

(a) Donaldson Public Domain-1883 page 292.

Up to June 30-1883 there had been three coal entries in Oregon, amounting to 342.24 acres, netting to the government \$3,422.40. (a)

From July 1-1880 to June 30-1904 there had been 34 entries, amounting to 4,958.54 acres, netting to the government \$54,892.40. (b)

(a) Donaldson Public Domain-1883 page 1278.

(b) Report Land Comm., 1904-1905, Sen Doc. Vol 4-203

C H A P T E R X I V .

--DONATION ACT--

The first act of this kind that affected lands in Oregon, was the act passed by Congress for Oregon Territory, September 27-1850. The act provided for making surveys and donations of public lands in Oregon, and related to two classes of settlers. It granted to the first class of actual settlers of the public lands in this State, who were such prior to the first of September, 1850, a donation of one-half section, or 320 acres if a single man, and if married an entire section, or 640 acres, one-half to the husband and the other half to the wife in her own right; and to the second class who were, or who would become settlers between the first of December, 1850, and the first of December, 1853, is granted one-quarter section, 160 acres to a single man, and if married, one-half to the wife in here own name. There were other provisions mentioned in this act as to the settlers, their nationality, color, age, etc.

The act of February 14-1853 extended this time to December 1-1885. Emigrants becoming married within one year after arriving in the Territory, or within one year after become twenty-one years of age, were entitled to the advantages accorded to married men. Residence on, and cultivation of the land for four consecutive years were necessary to insure a patent from the Government. Mineral lands were excluded from being located under this act.

The act of February 14-1853, amendatory of the said act of 1850, provided that in lieu of the term of four years continued occupancy after settlement, required by said act,

claimants should be permitted, after two years' continuous residence and occupation, to pay for their lands at the rate of \$1.25 per acre, and subsequent legislation further reduced this time to one year. The act expired by limitation December 1-1855. (a)

Up to June 30-1883, under the Oregon Donation Act, there had been disposed of by the Government, 2,567,284.69 acres, which would equal 7,329 entries. (b)

Congress passed an act July 26-1894, providing that in all cases where persons had made proof of settlement of tracts of land, under and by virtue of the Donation act of September 27-1850, or under the various acts amendatory or supplementary thereto, in Oregon, Washington or Idaho, and had given notice required by law that they claimed such lands as donations, but had failed to execute and file in the proper land offices proof of their original residence on, and cultivation of the land so claimed, so as to entitle them to patent thereof, such claimants should be given until January 1-1896 the right to make the file proof, and fully establish their rights to donation of lands under the said act; all those so claiming land were to forfeit such claim, if their proofs were not filed by that date. (c)

Under the act of 1850 there had been confirmed in Oregon, to June 30-1904, 9,432 claims, aggregating 2,614,082.24 acres. (d)

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- (a) Donaldson Public Domain-1883 page 296.
 - (b) Do Do 969.
 - (c) Vol 28 Stat. L. page
 - (d) Report Land Comm. 1904-1905 Sen. Doc. Vol 4 page 140.

CHAPTER XV.

--TOWNSITE AND COUNTY-SEAT ACTS--

The laws of the United States providing for the reservation and sale of town-sites of the public lands, are found in Title 32, Chapter VIII, of the Revised Statutes of the United States, Sections 2380 to 2390 inclusive. These laws are very liberal in their provisions, and contemplate not only the entry of land already settled upon for purposes of trade, for the benefit of citizens of the town, but provide for the selection and reservation of land, whether surveyed or unsurveyed, for town-sites "on the shores of harbors, at the junction of rivers, important portages, or natural or prospective centers of population", in advance of the settlement thereof, or of the surrounding country.

The pre-emption law of 1841 reserved from pre-emption settlement and entry; first, "Lands included within the limits of any incorporated town, or selected as the site of a city or town"; Second, "Lands actually settled and occupied for purposes of trade and business and not for agriculture". The same provisions apply to land subject to entry under the homestead law. The same reservation is made in direct terms, or by implication, in nearly all the acts of Congress providing for the various classes of scrip.

The act of March 3-1877, entitled "An act respecting the limits of reservations for town-sites upon the Public Domain" (19 Stat L. 392), was passed to remedy the evil, in certain cases, of the incorporation by the State or Territorial Legislatures of a town with limits covering larger areas

than the maximum quantity of 2,560 acres.

