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## The Swamp Land Act in Oregon, 1870-1895

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AN ABSTRACT OF THE THESIS OF Richard Mark Pintarich for the  
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Title: The Swamp Land Act in Oregon, 1870-1895.

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The Swamp Land Act of 1849, originally intended to give the state of Louisiana the unproductive swamplands within its borders and use the proceeds to construct the drains and levees necessary to reclaim these lands, was extended to Oregon in 1860. Oregon did not act on the matter until 1870, but once begun, it became a prolific source of political corruption, fiscal irresponsibility, fraud, and land speculation and monopolization. Even though the physiography of Oregon was much different than the states in the Mississippi Valley, millions of acres of "swampland" were filed upon and the state sold hundreds of thousands

of acres long before it received legal title to these lands. In most cases final patents were never issued by the federal government. Rather than the proceeds of the sales of these lands going toward reclamation, the funds often went to the friends of state officials for dubious services. Appropriations, based on the anticipated sale of swampland, were made for the owners of wagon roads for projects never completed. This created a state indebtedness which the sale of swampland alone could not erase. A major result of the Swamp Land Act in Oregon was the withholding of arable land and water rights from actual settlers in the predominantly semiarid regions of Oregon by land speculators and by cattle barons who used it to monopolize vast tracts of grazing land. Litigation over disputed swampland claims occurred well into the twentieth century.

Because little has been written on this topic, primary sources have been extensively relied upon for the research. The most important of these sources were the Portland Oregonian, government documents of the state of Oregon, and the documents of the United States Department of Interior.

THE SWAMP LAND ACT IN OREGON, 1870-1895

by

RICHARD MARK PINTARICH

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requirements for the degree of

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## CHAPTER I

### INTRODUCTION

In the nineteenth century, the United States Government aided and encouraged the settlement and growth of states, especially new states, through numerous land grants for internal improvements. These grants, displaying the federal government's interest in opening up new land and encouraging settlement to make the vast public domain of the nation productive, helped states and private corporations develop and promote such things as transportation, reclamation, and education. It was believed that what was good for individuals and states would eventually benefit the nation as a whole. In the long run this proved to be true, but more often than not the main beneficiaries of some grants were not the states, the nation, or the public so much as speculators and capitalists who used and misused the laws to reap enormous profits. The Swamp Land Act became one of the most abused of these grants.

Louisiana, in the 1840's, had become increasingly concerned over its many unproductive and unhealthy acres of swampland, an area occupying nearly one third of the state's total area. Because these lands were not suitable



for cultivation, and therefore shunned by homeseekers, Louisiana asked Congress to donate them to the state as an internal improvement grant. There was little opposition to the idea in Congress; the lands would never bring any money into the federal treasury and the United States had no plan of its own to improve the swamplands. Congress was more than happy to give these worthless acres to the state to sell and improve if it could.<sup>1</sup>

The Swamp Land Act of 1849 was created "to aid the State of Louisiana in constructing the necessary levees and drains to reclaim the swamp and overflowed lands which may be or are found to be unfit for cultivation."<sup>2</sup> It was soon realized, however, that if Louisiana was eligible for federal aid, then certainly Mississippi, Arkansas, and the other states in the Mississippi Valley with a similar topography should also be provided for. The Swamp Land Act of 1850 extended the grant to other states with land swampy in character.

Almost from the beginning there were problems. Honest misinterpretation, fraudulent claims by speculators, and corruption and bungling by both federal and state officials combined to cause much litigation over swamplands. A great deal of the problem was a direct result of the vagueness of the General Land Office in the administration of the swamplands. Instead of segregating the swamplands before disposal, the states were allowed to

select their swamplands either by their own survey or using the field notes of federal surveyors. The method varied from state to state and the General Land Office was not consistent in its swampland decisions regarding selection, discrepancies resulting in uncertainties not only for the states but among land claimants and the surveyors general of the states as well. The more the General Land Office tried to define the act through rulings, the more vague and muddled it became. This confusion resulted in many conflicts between state swampland claims and preemption claims, railroad grants, and other federal land grants. It also led to fraud with valuable agricultural land and timber land being selected as swamp.

The Swamp Land Act, deeply mired in Mississippi Valley disputes, moved west in 1850 when California became a state. Though eligible for these lands, it was not until ten years later that the state took any action toward selection of swamplands. But once started, California sold swampland as rapidly as possible. Unfortunately, it was done years before the federal government issued any patents to the state, resulting in the not uncommon situation where two parties might hold title to the same parcel of land, one from the state and one from the United States.<sup>3</sup>

This was just the beginning of complications arising from the grant as speculators and "monopolists" soon saw the opportunities presenting themselves in being able to

claim vast areas for a small deposit. The speculator held his land until a legitimate settler came forward to buy it at a grossly inflated price.<sup>4</sup> The land monopolists were usually cattlemen who used the Swamp Land Act to build their empires in the San Joaquin and Sacramento valleys. One outfit, Miller and Lux, which eventually expanded into Oregon, acquired 80,350 acres of swampland, most of which was not swamp but very fertile land subject to seasonal flooding.<sup>5</sup>

Of course none of this could have taken place had it not been for the vagueness of the law as it was written, the uncertainties of state and federal officials, and the corrupt nature of some public servants in Sacramento. The California state land agency, composed of the state surveyor general and one clerk, was created in 1858. For the next two decades these two men were in charge of distributions more than four million acres of land.<sup>6</sup> Underpaid and overworked, the two-man land agency was more than willing to accept the voluntary services of speculators and line their pockets in the process. J. F. Houghton, Surveyor General in the 1860's, became one of the largest landholders in the state claiming many acres of dry land as swamp. Incomplete books and "lost" receipts became inexplicably common, and it was reported by one legislative committee in the 1870's that an earlier surveyor general had "paid the state only \$42,000 of an estimated

\$74,000 believed collected." <sup>7</sup> There was also evidence of his giving titles to friends without payment and his having worked closely with speculators. <sup>8</sup>

This and the mismanagement of other land grants forever altered the land use pattern of California in that it discouraged settlement by small farmers. The result was accurately described by Henry George in 1871:

In all of the new States of the Union land monopolization has gone on at an alarming rate, but none of them as fast as in California. . . . These lands were gobbled up by a few large speculators . . . millions of acres have been monopolized by a handful of men . . . . The State has been made the cat's paw of speculators. <sup>9</sup>

Most of California's swampland activities were carried out in the 1860's, years before Oregon contemplated its Swamp Land grant. There was something to be learned from our southern neighbor; unfortunately the lesson Oregon learned was to emulate rather than avoid the experience of California.

## CHAPTER I

### FOOTNOTES

<sup>1</sup>Paul W. Gates, History of Public Land Law Development (Washington, D.C.: Government Printing Office, 1968) p. 322.

<sup>2</sup>Ibid.

<sup>3</sup>Ibid., p. 330.

<sup>4</sup>Gerald D. Nash, "The California State Land Office 1858-1998," Huntington Library Quarterly, XXVII, p. 352.

<sup>5</sup>Gates, History of Public Land, p. 327.

<sup>6</sup>Nash, "The California State Land Office," p. 349.

<sup>7</sup>Ibid., pp. 349-350.

<sup>8</sup>Ibid.

<sup>9</sup>Gerald D. Nash, "Problems and Projects in the History of Nineteenth-Century California," Arizona and the West, II (1960), p. 332.