The act of May 26-1824 (Sec 2286 R.S.), provided for the pre-emption, at the minimum price, of a quarter section of land in each County or Parish, respectively, for the establishment of seats of justice therein. Under these provisions several entries for County seats had been made up to 1883.

Besides and prior to the enactment of general laws, many towns have been established upon the Public Domain by special laws of Congress.

By the act of May 23-1844, there was entered in Oregon, the town-site of Jacksonville, date September 27-1862, area 114.69 acres. By the same act Lafayette was entered April 19-1858, area 163.46 acres, Dallas March 21-1878, area 38 acres. (a) By act of May 26-1824 for location of County-seats, there was entered in Oregon, County-seat of Washington County, July 30-1857, area 33.23 acres. (b) By town-site act, (Sec. 2382 R.S.), July 1-1864, there were located in Oregon the towns of La Grande, Baker City and Sparta, with areas of 107, 80 and 32 acres respectively. (c) Under act March 3-1877 governing sale of lands to town-sites in Military Reserves, there were sold to The Dalles, Oregon, 128 blocks aggregating 640 acres, date of sale April 1-1880. (d) Sale of town lots from July 1-1880 to June 30-1904, 753 entries, \$70,453.61. (e)

(a) Donaldson Public Domain 1883, pages 299-301

(b) Donaldson Public Domain 1883 page 305.

(c) Donaldson Public Domain 1883 page 305.

(d) Donaldson Public Domain 1883 page 971.

(e) Report Land Comm. 1904-1905 Sen. Doc Vol 4 page 208

C H A P T E R X V I.

--HOMESTEADS--

The homestead bill, or the granting of free homes from and on the Public Domain became a national question in 1852. The Free Soil Democracy at Pittsburg, Pennsylvania, August 11-1852 adopted the following as the 12th plank or resolution in their platform: "That the public lands of the United States belong to the people, and should not be sold to individuals, not granted to corporations, but should be held as a sacred trust for the benefit of the people, and should be granted in limited quantities, free of cost to landless settlers". Thereafter it became a national question until its passage in 1862, and was in the platform of political parties. (a)

--The Essence of the Homestead Law and its Benefits (1883)--

The essence of the homestead law and the amendments is embodied in the conditions of actual settlement, dwelling on, and cultivation of the soil embraced in an entry. It gives for a nominal fee, equal to \$34.00 on the Pacific Coast and \$26.00 in the other States to a settler- a man or woman over the age of twenty-one years, head of a family or a single person above the age of twenty-one years, a citizen of the United States, or having declared an intention of becoming such- the right to locate upon 160 acres of unoccupied land in any part of the public land States and Territories subject to the entry at the United States Land Office, to live upon the same for a period of five years, and upon proof of compliance with the law, to receive a patent there-

for, free of cost or charge for the land. Full citizenship is requisite to obtain final title. If the locator desires to buy his homestead outright at the end of six months, he can, upon due proof, pay for his land at the rates of \$1.25 or \$2.50 per acre, as the case may be, which is called commutation of a homestead.

The homestead act is now the approved and preferred method of acquiring title to the public lands. It protects the government, it fills the States with homes, it builds up communities, and lessens the chance for social and civil disorder, by giving ownership to the soil in small tracts to the occupants thereof. It was copied from no other Nations system. It was originally and distinctively American. (a)

The several Homestead laws recognize six classes of homesteads.

1. Under Original Act of May 20-1862, and amendments,
2. Adjoining farm homesteads, Sec 229 R.S.
3. Additional Homestead, Act March 3-1879
4. Soldier's Homestead, Act June 8-1872.
5. Additional Homestead, Act June 8-1872.
6. Indian Homestead, Act March 3-1875. (b)

Up to 1883, there had been in Oregon 4,617 entries (final), aggregating 636,343.69 acres. (c)

The Soldier's homestead act of June 8-1872, amended by act of March 1-1901 provides, that every soldier and officer who served in the Rebellion of 1860, the Spanish war or war service in the Philippines for ninety days, and who was honorable discharged, and remained loyal to the government, shall be entitled to 160 acres of public land, to be taken in compact form, but that such settler shall be allowed

(a) Donaldson Public Domain-1883 page 350.

six months after locating his homestead within which to make his entry, and commence his settlement and improvement. The act and amendment further provides that the time which the settler has served in the army, navy or marine corps, shall be deducted from the time heretofore required to perfect title, or if discharged on account of wounds, etc., etc., then the term of enlistment shall be deducted from the time heretofore required to perfect title, but no patent shall issue to any homestead settler who has not resided upon, improved and cultivated his homestead for a period of at least one year after he shall have commenced his improvement. That in case of death of said homesteader while in the war service, his **heirs** shall be entitled to make immediate final proof and receive government patent for said land.

(a)

The act of June 8-1872, further provides that every person, entitled under the provisions of the Soldier's homestead act to enter a homestead, who may have heretofore entered, under the homestead laws, a quantity of land less than 160 acres, shall be permitted to enter so much land as, when added to the quantity previously entered, shall not exceed 160 acres. (b)

Section 5 of the Deficiency Appropriation Act of March 3-1875 provides, that any Indian born in the United States, who is the head of a family, or who has arrived at the age of twenty-one years, and who has abandoned, or who may abandon his tribal relations, shall be entitled to the benefits of the homestead act of May 20-1862, except that

(a) 31 Stat. L. 847.

(b) 17 Stat L. 333.

Section 8 of said act shall not be held to apply to entries made under this act. Section 16 provides, that in all cases in which Indians have heretofore entered public lands under the homestead law, and have proceeded in accordance with the regulations prescribed by the Commissioner of the General Land Office, or in which they may hereafter be allowed to so enter under said regulations, prior to the promulgation of regulations to be established by the Secretary of the Interior under the fifteenth section of this act, and in which the conditions prescribed by law, have been or may be complied with, the entries so allowed are hereby confirmed, and patents shall be issued thereon, subject however, to the restrictions and limitations contained in the fifteenth section of this act in regard to alienation and incumbrance. (a)

The act of March 3-1879 provides, that from and after the passage of this act, the even sections within the limits of any grant of public land to any railroad company, or to any military road company, or to any State to aid any railroad or military road, shall be open to settlers under the homestead laws to the extent of 160 acres to each settler, on any even section as above mentioned, and those who, by existing laws shall have been restricted to 80 acres, may enter an additional 80 acres adjoining the land embraced in his original entry, if such additional land be subject to entry; or if such person so elect, he may surrender his entry to the United States for cancellation, and thereupon be entitled to enter lands under said laws, the same as if

the surrendered entry has not been made. And any person to making additional entry of 80 acres, or new entry, shall be permitted to do so without payment of fees and commissions; and the residence and cultivation of such person, upon and of the land embraced in his original entry, shall be considered residence and cultivation for the same length of time, upon and of the land embraced in his additional or new entry, and shall be deducted from the five years' residence and cultivation required by law: Provided, that in no case shall patent issue upon an additional or new homestead entry under this act, until the person has actually, and in conformity with the homestead laws, occupied, resided upon, and cultivated the land embraced therein at least one year.

(a)

By the Indian Appropriation Act of July 4-1884, it was among other things provided, that to such Indians as now may be located upon the Public Domain, shall be extended the benefits of the Homestead act; all patents to declare the land thus entered to be held in trust by the United States for a period of twenty-five years, for the sole use and benefit of the Indian by whom such entry shall have been made.

(b)

The act of May 6-1888 provides, that patents shall

issue to the homesteader of additional land under the act above, (20 Stat L. 472) without further cost or proof of cultivation and settlement.

(c)

By the act of March 2-1889, and amendatory act Dec-

ember 29-1894, a homesteader was granted leave of absence

(a) 20 Stat L. 472.

(b) 23 Stat L. 96.

(c) 24 Stat L. 22.

for a period not exceeding one year at any one time, provided that the time of such actual absence shall not be deducted from the actual residence required by law. (a)

The act of March 2-1889 "An act to withdraw public lands from private entry, and for other purposes", provides,

Section 1, That from and after the passage of this act, no public lands of the United States, except those in the State of Missouri, shall be subject to private entry.

Section 2, That when any person has not perfected title to land formerly entered under the homestead law, he shall have the right to make homestead entry of not exceeding 160 acres. That all settlers who have previously entered land under pre-emption laws, may perfect their titles under the homestead law, notwithstanding they may have heretofore had the benefit of such a law.