## CHAPTER II

### THE PASSAGE AND ABUSE OF THE SWAMP LAND ACT, 1870-1878

The Swamp Land Act was extended to the newly admitted states of Oregon and Minnesota in 1860. As was the case of many land laws which had their origins east of the Great Plains, its effect in Oregon was quite different from that in the Mississippi Valley. Oregon's few acres of swampland were not, as might be expected, in the well-watered Willamette Valley or along the Oregon coast, but were located on the edges of large lakes in arid southern and southeastern Oregon. Rather than being a nuisance, they were oases in the desert.

Even though the 1860 act called for selection of swamplands by the state within two years, the Oregon legislature did not act on the matter until 1870. Oregon's sudden interest in swampland appears to have been created by the desire for internal improvements, especially wagon roads, and the state's inability to finance any proposed projects. However, subsequent events indicate the possibility of personal gain by legislators and the wagon road promoters also figured significantly in the decision to pursue this grant.

Oregon displayed an incredible enthusiasm for road building in the 1860's, receiving 2,490,890 acres from the federal government for the construction of several military wagon roads. These lands, representing over two-thirds of all land granted by the federal government for military wagon roads in the nation at the time, were given to the state which then passed them on directly to the individual companies.<sup>1</sup> By 1870, Washington was no longer receptive to further land grants for Oregon wagon road construction. Considering the large amount of land already granted and the fact that much of this land was being taken by speculators who did more scheming and lobbying than actual road building, it was just as well. Oregon was left with the need for improved transportation without federal aid.

The 1870 legislature was besieged by the lobbyists for a score of wagon road schemes and the memorials of isolated settlers asking for more and better roads. But where were the funds for even the most necessary internal improvements to come from? The Oregon constitution made, for all practical purposes, state financing of internal improvements an impossibility. For example, Article XI, Section 7, of the constitution read, in part:

The legislative assembly shall not loan the credit of the state, nor in any manner create any debts or liabilities, which shall singly or in the aggregate with previous debts or liabilities exceed the sum of fifty thousand dollars, except in case of war, or to repel invasion, or suppress insurrection. . . .

The constitution's framers believed the state should not aid or participate in the construction of internal improvements. The financial policy of the state was designed so that government business would not become a burden to the taxpayer, a "pay as you go" and "hard cash" rule of business practice.<sup>2</sup> This attitude was something the pioneers had brought with them from the Midwest where they had witnessed reckless state spending for internal improvements in the inflationary 1830's. This spending spree ended with the economic collapse of 1837, leaving in its wake monstrous state indebtedness, ruinous taxes, greatly decreased crop prices, and unfinished roads and canals.<sup>3</sup>

State indebtedness was taboo, but there were two federal grants made to the state specifically for internal improvements. The first of these gave five percent of the sales of public lands to the state for internal improvements but, because most of Oregon's valuable Willamette Valley farm land had already been claimed under earlier statutes, these proceeds, remarked the Oregonian, "amount to an inconsiderable sum, and it may well be doubted whether (a) large sum . . . will ever be realized by the State from them."<sup>4</sup> At that time, forest lands and semi-arid eastern Oregon lands were considered worthless by the Mississippi Valley farmers who had settled here.

The second of these grants was the 500,000 acres given the state to sell for internal improvements. At



\$1.25 an acre revenue from this grant would be a significant amount. However, it became the subject of heated debate. In his 1870 message to the legislature, Governor George L. Woods stressed that the proceeds from this grant were to go into the common school fund, and he hoped the legislature would "carefully guard the Common School Fund from improper and unconstitutional uses."<sup>5</sup> Opponents of this view argued that the grant was given by the federal government specifically for internal improvements and its revenue did not belong in the school fund.<sup>6</sup> The controversy remained unresolved that session. Even though the wagon road promoters were very active in their lobbying, a majority of the legislators followed Governor Woods' lead and voted down for lack of funding all but two minor wagon road bills.<sup>7</sup>

One internal improvement project, however, was pushed through the legislature, the Willamette Falls Canal and Locks bill. The passage of this \$200,000 appropriation, to be paid out of the five percent fund and the 500,000 acre internal improvement grant, caused a public uproar. Because it created state indebtedness, it was decried as unconstitutional and nearly immoral for taking money from the schools and putting it into the pockets of corporate officers.<sup>8</sup> The Oregonian editorialized:

An inroad is now made on the school fund. . . . The flood-gates have been opened, and unless they are closed promptly everything within reach will be carried away by the swift, turbid stream that has begun to undermine the foundations of good and honest government.<sup>9</sup>

Many Oregonians shared this view and the flood-gates were closed in 1871 when the federal government agreed that funds from the 500,000 acre grant belonged in the common school fund.<sup>10</sup>

Nevertheless, many were still interested in governmental support for internal improvements, and a committee was appointed to look into other grants, including the swamp grant. It was reported that this calmed the wagon road people somewhat.<sup>11</sup> On the last day of the 1870 legislative session, while the canal and locks bill occupied most people's attention, the legislature, almost unnoticeably, passed a measure entitled, "An act providing for the selection and sale of the swamp and overflowed lands belonging to the state of Oregon." This was in keeping with Governor Lafayette Grover's desire to get as many acres as possible for the state through available federal land grants before federal railroad, wagon road, homestead and pre-emption grants gobbled up the land.<sup>12</sup>

The Swamp Land Act passed by a large margin, even though one of its opponents found "the bill defective in all its parts."<sup>13</sup> But there were few opponents to the measure in a legislature described by the Oregonian as "the most corrupt body that ever assembled in Oregon. . . . even the Democratic Herald admitted the legislature was composed mainly of 'fools and rascals.'"<sup>14</sup> Subsequent events proved this remark had merit beyond the Oregonian's usual dislike of Democratic administration.

An 1870 investigating committee said of the State Land Board of 1868-1870:

No proper books were kept, not even those actually required by law. . . . On the flimsy pretense that there was not clerical aid in the office sufficient to transact the business, the Board, as a Board, generally refused to receive payments upon lands, though it is on record that some of the members were somewhat more yielding and did a little business of that sort on their own individual account.<sup>15</sup>

Of course funds generated in this manner seldom found their way into the treasury.

The same committee also found instances where Secretary of State S. E. May collected money for land sales, but "converted the same to his own use and did not account therefor to the Board." An 1872 investigative committee found that, in the late 1860's, the same public servant had pilfered \$5,424 of the five percent fund. May did much more, but it was also found that the state treasurer, Edwin N. Cooke, was investing state funds and pocketing the interest along with other maneuvers to boost his personal income.<sup>16</sup>

Many state legislators felt at home in this political atmosphere. Of these legislators and the swarm of lobbyists in Salem, in regard to the Swamp Land Act, Bancroft's History of Oregon states: "To secure these overflowed lands, together with others that were not subject to inundation, but could be embraced in metes and bounds, was the purpose of the framers and friends of the swamp-land act of 1870 in the Oregon legislature."<sup>17</sup>

When the federal government gave Oregon its swamp-lands in 1860 it provided that the state would have two years to select the lands. The findings were then to be confirmed by the Department of Interior which would then pass approved lands to the state to sell. To get around the two year limitation required by the 1860 Swamp Land Act, the state claimed that the 1870 act was justified because the Secretary of the Interior had failed to notify the governor that surveys in Oregon were ever completed and confirmed.<sup>18</sup> The selection of swamplands was, it was argued, dependent on federal surveys. The Interior Department agreed, and gave Oregon the choice of one of two methods to select swampland; either from federal survey field notes or through selection and proof by state agents.<sup>19</sup> Choosing one of these two methods the state could select swampland and, upon approval of the Department of Interior, proceed to claim these acres as state lands and sell them according to its own regulations. Oregon did not distinctly indicate which method would be followed. The 1870 law stipulated: "It shall be the duty of the Commissioner of Lands to appoint a suitable person or persons as his deputies to proceed as soon as practicable to select in the field all (swampland) . . . ." <sup>20</sup> As it turned out, however, the state saw no need to hire deputies when swampland claimants were eager to do the work for free by reporting their selections to the State Commissioner of Lands,

describing their selection by survey maps, meander lines, or any artificial or natural landmark. As selection and claiming became one operation, the law completely ignored federal requirements. Oregon carelessly leapt into the business of selling swampland which it did not own.