Section 5, That any homestead settler who has heretofore entered less than one-quarter section of land, may enter other and additional land lying contiguous to the original entry, which shall not with the land first entered exceed in the aggregate, 160 acres, without proof of residence upon and cultivation of the additional entry; and if final proof of settlement and cultivation had been made for the original entry, when additional entry is made, then the patent shall issue without further proof. Provided, that this section shall not apply to or for the benefit of any person who at the date of making application for entry hereunder, does not own and occupy the lands covered by his original entry; And provided, that if the original entry shall fail for any person, prior to patent, or should

appear to be illegal or fraudulent, the additional entry shall not be permitted, or if having been initiated, shall be cancelled.

Section 6 also pertains to the additional entry of land not contiguous to the original entry, to make in the aggregate 160 acres, but provides especially that the land covered by additional entry shall be resided upon by the settler in conformity with the homestead laws, and that in no case shall patent issue for the additional land, until such requirements are complied with. (a)

Among other things, the Civil Appropriation Act of August 30-1890 provides, that no person who shall after the passage of this act enter upon any of the public lands with the view of occupation, entry or settlement, under any of the land laws, shall be permitted to acquire title to more than 320 acres in the aggregate, under all of said laws, but this limitation shall not operate to curtail the right of any person who has heretofore made entry or settlement on the public lands, or whose occupation, entry or settlement is validated by this act. (b)

The act of March 3-1891, among other things, provides that the maximum land entries as set out immediately above, shall be construed to include in the maximum amount of lands, the title of which is permitted to be acquired by one person, only agricultural lands, and not to include lands entered or sought to be entered under mineral land laws. (c)

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- (a) 25 Stat L. 854.
 - (b) 26 Stat L. 391.
 - (c) 26 Stat L. 1101.

--COMMUTATION OF HOMESTEAD ENTRIES--

By R. S. Section 2301, homestead claimants were allowed to commute on making proof of settlement and cultivation as provided by law granting pre-emption rights. By 1891, March 3, Chapter 561, Section 6 R. S., Section 2301 was amended so as to allow commutation on proof of settlement, residence and cultivation for the period of fourteen months after date of entry. Section 3, Act June 3-1896, Chapter 312, 29 Stat L. 197 renders the period of commutation uniform at fourteen months, and section 1, same act, confirms all prior commutations made in good faith after six months residence on the land, but in less than fourteen months.

In *McCord v. Hill* (1901) 111 Wis. 527, the Court held; The six months residence required by law of June 3-1896 above, as a condition to the right to commute the homestead entry, and may be had any time before commutation and need not be subsequent to entry. (a)

Section 1 of Act of April 28-1904 provides, that when a settler through some unavoidable complication of his personal or business affairs, or on account of an honest mistake as to the character of the land previously entered, was unable to perfect his entry, either from the causes above or from other good and valid causes, he shall be entitled to the benefits of the homestead laws as though such firmer entry had not been made.

Section 2 provides for additional entry of contiguous land aggregating 160 acres in all, and is the same in

(a) Fed. Stat. Annotated Vol 6 page 318.

essence as the law of March 2-1889, section 5.

Section 3 provides, that commutation under the provisions of R.S. Sec. 2301, above referred to, shall not be allowed on an entry made under this act. (a)

Lands commutated in Oregon Under Section 2301 R.S. from July 1-1880 to June 30-1904, aggregated 591,853.37 acres amounting to \$789,421,67, Number of entries 3,959.

Lands commuted under second section Act June 15-1880 aggregated 18,019.69 acres, amounting to \$28,088.30. number of entries 126. (b)

Final homestead entries in Oregon to June 30-1904, amounted to 23,888 entries, or 3,493,637.24 acres. (c)

Under the act of March 3-1905, Section 2288 R.S. was amended so as to read; Any bona fide settler under the pre-emption, homestead or other settlement laws shall have the right to transfer, by warranty against his own acts, any portion of his claim for church, cemetery, or school purposes, or for the right of way for railroads, telegraph, telephone, canals, reservoirs, or ditches for irrigation or drainage, across it, and the transfer for such public purposes shall in no way vitiate the right to complete and perfect the title to his claim. (d)

(a) 33 Stat L. 527.

(b) Report Land Comm 1904-1905 Sen. Doc. Vol 4 page 202.

(c) Do 175.

(d) 33 Stat L. 991.

C H A P T E R X V I I .

T I M B E R A N D S T O N E A C T S .

From 1817 to 1878 various acts were passed by Congress for the protection of timber and the sale of timber lands on the Public Domain but none of these acts were general in character.

June 3-1878 Congress passed an act authorizing the sale of timber land unfit for cultivation, in California, Oregon, Nevada and the Territory of Washington, at \$2.50 per acre. This act confines its benefits to citizens, or those who may declare their intentions of becoming such; no other person or association of persons to enter more than 160 acres. Proof must be shown of the non-mineral and non-agricultural character of the land described. This act also provided for the sale of lands valuable chiefly for stone, in the same quantity, and on the same terms as timber lands. Application must be made to the District Land Office which application was posted for sixty days, and published in the newspapers for the same length of time. If no adverse testimony as to the character of the land was shown after said sixty days, then he or they could pay for and enter it. (See circular General Land Office, August 15-1878, and specifically circular May 1-1880). (a)

Up to June 30-1883 there had been 132 entries in Oregon, aggregating 15,912.52 acres. (b)

Lands disposed of for cash from July 1-1880-1904, 1,937,206.50 acres, amounting to \$4,843,026.00, 13,065 entries (c)

(a) Public Domain-Donaldson, 1883 page 359.

(b) Do 1289.

(c) Report Land Comm. 1904-1905 Sen Doc. Vol 4 page 201.

FOREST RESERVATIONS.

Section 24 of the Act of Congress, Approved March 3-1891 entitled "an act to repeal timber culture laws, and for other purposes", empowers the President of the United States to create public reservations, together with the limits thereof, by public proclamation.

By such power in him vested, the President has created at different times certain ~~reser~~ves in Oregon.

By proclamation, September 28-1893, one of the Cascade Forest Reservations was set aside, having its beginning point at the intersection of range lines between ranges 6 and 7 East of Willamette Meridian, Township two North, on the South bank of the Columbia River. (for description see proclamation) (a).

On the same date the Ashland Reservation was created by proclamation, beginning at the North east corner of Section 27, Township 39 South, Range 1 east of Willamette Meridian. (for description see proclamation) (b).

Among other things, the Sundry Civil Appropriation Act of June 4-1897 provides, that any settler shall have the right to lands in lieu of such lands as may be included in any Forest Reservation, such tract selected in lieu must be upon vacant land, and not exceeding in area the former tract. (c)

Section 1 of the Appropriation Act of June 6-1900, provides, that all selections of land made in lieu as provided in the Act of June 4-1897, shall be upon vacant,

- (a) Stat L. Vol 28.
- (b) Stat L. Vol 28
- (c) 30 Stat L. 36

surveyed, non-mineral public lands, which are subject to homestead entry, not exceeding in area the tract covered by such claim or patent. (a)

The act of March 3-1901, or that part of the same pertaining to the relinquishment, selecting and patenting of lands within a forest reserve, is in essence the same as the last act above abstracted. (b)

By act of May 22-1902, Congress created what is known as Crater Lake National Park, Oregon, for the protection and preservation of game, fish, timber and all other natural objects therein, said reserve having an area of 249 square miles. Section 3, states that it shall be unlawful for any person to establish any settlement, or residence within said reserve, or to engage in any lumbering or other enterprise, etc. etc., and provided a penalty for such depredation. (c)

An addition was made to the Cascade Forest Reservation created September 28-1893, by proclamation of President McKinley, July 1-1901, of the following described land, to-wit; The south half of Township one South, Township two South, three South, and four South, Range eleven East of Willamette Meridian, Township five South, Ranges nine and ten East, and so much of Township six, Ranger nine and ten East, as lies North of the Warm Springs Indian Reservation. (d)

The Act of February 1-1905, provided that the Secretary of the Department of Agriculture, should execute or cause to be executed all laws affecting public lands,

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- (a) 31 Stat L. 614.
 - (b) 31 Stat L. 1037.
 - (c) 32 Stat L. 202.
 - (d) 32 Stat L. 1972.

heretofore or hereafter reserved under the provisions of section twenty-four of the act entitled, "An act to repeal the timber culture laws, and for other purposes", approved March 3, 1891, and acts supplementary and amendatory thereto, after such lands have been so reserved, excepting such laws as affect the surveying, prospecting, etc, or patenting of such lands. (a)

By proclamation dated February 5-1904, President Roosevelt created what is known as the Baker City Forest Reservation, in Eastern Oregon. (for description see Vol. 32 Stat L. page 2331). (b)

The Act of March 3, 1905, provides, that the Acts of June 4-1897, and June 6-1900, and March 3-1901, are repealed so far as they provide for the relinquishment, selecting and patenting of lands within a forest reserve, but the validity of contracts entered into by the Secretary of the Interior prior to the passage of this act shall not be impaired.