To make matters worse, the 1870 law was a speculator's dream. The requirements for defining and locating swampland were very flexible, there was no limit placed on the amount of land an individual could claim, and only twenty percent of the purchase price of one dollar an acre had to be paid. The claimant was generously given ten years to pay the balance after proof of reclamation, and the only proof needed was a crop of "either grass, the cereals or vegetables for three years." Even this was liberally interpreted.<sup>21</sup> Since no actual survey was required, that initial payment was, of course, a conjectural amount.<sup>22</sup> This loophole filled law was in the hands of the Board of School Land Commissioners -- the Governor, Secretary of State, and the State Treasurer -- because the office of Commissioner of Lands had not been established.

Early in 1871, the Oregonian remarked, "It is to be expected that attempts will be made by operators who got the present state law passed, and who are 'inside' with the Board, to obtain for purposes of speculation large tracts of land, which are mostly dry, and which should be reserved for homesteads for actual settlers."<sup>23</sup> Throughout 1871

swamplands were claimed at an alarming rate and were usually followed by the protests of citizens around the state.

By January 22, 1872, United States Senator Henry W. Corbett had received and presented to the Senate some fifteen memorials from citizens of various parts of the state protesting against the operations of the "swamp land ring."<sup>24</sup>

Initially, the most vociferous protests came from southern Oregon. In the Klamath Lake area, where the margins of lakes and streams were the most valuable land, a complaint read:

A surveyor ran meander lines along the margin of the low and valuable lands, and not along the bank of the river or lake. These large, valuable tracts are then called "marsh." . . . Among the first applicants for swamp lands in Klamath was A. J. Burnett, a member of the State House of Representatives; and the remainder of the names are speculators we believe to be in collusion with Burnett.<sup>25</sup>

Burnett was indeed a major holder of swamp land in southern Oregon along with J. B. Underwood (his business partner) and S. B. Cranston (his brother-in-law). An even larger operator was Quincy A. Brooks, a man not satisfied with merely gaining title to as much fertile land as possible. Working through Governor Grover and James Kelly, U. S. Senator from Oregon and head of the infamous Willamette Falls Canal and Locks Company, Brooks was able to have George Conn removed from the Linkville (Klamath Falls) land office and have himself installed. A letter to the editor of the Oregonian, signed "One of the Many," complained that Brooks "refused to allow homestead and pre-

emption filings on 'swamplands'" and "we are taxed to pay Q. A. Brooks to the tune of \$1,500 per year to help him to take our lands from us. . . . (Governor Grover) should receive a merited kick from every honest man in the state."<sup>26</sup>

It was not long before petitions headed "Repeal, Repeal!" were circulated around southern Oregon. The petitioners usually complained that speculators, members of the Oregon Legislature, and others were claiming large tracts of land, creating a land monopoly which injured and deprived homesteaders and preemptors. Furthermore, much of the land being claimed was along the edges of lakes located in semi-arid areas. Settlers complained that, "The greater part of these lands are made valuable only on account of the overflow, without which the lands would be wholly unfit for cultivation."<sup>27</sup>

Such complaints were ignored by the Grover administration. The state maintained it was "to the advantage of Oregon to obtain and sell as many acres of the public lands as possible."<sup>28</sup> The protests continued, but the state wouldn't listen and the federal government had supported similar claims, even though it hadn't yet recognized Oregon's swampland selections. In an 1873 California case, the Commissioner of Public Lands ruled:

It is often said that if the lands were drained they would be unfit for cultivation, and irrigation would be necessary.

This is a virtual admission that the lands are swamps and I cannot see how irrigation or anything

else necessary to cultivation, after reclamation, can affect the right of the State under the grant. Irrigation is a part of cultivation.<sup>29</sup>

This mode of thought coupled with Oregon's liberal law gave free license to speculators to monopolized much of the available water and productive lands in areas predominantly dry.

Swampland claims not only deprived potential settlers of valuable, arable land, there were reports of swamp claims being filed on land already taken for homesteads. Residents in these areas were quite vocal in their protests, but ignored by the government. The Yreka Journal warned, "the swamp land troubles will result in bloodshed if settlers are cheated out of pre-emption land."<sup>30</sup> There was no bloodshed, but neither was there much sympathy coming from Salem and the courts.

In 1873, Joseph Gaston of Yamhill County claimed as swampland a preemption claim held by Frank L. Stott. Stott protested, and the issue reached the Supreme Court of Oregon in December 1873. The court decided that the basic conflict was that "Gaston holds under the State (swampland), Stott under the United States (preemption)."<sup>31</sup> The court ruled in favor of Gaston:

Stott acquired no legal or equitable rights (merely) because the officers of the United States local land office saw fit to accept or entertain his application for their pre-emption under the Act of 1841, for the United States had no legal or equitable rights there in.<sup>32</sup>



This interpretation was the view agreed upon by the courts on swampland matters throughout the 1870's. It remained the opinion of the state and the courts that the Swamp Land Act of 1860 was a grant in presenti, that all swampland in Oregon had been given to the state in 1860 with no restrictions. Ironically, the Interior Department concurred with this ruling when the appeal was before it, even though it had not yet recognized Oregon's right to any swampland whatsoever. Such vacillating opinions were not uncommon in federal decisions. In 1885, a retiring officer of the agency was praised for his services to the government and his furnishing of "valuable precedents on all sides of nearly every question of importance . . . during the past fifteen years."<sup>33</sup> Though the sarcasm was unintended, it was all too true in many cases.