Areas of Forest Reserves in Oregon to June 30-1904.

Ashland	18,560 acres
Baker City	52,480 "
Bull Run	142,080 "
Cascade Range	<u>4,436,120 "</u>
Total	4,649,240 acres

Withdrawn for proposed Reserves, 10,269,920 acres. (c)

(a) 33 Stat L. 628.

(b) 32 Stat L. 2331.

(c) Report Land Comm. 1904-1905, Sen. Doc. Vol 4 page 197.

C H A P T E R X I X.

---TIMBER CULTURE---

The first act passed by Congress relating to timber culture was March 3-1873, amended by act of March 13 1874. It was for the promotion of the growth of timber on the Western Plains. This act provided a method of acquiring title to the public lands, on condition that the timber should be grown thereon; so that persons might take "timber farms", as well as "agricultural farms" - the land to be given them as a reward or bounty for raising trees. The act contained a clause that land in cultivation for timber should not be liable for debt contracted prior to the issuing of the patent therefor. Entry of not more than 160 acres, nor less than 40 acres could be made. One-fourth of the tract entered must be devoted to timber for eight years, and after that length of time, on proof of the facts at the district land office, certificate for patent was to issue. The first filings under this law were made in the Fall of 1873, but they were few and of small area. The act of 1878 was similar in essence, but superseded all prior acts. It gave further privileges, and contained additional conditions. The timber culture acts up to 1883 were purely experimental.

(a) In Oregon, up to 1883 there had been 1,570 original entries, aggregating 232,954.86 acres, but no patents had been issued. (b)

The act of March 3-1891 repealed the act of June 14-1878, and all laws amendatory thereof, or supplementary

(a) Donadson Public Domain-1883, page 361.

(b) Do 1290.

thereto. The repeal not to affect in any way, claims initiated under the former laws. Certain other provisions were made for the securing of title to land entered under the timber culture laws. (a)

The act of March 3-1893 added a proviso to the above act, by which amendatory act an entryman could make final proof to such land **entered** under the timber **culture** law, after having complied with the laws required in such cases for a period of four years, and upon payment of \$1.25 per acre for such tract. And further provided that no land acquired under the provisions of this act shall in any event become liable for the satisfaction of any debt or debts contracted prior to the issuing of the final certificate therefor. (b)

The land disposed of for cash in Oregon, under the timber culture laws from July 1-1880 to June 30-1904, 35,742.61 acres, 251 entries, amounting to \$44,678.37 (c)

Final Timber culture entries up to June 30-1904 in Oregon, under said laws, 1,497, aggregating 223,861,84 acres. (d)

(a) 26 Stat L. 593.

(b) 27 Stat L. 593.

(c) Report Land Comm. 1904-1905, Sen. Doc. vol. 4 page 207.

(d) Do 183.

CHAPTER XX.

DESERT LANDS

March 3-1877, Congress enacted the "Desert Land Act", which applies to California, Oregon, Nevada, and other States. It is for the reclamation of Desert lands, an entry of 640 acres being permitted; and three years are given from the date of filing in which to convey water onto the same. At time of filing application, twenty-five cents per acre is to be paid at the District Land Office, and upon proof of compliance with the law, final payment of \$1.00 additional per acre can be made at any time within three years. All lands exclusive of timber and mineral lands, which will not, without irrigation produce some agricultural crop, are deemed and held to be desert land under this act. The determination of what may considered such desert lands, is subject to the decision and regulation of the Commissioner of the General Land Office. (a)

Up to June 30-1883 there had been 106 entries in Oregon, aggregating 29,461.37 acres.

By the act of March 3-1891, five sections were added to the act of 1877, numbered from 4 to 8.

Section 4 provided, that the party making entry shall at the time file a map of the contemplated irrigation; that he shall show the source of the water to be so used, and that he may associate together with others for the purpose of constructing canals and ditches for tracts entered or proposed to be entered by them.

(a) Donaldson Public Domain-1883 page 363.

Section 5 provided, that the entryman shall expend three dollars per acre for the three years, in improvements, and that he shall have cultivated one-eighth of the land, at the expiration of said three years.

Section 6 provided, that the entries made prior to the amendatory act of 1891, may be perfected according to the act of 1877, or at the option of the claimant, may be perfected under the terms of the act of 1891, and further repeals all acts in conflict with the act as amended.

Section 7 provided, that patent shall issue after four years, in case of proof of reclamation and cultivation of the land according to legal requirements, and limits the amount of land which may be entered, to 320 acres. (a)

In the General Appropriation Act of August 18-1894, section four relates to Desert lands in Public Land States. To aid in the reclamation of the desert lands in said States, and the settlement, cultivation and sale thereof, the Secretary of the Interior is authorized to donate, grant and patent to the State, free of cost, lands, as the State may cause the same to be irrigated, reclaimed, occupied, for ten years after the passage of this act, and as fast as the States can give satisfactory proof according to the rules and regulations laid down by the Department of the Interior, that when any of said lands so reclaimed, patents shall be issued to the States or to their assigns for said lands. Provided, that said States shall not sell or dispose of more than 160 acres of said lands to any one person. (b)

(a) 26 Stat L. 1096.

(b) 28 Stat L. -----

By the Act of August 18-1894, the time for making final proof was extended to five years. And the expenditure was fixed at one dollar, per acre per year. (a)

Section three of the General Appropriation act, of March 3-1901 provided, among other things, that the Secretary of the Interior, at his discretion, when the States had failed to cause the lands applied for, under the Act of 1894, to be irrigated and reclaimed, might extend the time for a period not exceeding five years, or might in his discretion restore the lands to the Public Domain. (b)

The act of June 17-1902 provided, among other things, that all moneys received from the sale of public lands in Oregon, and other States, beginning with June 30-1901, except five per cent of the sales of public lands, which have been set aside to the State for educational and other purposes, are reserved for a "reclamation fund"; and further provided for the support of the agricultural colleges by the government, provided this method of disposal of lands, should take from their share of the proceeds, an amount which would make that remaining insufficient for their maintenance. (c)

Land disposed of for cash under the desert land acts from July 1-1880 to June 30-1904, aggregated 99,161.77 acres, amounting to \$99,205.52. Number of final entries 515. (d)

(a) 28 Stat L. 226.

(b) 31 Stat L. 1183.

(c) 32 Stat L. 388.

(d) Report Land Comm. 1904-1905, Sen. Doc. Vol 4. page 202.

C H A P T E R X X I .

-- RIGHTS OF WAY OVER PUBLIC DOMAIN --

Section 2477 R.S. provides, that the right of way for the construction of highways over public lands, not reserved for public uses is hereby given. (See Act July 26-1866). (a)

Section one of act of March 3-1875, gives any railroad company, organized under the laws of the United States, except in District of Columbia, the right of way over the public lands, 100 feet on each side of the center line of said road, and further gives to the road, the right to take from the public land, material to use in construction of said road. (b)

Section five, same act provides, that this act shall not apply to any lands within the limits of any Military, Park or Indian Reservation, or other lands especially reserved from sale, unless such right of way shall be provided for, by treaty-stipulation, or by act of Congress heretofore passed. (c)

Section 18 of Act of 1891 provided, for the right of way through public land and reservations of the United States shall be given to any ditch or canal company, formed for the purpose of irrigating lands, and duly organized under the laws of any State or Territory, to the extent of the ground occupied by the water of the reservoir, and of the canal and its laterals, and fifty feet on each side of the marginal limits thereof, and also the right to take from the public

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- (a) 14 Stat L. 253.
 - (b) 18 Stat L. 482.
 - (c) 18 Stat L. 482.

lands, materials for construction of such ditch or canal.(a)

Section one of the act of January 21-1895 provides, that the Secretary of the Interior be, and is hereby authorized and empowered, to permit the use of the right of way through the public lands, not within the limits of any Park, Forest, Military or Indian Reservation, for tramroads, canals or reservoirs, to the extent of the ground occupied by the water of the canals or reservoirs, and fifty feet on each side of the center line of the tramroad, by any citizen of the United States, engaged in the business of mining or quarrying, or of cutting timber and manufacturing lumber. (b)