By 1872, the state had on file swampland selections amounting to 174,219 acres, and Governor Grover reported that 325 applicants had filed on an additional 5,838,715 acres as yet unacted upon.<sup>34</sup> That legislature, anxious to speed up and expand swampland sales, passed a resolution which asked Oregon's representatives in Washington to push for swampland legislation and secure for the state lieu lands in compensation for lands disposed of by the federal government under other land laws since 1860.<sup>35</sup> To appease both irate settlers and the federal government, the legislature also passed an act which gave settlers clear title

to preemption or other federal claims made before 1870 or before a swampland claimant.<sup>36</sup> The memorial pointed out one of the main reasons for the increased interest in gaining clear title to the state's swamplands: ". . . whereas the legislative assembly of the State of Oregon at its present session has passed various acts making appropriations from the proceeds of the sales of said lands, for various objects of public utility . . ." <sup>37</sup>

The appropriations "for various objects of public utility" mentioned in the memorial of 1872 has been more accurately described as the state indulging in "some frenzied financiering with anticipated swampland funds."<sup>38</sup> That legislature passed an act giving ten percent of Swamp Land proceeds to the common school fund.<sup>39</sup> While this amounted to only a few hundred dollars, over \$100,000 was appropriated for various wagon road schemes payable out of the swamp land fund and other land funds. In one typical case it was provided that "if there be no money in the treasury to pay said warrant the same shall draw ten percent interest per annum payable out of the (swamp land fund)."<sup>40</sup> While in this generous mood, the legislature then passed an act giving all unappropriated money in the five percent fund and the swamp land fund to the Portland, Dalles and Salt Lake Railroad Company.<sup>41</sup>

Little more than a year after the adjournment of the 1872 legislature the Oregonian said of its legislation:

The last Legislature of the State of Oregon had probably about as many jobs put up on it, as any session that ever convened. Not least among these . . . were the various wagon road grabs that were put through by the (vote) swapping process. (This was done by) that class of small politicians who have no shame to restrain them from down-right stealing, and no aspirations above the getting of a few thousand dollars. . . . (The wagon road appropriations) were swindles, every one of them. They were conceived as swindles, and as such were finally consummated. The money spent on them, or rather on the contracts for them, might as well have been cast into the sea for all the benefit the community at large has realized or will realize from them.<sup>42</sup>

Historian F. G. Young later concurred:

Legislators with purposes pitched on . . . a low plane . . . became the victims of ingenious schemers who were on hand with plausible objects, in the shape of wagon road projects, to solicit appropriations anticipating the receipts from swamp land sales. With no adequate administrative supervision these wagon road appropriations became what they were planned to be -- means for relieving the treasury of expected surplus funds.<sup>43</sup>

Even if this were not universally true, the fact remains that with this sort of spending the state had to peddle swamplands in earnest.

Prior to the 1872 legislative session, Governor Grover wrote to the Secretary of the Interior asking that Oregon's selections be recognized and patents issued.

The Oregonian spoke for many when it warned:

This is just what should not be done without further investigation. To do this would be to consummate the whole swampland fraud that had its inception in our last legislature. It is well understood that tens of thousands of acres have been "selected" under Gov. Grover's law, which are not properly swamp lands at all. Speculators have seized these lands. . . .

But it is said that it is to the advantage of Oregon to obtain and sell as many acres of the

public lands as possible, even if the General Government is defrauded by it.<sup>44</sup>

The Oregonian also doubted that it was in the best interest of the state to sell lands to speculators rather than actual settlers.<sup>45</sup>

Though a battle seemed to be raging in Oregon, the Interior Department paid little attention to the activities and didn't recognize the claims because the state hadn't declared how it was selecting these lands. In 1872, the Surveyor General of Oregon, W. H. Odell, reported to the Commissioner of the General Land Office that the first list of selections amounted to 126,636 acres, but "No action has been had in this office as yet." He also noted that clearly by the next year "it will be incumbent on this office to give some attention to the selections of swamp lands in this State."<sup>46</sup> The following year he wrote that almost 300,000 additional acres had been selected, and in Oregon "selected" often meant those acres were sold.<sup>47</sup> The Surveyor General believed the state was entitled to 11,000 of these acres, but the Interior Department continued to refuse approval, let alone issue patents, to any of the claims.

The 1874 state treasurer's report gave \$5,607 as the amount paid into the swamp land fund. Of this amount \$5,550 was paid to the Trask River Wagon Road Company, leaving a balance of \$51.18 in the fund. Because all the cash in the fund was now spent, the wagon road company was

given \$4,450 in warrants payable out of future swamp land sales to make up the difference in the \$10,000 appropriation.<sup>48</sup> Of course with no money in the fund, the other wagon roads were issued warrants, bearing ten percent interest, payable out of the swamp land, tide land, five percent, and other minor funds. These warrants amounted to \$61,550.<sup>49</sup> In the process, all available money in these other land funds was given to the various wagon road companies.

Governor Grover and the land board became increasingly anxious to have Oregon's swampland selections confirmed by the Interior Department, but no patents were being issued. An 1873 letter from the General Land Office to Grover explained:

The act of the legislative assembly of October 26, 1870 (Oregon's Swamp Land Act), does not elect to make selections in any particular way. It may be inferred, however, that the state intended to make its own selections in the field. It does not provide for furnishing this office, or any of its agents, with any testimony whatever; it only provides for the selection and sale, and seems to ignore entirely the right of the United States to enquire whether the lands are swamps or not.<sup>50</sup>

The letter then went on to criticize Oregon's method of selections since 1870: ". . . the state cannot adopt the (federal survey) field notes when they establish the swampy character of the land, and repudiate them when they do not." The state had to decide which method it would use and inform the General Land Office before any land would be granted.<sup>51</sup>

The 1874 Oregon legislature complied with federal regulations by passing an act stating that "Oregon hereby elects to select the swamp and overflowed lands within her boundaries by agents of the state."<sup>52</sup> This was acceptable to the General Land Office, and it began the recognition of Oregon swampland. This, however, was a mere formality to Oregon which operated under the assumption that swampland was a grant in presenti, long outside of federal control, and continued to give swampland claimants, acting as "agents" free rein on both surveyed and unsurveyed lands.

In 1876, the Board of School Land Commissioners, in charge of swamp and other state lands, reported that roughly 324,000 acres of swampland had been selected, but that only 1,336 of these acres had been approved by the General Land Office and none had yet been patented.<sup>53</sup> The state's inability to gain title to these lands caused some who had made down payments to withdraw their money because their "swampland" was being settled by preemptors.<sup>54</sup>

Nevertheless, it appears that the 1876 Oregon legislature found the acceptance of a little over one thousand acres of swampland by the General Land Office quite encouraging, for reckless spending with anticipated swampland funds continued. In one act alone, \$50,000 was appropriated for The Dalles and Sandy Wagon Road payable out of swampland sales and the five percent fund.<sup>55</sup> Along with this appro-

priation was an amendment stating that warrants issued for the wagon road would be accepted by the state "together with any interest accruing thereon, at their face, in payment for any of the swamp . . . lands belonging to the State of Oregon."<sup>56</sup> Such a move was predictable since wagon road appropriations were handily outrunning funds received for swampland. By 1876, the state had accumulated \$109,154 in outstanding wagon road warrants (bearing 10% interest) and only \$326 was credited to the Swamp Land fund.<sup>57</sup>

The 1876 act gave the state a chance to get back some of the funds appropriated in exchange for land, albeit land it did not own unless the General Land Office began cooperating in a more generous manner. But, all things considered, Oregon stood to gain little with this arrangement outside of possibly not going into debt any further. At best, Oregon could get a wagon road out of the arrangement, even though the history of Oregon wagon road dealings made this unlikely.

Wagon road appropriations greatly increased state indebtedness, but the large expenditures did not improve transportation in the state. The settlers around Tillamook, for example, had long been isolated for lack of a road to the Willamette Valley and were forced to pay high ocean-going shipping rates. In the summer of 1872, the Oregonian recommended the state relieve this situation through "a direct appropriation of money for such a road . .

. ."58 This aid came when the 1872 legislature gave \$10,000 to the Trask River Wagon Road Company. But by 1874 the Oregonian was forced to say of the project, "It is fraud from beginning to end." Of the \$10,000 appropriation only \$2,600 went into actual road building. "Some may call it jugglery," the Oregonian remarked, "others will say the money was stolen. Those of Christian charity . . . will readily believe that it requires three-fourths of every appropriation to pay preliminary expenses."59 The "road" as it was built was nearly impossible. As the Oregonian said, \$2,600, even if it were wisely spent, which it wasn't, "won't build much of a road."60

Other wagon road operations weren't any better. On the road to Astoria, the Oregonian remarked, "A wagon might be taken over it, a spoke or an axle at a time, . . . but it is not a road never was and never will be."61 And, finally, the Oregonian said of the road between Portland and The Dalles:

It is strange that with the amount of money which has made given by the state for the purpose, a road has not been made between Portland and the Dalles, . . . a full eighteen miles of the route being yet in a state of nature. . . .

From Rooster Rock to Lower Cascades . . . it is not improved at all. . . . not only exceedingly rough and difficult to get over, but in places is very dangerous by reason of ice covered streams and quicksands which should have been bridged over. 62

Although the state would gain little through the 1876 act, the holders of these warrants had a chance to



profit handsomely. By using these warrants for the twenty percent down payment on swampland, one could gain control of five acres for every dollar held on wagon road warrants. This act made Oregon even more dependent of federal recognition of its swampland claims.

In 1878, the state land board reported that in the previous two years "There has been selected and listed 237,864 acres making in all 562,083.97."<sup>63</sup> At that time, however, the federal government had approved only 4,449 acres.<sup>64</sup> In his message to the 1878 legislature Governor Stephen F. Chadwick stressed that "The state is absolute owner of these swamp and overflowed lands . . ." and "It is to the benefit of the State to sell the lands as soon as possible."<sup>65</sup> He also complained vigorously on the continuing "interference" of the federal government: "In many cases the United States officers have permitted persons to pre-empt lands which were known to be of a swampy character and upon which applicants have already paid their 20 percentum."<sup>66</sup> One example of this was an 1877 General Land Office Decision which had ruled that Oregon's Swamp Land Act was not a grant in presenti and upheld several disputed preemption claims in southern Oregon.<sup>67</sup>

Nevertheless, the state continued its policy of speedy and reckless real estate dealings while the General Land Office plodded along on its own separate, and more sensible path. There was to be no immediate resolution of

this impasse. In fact, problems increased for the state as opposition grew from within.

The two years before the meeting of the 1878 legislature saw an increasing unrest among the people of Oregon. A special tax was levied in 1876 to eliminate a portion of the state's growing indebtedness, and although this special tax had nothing to do with the wagon road appropriations or Oregon's swampland dealings, it brought home the seriousness of this state's unstable finances and poor governmental management. An 1877 letter to the editor of the Oregonian by Timothy W. Davenport<sup>68</sup> echoed the feelings of many citizens:

. . . The people have borne a great deal and will continue to bear all that is necessary to support their government. Their character is good and it is only when they have lost confidence in their officers of the state and in the manner or nominating them, when they have seen, time after time, their high officers, acting under the obligations of an oath, take double or treble the amount of their salaries and in divers ways and numerous instances and by the most contemptible legal trickery to obtain possession of the public funds for the benefit of themselves and their party friends. . . .

Yourself, as well as the people, will recollect that the constitution limits the state indebtedness to \$50,000, and also the other fact notwithstanding such limitations we are in debt over three fourths of a million. Our state debt and taxation have been increasing and we have built no railroad, canal, or engaged in any works of internal improvement.<sup>69</sup>

Amid this general unrest, there were many charges of swampland swindles and corruption by state senators, the governor's administration, and Governors Grover and Chadwick themselves.<sup>70</sup> A letter from Klamath Falls in 1876

described Governor Grover and his cabinet on the land board as the "swamp land Tammany of Oregon."<sup>71</sup> The author then went on to say of the earliest claims in his area:

Most lands filed upon as swamp were done so within twenty-four hours after the passage of the bill. . . . Many of these filings, with accompanying maps and plats, must have been commenced before the bill was first introduced in the legislature, clearly showing that the object of the bill was to enable speculators -- many of whom were members of that legislature -- to secure a hold upon all lands they chose to file upon as swamp and overflowed; and not for the benefit of the people at large, only, as they could pick up the crumbs after the feast was over.<sup>72</sup>

The readers of local newspapers became increasingly aware that many problems existed in Salem and some questions needed to be answered as charges, countercharges, and the refutation of charges circulated widely and frequently in the press well into 1878.

## CHAPTER II

### FOOTNOTES

<sup>1</sup>Jerry A. O'Callaghan, The Disposition of the Public Domain in Oregon, (Washington, D.C.: Government Printing Office, 1960) pp. 49-50.

<sup>2</sup>F. G. Young, "Financial History of the State of Oregon," Oregon Historical Quarterly, X (1909), p. 269.

<sup>3</sup>Ray Allen Billington, Westward Expansion (4th ed.; New York: Macmillan, 1974), pp. 319-322.

<sup>4</sup>Oregonian, October 24, 1870, p. 2.

<sup>5</sup>Oregon, House Journal, 1870, p. 19.

<sup>6</sup>Oregonian, October 3, 1870, p. 3.

<sup>7</sup>Ibid., October 28, 1870, p. 2.

<sup>8</sup>Ibid., October 24, 1870, p. 2.

<sup>9</sup>Ibid., October 29, 1870, p. 2.

<sup>10</sup>O'Callaghan, p. 66.

<sup>11</sup>Oregonian, September 30, 1870, pp. 1-2.

<sup>12</sup>Young, p. 377 and XI, p. 155.

<sup>13</sup>Oregonian, October 26, 1870, p. 2.

<sup>14</sup>Ibid., November 8, 1870, p. 2.

<sup>15</sup>Young, XII, p. 93.

<sup>16</sup>Ibid. pp. 94-102.

<sup>17</sup>H. H. Bancroft, History of Oregon, Vol. 2 (New York: The Bancroft Company, 1886), pp. 656-647. Bancroft elaborated: "It was said that some of the members who took an active part in the passage of the bill had prepared their notices and maps to seize the valuable portions of the swamp-lands before voting on it. Two members made

out their maps covering the same ground, and it depended on precedence in filing notices who should secure it. One of them called on the secretary after nightfall to file his notice and maps, but was told that the governor had not yet signed the bill, on which he retired, satisfied that on the morning he could repeat his application successfully. The bill was signed by the governor that evening, and his rival, who was more persistent, immediately presented his notice and maps, which being filed at once, secured the coveted land to him." Ibid.

<sup>18</sup> Oregon, General Laws, 1870, p. 54.

<sup>19</sup> O'Callaghan, p. 67.

<sup>20</sup> Oregon, General Laws, 1870, pp. 54-55.

<sup>21</sup> Ibid., p. 56.

<sup>22</sup> Bancroft, II, p. 656.

<sup>23</sup> Oregonian, January 9, 1871, p. 2.

<sup>24</sup> Ibid., March 1, 1872, p. 1.

<sup>25</sup> Ibid., November 1, 1871, p. 2.

<sup>26</sup> Ibid., May 17, 1876, p. 1.

<sup>27</sup> Ibid., October 28, 1871, p. 2; ibid., November 1, 1871, p. 2.

<sup>28</sup> Ibid., January 1, 1872, p. 1.

<sup>29</sup> Ibid., March 14, 1873, p. 2.

<sup>30</sup> Ibid., November 11, 1871, p. 1.

<sup>31</sup> Oregon, General Laws, 1874, p. 539.