The section was amended May 11-1898 by adding a proviso extending the provisions of those persons or that person furnishing water for domestic purposes, or for public or other beneficial uses. (c)

Section two of Act above, viz, January 21-1895 provides that the Secretary of the Interior shall permit the use of the right of way to the extent of twenty-five feet, together with the use of necessary ground not exceeding forty acres, upon the public lands and forest reservations, by any citizen or association of citizens of the United States, for the purpose of generating, manufacturing, or distributing electric power. (d)

Section one of the Act of January 13-1897 gives stock companies the right to construct and maintain reservoirs on the public lands, not exceeding in area 160 acres. (e)

(a) 26 Stat L. 1101.

(b) 28 Stat L. 635.

(c) 30 Stat L. 404.

(d) 28 Stat L. 635.

(e) 29 Stat L. 484.

Section two of the amendatory act of May 11-1898 provides, that the rights of way for ditches, canals or reservoirs heretofore or hereafter approved under the provisions of Sections 18,19,20 and 21 of the Act to repeal timber culture laws and for other purposes, approved March 3-1891, may be used for the purposes of water transportation ~~for~~ domestic purposes, or for the development of power, and subsidiary to the main purpose of irrigation. (a)

Section one of the Deficiencies appropriation Act of March 3-1899 recites, that in the form provided by existing law, the Secretary of the Interior may file and approve surveys and plats of any right of way for a wagon road, railroad or other highway, over and across any forest reservation, or reservoir sight, when in his judgment, the public interests will not be injuriously affected thereby. (b)

Total number of acres patented in Oregon up to June 30-1904, for reservoir rights of way:-

1902.	1903.	1904.
292.90 acres	766.33 acres.	50. 90 acres.
Total, 1,110.13 acres. (c)		

(a) 30 Stat L. 404.

(b) 30 Stat L. 1233.

(c) Report Land Comm. 1904-1905. Sen. Doc. vol 4 page 196.

C H A P T E R X X I I .

--OTHER ACTS--

I. Graduation Act.

The Graduation Act of August 4-1854, and amendments, was to "cheapen the price of lands in the market for the benefit of the actual settlers, and for adjoining farms". It ~~graduated~~ the price of public lands which had been in the market, and which remained unsold for ten years and upwards, to actual settlers; the prices varying from one dollar to twelve and one-half cents per acre, according to the length of time the tracts were in the market respectively. Thousands of entries were made under the provisions of this act, but up to 1883 no statistics were given by Donaldson for Oregon. The Act was repealed in 1862, June second. (a) 2. Cash Entries.

Congress passed an act January 30-1897, which provided that all entries of public land made under the provisions of the act entitled "An act to graduate and reduce the price of lands to actual settlers, and cultivators", approved August 4-1854, which were illegal and invalid because of the fact that the lands covered thereby had never been offered for sale, be and the same are hereby confirmed, if upon examination by the Commissioner of the General Land Office, the same are found to be otherwise regular, and in compliance with the ~~said~~ act, and the acts supplementary thereto. That all acts or parts of acts in conflict herewith are hereby repealed. (b)

(a) Donaldson, Public Domain-1883 page 291.

(b) Stat L. Vol 29.

3. Special Grant to Oregon.

By act of April 19-1904, Congress granted to the State of Oregon the following described land, to-wit;

Beginning at the southeast quarter of section nineteen, the northwest quarter of the southwest quarter of section twenty, and the northwest quarter of the northeast quarter of section thirty, all in township two north, range forty-one east of Willamette Meridian, in Oregon, for the use of said State, in maintaining and operating a fish hatchery. The act provided that if such land was not so used at the end of five years, it should revert to the government. (a)

4. Fort Klamath Hay Reservation.

By the act of March 31-1896, Congress provided that all lands lying within the boundaries of the Fort Klamath Hay Reservation, not included in the Klamath Indian Reservation, in the State of Oregon, shall be open to the operation of the laws regulating homestead entry. Provided, that the disposal of said lands shall be made in tracts not exceeding eighty acres to any bona fide settler thereon. (b)

(a) 33 Stat L. 185.

(b) Vol 29 Stat L.