<sup>32</sup> Ibid., p. 553.

<sup>33</sup> Harold H. Dunham, "Some Crucial Years of the General Land Office, 1875-1890", in The Public Lands, ed. by Vernon Carstensen (Madison, 1963), p. 183.

<sup>34</sup> Young, X, p. 380; Oregonian, February 25, 1886, p. 6.

<sup>35</sup> Oregon, General Laws, 1872, pp. 139, 120-122.

<sup>36</sup> Ibid., p. 139.

- <sup>37</sup>Ibid., p. 220.
- <sup>38</sup>Young, XI, p. 158.
- <sup>39</sup>Oregon, General Laws, 1872, p. 128.
- <sup>40</sup>Ibid., pp. 16-17, 36, 56-57, 62, 81, 86, 122-123.
- <sup>41</sup>Ibid., p. 16.
- <sup>42</sup>Oregonian, January 24, 1874, p. 2.
- <sup>43</sup>Young, X, p. 384.
- <sup>44</sup>Oregonian, January 1, 1872, p. 2.
- <sup>45</sup>Ibid.
- <sup>46</sup>U.S., Department of Interior, General Land Office, Annual Report of the Commissioner of the General Land Office (Washington, D.C.: Government Printing Office, 1872), pp. 226-227.
- <sup>47</sup>Ibid., 1873, p. 225.
- <sup>48</sup>Oregon, Biennial Report of the State Treasurer of Oregon (Salem: State Printing Office, 1874), pp. 5-8, 99, 121-122.
- <sup>49</sup>Ibid., p. 109.
- <sup>50</sup>Oregonian, August 6, 1879, p. 1.
- <sup>51</sup>Ibid.
- <sup>52</sup>Oregon, General Laws, 1874, p. 241.
- <sup>53</sup>Oregon, Biennial Report of the State Land Board (Salem: State Printing Office, 1876), p. 14.
- <sup>54</sup>Young, X, p. 381.
- <sup>55</sup>Oregon, General Laws, 1876, p. 78.
- <sup>56</sup>Ibid.
- <sup>57</sup>Young, X, p. 109; Oregon, General Laws, 1878, p. 223.
- <sup>58</sup>Oregonian, August 27, 1872, p. 2.
- <sup>59</sup>Ibid., January 24, 1874, p. 2.

<sup>60</sup>Ibid.

<sup>61</sup>Ibid., January 23, 1875, p. 2.

<sup>62</sup>Ibid., December 27, 1879, p. 2.

<sup>63</sup>Oregon, Land Board Report, 1878, p. 80.

<sup>64</sup>See Table 5.

<sup>65</sup>Oregonian, September 12, 1878, p. 4.

<sup>66</sup>Ibid.

<sup>67</sup>Ibid., March 7, 1877, p. 1.

<sup>68</sup>Timothy W. Davenport was a farmer and doctor in Marion County who was quite active in local public affairs. He was the Marion County surveyor (1862-68), state representative (1868-72), state senator (1882), and state land agent (1895). When not in public office, Davenport frequently wrote letters to the editors of various newspapers criticizing the state's management of finances, its legislation, and politicians. He was a major opponent to the state's land policies in general and the Swamp Land Act in particular.

<sup>69</sup>Oregonian, December 29, 1877, p. 8.

<sup>70</sup>Ibid., May 17, 1876, p. 1; May 31, 1876, p. 4; July 18, 1876, p. 1; April 3, 1878, p. 2; May 9, 1878, p. 1.

<sup>71</sup>Ibid., May 17, 1876, p. 1.

<sup>72</sup>Ibid.

### CHAPTER III

#### LEGISLATIVE INVESTIGATION AND REFORM, 1878

Governor Chadwick's 1878 message to the legislature echoed that of his predecessor when it came to the Swamp Land Act, maintaining, "It is to the benefit of the State to sell the lands as soon as possible."<sup>1</sup> The governor went on to say:

The modes of reclamation are not definitely stated, but it seems that the law contemplates that the land shall be drained in all cases. It is claimed, however, that the most of this land is of such a character that draining it would destroy its value entirely. . . . if drainage will diminish their values, it ought not to be demanded by the legislature. In either case, whatever is best for the purchaser is best for the state also. . . .

This requirement seems to be based somehow upon the supposition that the grant to the state is made conditional upon the reclamation of the lands. This is, however, wholly erroneous. The state is absolute owner of these swamp and overflowed lands.<sup>2</sup>

This statement should have made anyone in the General Land Office familiar with Louisiana swamps doubt there was much swampland in Oregon, but more significant was the fact Oregon still maintained the act was a grant in presenti. In defense of this view, Chadwick offered the 1874 case of Gaston v. Stott, even though in 1877 the commissioner of the General Land Office had ruled in a southern Oregon case: "The act of March 12, 1860, did not create a grant in



presenti" and that the condition of the original grant had to be met.<sup>3</sup> The state should have been claiming only land so swampy as to be unfit for cultivation, sold only after patent was issued, and the income spent on drains and levees necessary to reclaim the land. Even though Oregon had not attempted to meet these basic requirements, Chadwick lamented that "In many cases the United States officers have permitted persons to pre-empt lands which were known to be of swampy character and upon which applicants have already paid their 20 per centum."<sup>4</sup> Chadwick went on to criticize Washington's refusal to patent Oregon swamplands. Little had changed in eight years.

Meanwhile, the 1878 legislature was faced with some glaring incongruities regarding the financial status and suspicious management of the Swamp Land Act that had developed over the years. The treasurer's report gave \$14,230.80 as the amount received for swamplands during the 1876-1878 biennium. Of this amount, \$12,815.20 in disbursements were paid to three wagon road companies and \$656.05 was transferred to the school fund, leaving a balance of \$1,085.73.<sup>5</sup> Furthermore, the state was liable for \$138,600 in wagon road warrants (bearing ten percent interest) payable out of the swamp fund and other land funds.<sup>6</sup> The revenue from swampland sales was simply not keeping pace with the growing state indebtedness despite the fact that hundreds of thousands of acres were being claimed as swamp.

Even more curious was the report of the Swamp Land Board. Rather than being a biennial report, the 1878 report combined all swampland transactions since September 9, 1871, omitting the first year of operation. The report stated that of the \$42,989.34 received, \$20,736.35 had been paid to the treasury and \$22,252.99 paid out "for expenses of selecting swamp lands and amounts returned to purchasers. . . ." <sup>7</sup> The board went on to report that 562,083.97 acres had been selected and listed and "There are on file in the office at the present time applications for a large lot of lands that have not been listed or selected; also, there are applications on file for about one million acres that are yet unsurveyed." <sup>8</sup> At the time, the General Land Office had patented only 4,449 acres to the state and refused to approve any more. <sup>9</sup>

In summary, the state had received only about \$43,000 for over one-half million acres selected, perhaps more, and all but \$1,085 of this had been given to wagon road schemes and "expenses" of the land board. This financial fiasco, combined with protests around the state, growing state indebtedness, and the refusal of the General Land Office to issue any more patents, led to the formation of a joint legislative investigating committee to look into the matter of the swamplands.

The 1878 Special Committee of Investigation submitted its preliminary report after interviewing Thomas H. Cann,

clerk of the land board. During this brief investigation, they learned that very little money was ever passed on to the treasury by the land board. In fact, Cann testified, "There was at no time from September 1, 1874 to September 1876 money paid into the state board, but it was paid out to parties in the field." These "state agents" then submitted bills to the state in lieu of paying the twenty percent downpayment on swamplands they claimed. This was done without certificates or vouchers.<sup>10</sup> The large sums of money held in the land board was treated casually and doled out quite liberally. Two men received over \$17,000 "with no apparent services performed" and \$6,000 paid another for work "It would take any competent man less than a month to do. . . ." When asked if he had given a \$30,000 receipt to R. M. Walker without receiving any money, Cann replied: "I did so at the solicitation of Gov. Chadwick, and have been sorry for it ever since. . . ."<sup>11</sup>

The findings of this brief interview were enough for the committee to ask the legislature for authority to investigate the conduct of the land board retroactive to the passage of the 1870 Swamp Land Act. Such a resolution was immediately passed by the House, the Senate concurring.<sup>12</sup> The investigative committee then went through the books of the land board and found so many examples of neglect and chicanery another "thorough and complete investigation" was asked for. Again, the authority was granted.<sup>13</sup>

It is important to remember that the land board consisted of the Governor, the Secretary of State, and the Treasurer of Oregon, the highest elected officials of the state. The administrations of the 1860's were extraordinarily corrupt, but despite the ultimate exposure of these frauds, the committee stated: "The wasteful and dishonest practices of the Woods-May administration . . . appear to have served as a precedent and an example from which have grown still greater abuses under their immediate successors."<sup>14</sup> The Woods-May administration was Republican, that of Grover and Chadwick Democratic. Despite the varying accusations made in Oregon's highly partisan press, nothing crossed party lines so easily as incompetency and corruption.

From the beginning, the committee was under the handicap of having to rely on voluntary witnesses, there being no law against evading questions or refusing to testify altogether. Further hindering the investigation was the condition of the records of the land board:

The confusion and omissions in the records of this department can only be understood by actual examination. If the purpose had been to conceal, under the pretense of exhibiting the real transactions of the land department, they could not have succeeded better. From September, 1870, to September, 1872, no record can be found of sales of lands, receipts of disbursements, by the board of their clerk. . . . Since September, 1874, no record of the proceedings of the board has been kept. A mass of detached papers, containing letters, certificates and what purports to be memoranda of the proceedings of the board, sometimes in pencil, and in many instances partially obliterated, fastened

together in bunches of a half a dozen sheets or more, and the whole in one confused pile, encircled by a rubber band, constitute the only means of determining the action of the board from September, 1874, to September, 1878. These memoranda are not authenticated by the signatures of any members of the board of other person.<sup>15</sup>

In commenting on this situation, the Oregonian quoted from Hamlet: "For how his audit stands who knows save heaven?"<sup>16</sup>

The most obvious examples of mismanagement were the extravagant salaries of the clerks of the land office. From 1874 to 1878, J. H. Hackleman was paid \$5,583 for recording about 1,100 deeds. For this service "\$300 would have been a liberal compensation."<sup>17</sup> He was also drawing full wages as an employee of the treasury department. David Fleischman, H. H. Gilfry, and T. H. Cann were paid \$3,650 each from 1872 to 1874 as clerks in the land board. During this same period, Fleischman "performed . . . duties (for the) State Treasurer, and Gilfry, those of private secretary to the Governor" with corresponding salaries.<sup>18</sup> Gilfry also drew a great deal of additional expense money, such as drawing \$350 for recording 351 deeds. The committee commented that even "at double the rates allowed county clerks (it) would have amounted to a sum not greater than \$52.65."<sup>19</sup> Judging from the shoddy, incomplete condition of the records in the land office it did not appear the clerks did enough work for the board to justify their extravagant wages. The committee believed "one competent man" could have replaced Cann, Gilfry, and Fleischman "at an expense

of one-third the amounts paid them."<sup>20</sup> This self-help being done without appropriation from the legislature and without warrants drawn upon the treasurer, the committee concluded:

Liberality -- under some circumstances a virtue -- is of a doubtful character when indulged in with other people's money under any circumstances; but when it takes the form of a lavish waste of public funds upon favorites or otherwise by those whose sworn duty it is to guard the State from imposition and injustice, it becomes an absolute crime.<sup>21</sup>

The negligence of the board affected all land funds, but the swamp land fund was the most abused. From 1870 to 1878, the legislature could not have had any idea of the status of this fund, as 1874 was the only year a report was given to the legislature by the board. All those years, the committee discovered, "The board seems to have treated this as private fund. . . ." Acting as though not responsible to the state legislature or the people of the state, the board did not report money received and paid fees without appropriation or warrants, "in some instances for purposes not authorized by law."<sup>22</sup>

Two striking examples of this fund's abuse were the \$1,604 fee paid Joseph Gaston for defending his swampland claim (the land itself was worth only \$200) and \$1,997 paid for attorney's fees and selection services to Quincy A. Brooks for preventing homestead and preemption settlers from taking "swamplands"; the board "invariably decided in Brooks' favor" in these contests.<sup>23</sup> But the

committee believed "the most culpable and reprehensible of all these allowances are those to Secretary Chadwick for attorney's fees . . . for services relative to swamp land matters." These allowances were signed by Governor Grover.<sup>24</sup>

Also of dubious merit were the fees paid for selecting swampland. J. N. Barker, Chadwick's brother-in-law, received \$5,640 (\$1,148 for expenses even though most of his work was done in a local land office) for selecting as swampland thousands of acres occupied by homestead and preemption claimants.<sup>25</sup> This, too, was authorized by Grover. One J. N. T. Miller was paid \$7,671 for similar services plus \$854 for his surveyor.<sup>26</sup> Though these fees for worthless selections were an absolute loss to the state, what the committee found especially disturbing about all the transactions was that "Mr. Cann, who received and disbursed such large sums, had no lawful authority to receive or retain the custody of public funds, much less to act as a disbursing officer. His position was that of a clerk; . . . his relation to the state was in nowise different from that of the janitor or other employe."<sup>27</sup> While swampland claimants Brooks, Barker, and Miller were on very good terms with the land board and had drawn a great deal of money out of the state land and other funds for questionable services, the same was true for a score of other men close to the board. The committee reported

to the legislature: "In truth, the entire board seem to have been much more intent on rewarding their friends than in protecting the State treasury from the rapacity of greedy claimants."<sup>28</sup>

At best, the investigation showed the land board to be incompetent, but the fact that all of this was hidden from the legislature and the public indicated a "conscious culpability on the part of the board, and is as much a crime as though they had appropriated the money to their own uses."<sup>29</sup> While the entire board was suspect, it was Chadwick as Secretary of State who was the most consistently involved in all areas of fiscal abuse. His actions indicated either "a childish credulity" totally inconsistent with "the shrewdness he has exhibited in other matters" or "a conspiracy in which Mr. Chadwick consented to use his official position for fraudulent and mercenary purposes."<sup>30</sup> Referring to the 1870 investigating committee's report on the crimes committed by ex-Secretary of State S. E. May, the committee commented:

Instead of this report acting as a check on the official conduct of his successor (Chadwick), it appears to have excited his admiration and envy, and stimulated him to commit others of still greater magnitude.<sup>31</sup>

Governor Grover resigned his state office February 1, 1877 upon his election as U. S. Senator from Oregon, but that did not make him immune to criticism. Because of his poor management of state finances, the common belief that



he set the swamp "ring" up in business, and the discovery that he had "swindled the land fund out of \$10,000 to pay a personal debt," many persons, including the editors of two California newspapers, believed he should "resign his seat in the Senate."<sup>32</sup> Grover did not surrender his Senate seat, but he only served one term. Even though he had recently said in the Senate that the school funds in Oregon had been excellently managed during his administration, the committee lamented, "That this magnificent educational fund has been depleted by about one-half by criminal carelessness and willful neglect of duty within the past eight years, is beyond question."<sup>33</sup>

Most Democratic newspapers in the state decried the investigation as a witch hunt attempting to besmirch the good name of the party that had been in power from 1870 to 1878, calling it the "most unfair, partial and one sided document that ever emanated from a committee of . . . a legislative body."<sup>34</sup> However, this was a Democratic committee appointed by a Democratic legislature, and only one of the five committee members was Republican."<sup>35</sup> Hard line Democrats as well as Republicans often supported the investigation. A letter by veteran Democrat Joseph Lane to committee member William Galloway typified the attitude of many:

As an honest and life long democrat I thank you for the good sense and energy manifested in the investigation your committee are making into frauds perpetuated by officials placed in power by

democratic votes, push the investigation, let it be thorough and complete, let every guilty man be punished, shield no one. With you there will be no white washing. Every one guilty of wrong doing will be exposed, and I hope severely punished. Nothing but a complete expose of the whole affair will save us in 80, or even give us a reasonable hope of success. Democrats must be honest and if not honest, they must be disgraced and punished.<sup>36</sup>

The officials of the Grover administration were censured by the committee, but none were prosecuted for lack of solid evidence that there was an attempt to defraud the state. It is possible the Democrats in Salem were hesitant to press charges even if evidence were available, believing the destruction of several political careers was sufficient. Prosecution would only further diminish the party's credibility in Oregon.

Financially, as well as politically, the swamp land fund was shown to be one of the most questionable operations of state government. It was frequently stated that Oregon could realize large profits and the state indebtedness eliminated through the sale of swampland, but the way this fund was managed made this an impossibility. The 1878 land board report gave \$42,989 as the amount received for swampland sales from 1871 to 1878. However, clerk Cann's cash book showed \$48,588 as the amount received during that period, with over half of the difference "unaccounted for in any way."<sup>37</sup> The Oregonian fairly judged that even the shoddy records of the land board indicated the actual expenses of the board amounted to over \$29,000

and that each of the 4,449 acres patented to the state had cost Oregon \$6.56. This was for land which was to be sold at no more than one dollar an acre.<sup>38</sup> An argument could be made that the warrants and monies given wagon road companies for their casual projects should be added, making the total cost of swampland between thirty and forty dollars an acre.

Amid the revelations of the investigation, the legislature passed an act to clean up the mismanagement and abuse of the sale of state lands by the land board. While this act covered most state lands, the salient features regarding swamplands were: a person could purchase no more than 320 acres at one dollar per acre, the price paid in full, and for land actually used by the applicant rather than for the purpose of speculation.<sup>39</sup> It was further enacted that applications for swampland not made in compliance with the 1870 law, including the twenty percent payment, were declared void. However, it was also ruled that applicants who had acted legally under the 1870 law, including the twenty percentum, could buy more than 320 acres if they paid \$2.50 an acre, payment paid in full. Those not willing to pay the full price for all land claimed would be allowed to purchase no more than 320 acres at one dollar an acre. Applicants had until January 1, 1880 to make their payment.<sup>40</sup>

It was generally believed this law would put the "swamp ring" out of business, reform the land board, and

put money into the treasury. The Oregonian editorialized:

Under the former act the swamp lands were "gobbled" in large quantities, and the state was swindled, mainly because the officials did not honestly do their duty. Under the present act the sales will be extremely slow and the proceeds trifling. But perhaps it is just as well that the lands should be as they are for some years to come. The "gobbling" will be stopped, and that is worth a great deal.<sup>41</sup>

This belief toward the effectiveness of the act was, however, dependent on how rigidly the land board applied the law. The land board, as it turned out, proved to be quite flexible in its interpretation of the measure.

## CHAPTER III

### FOOTNOTES

- <sup>1</sup>Oregonian, September 12, 1878, p. 4.
- <sup>2</sup>Ibid.
- <sup>3</sup>Ibid., March 7, 1877, p. 1.
- <sup>4</sup>Ibid., September 12, 1878, p. 4.
156. <sup>5</sup>Oregon, State Treasurer's Report, 1878, pp. 6-8,
- <sup>6</sup>Oregon, General Laws, 1878, p. 228.
- <sup>7</sup>Oregon, Land Board Report, 1878, p. 80.
- <sup>8</sup>Ibid.
- <sup>9</sup>See Table 5.
- <sup>10</sup>Oregonian, October 5, 1878, p. 1.
- <sup>11</sup>Ibid.
- <sup>12</sup>Ibid.
- <sup>13</sup>Oregon, Journal of the House, 1878, p. 679.
- <sup>14</sup>Oregon, Legislative Assembly, Report of the Joint Committee of Investigation . . . at the Tenth Regular Session (Salem: E.M. Waite, 1879), p. 4.
- <sup>15</sup>Ibid., p. 6.
- <sup>16</sup>Oregonian, October 10, 1878, p. 4.
- <sup>17</sup>Oregon, Report of the Committee, pp. 6-7.
- <sup>18</sup>Ibid., pp. 7-8.
- <sup>19</sup>Ibid.
- <sup>20</sup>Ibid.

<sup>21</sup>Ibid., pp. 8-9.

<sup>22</sup>Ibid., pp. 12-13.

<sup>23</sup>Ibid., pp. 13-15.

<sup>24</sup>Oregon, Journal of the House, 1878, p. 677.

<sup>25</sup>Joseph Lane wrote to committee member William Galloway: ". . . The fact is Barker is a poor wretch, without money or ability a thing of Chadwick, appointed by his influence on purpose to place money in his hands at the expense of the State. It was part of a plan to grab, swindle and take money from the State, to make hay while they could, while they held the purse strings (Robbers all). . . . Oh Shame, and all this by a Democratic Administration. . . ." Letter, Joseph Lane to William Galloway, December 23, 1878, Oregon Historical Society, Manuscript Collection, MSS 730.

<sup>26</sup>Oregon, Report of the Committee, pp. 13-14.

<sup>27</sup>Ibid., p. 15. Interestingly enough, it was found that the janitor also had received extravagant and unwarranted payments.

<sup>28</sup>Ibid., p. 212.

<sup>29</sup>Ibid., p. 15.

<sup>30</sup>Ibid., p. 18.

<sup>31</sup>Ibid., p. 163.

<sup>32</sup>Oregonian, December 31, 1878, p. 4; January 7, 1879, p. 2.

<sup>33</sup>Ibid., February 25, 1879, p. 2.

<sup>34</sup>Ibid., January 4, 1879, p. 2.

<sup>35</sup>Ibid., January 6, 1879, p. 2.

<sup>36</sup>Letter, Joseph Lane to William Galloway, October 9, 1878, Oregon Historical Society, Manuscript Collection, MSS 370.

<sup>37</sup>Oregon, Report of the Committee, p. 12.

<sup>38</sup>Oregonian, February 13, 1879, p. 2.

<sup>39</sup>Oregon, General Laws, 1878, pp. 42-43.

<sup>40</sup>Ibid., p. 46.

<sup>41</sup>Oregonian, October 22, 1878, p. 2.

## CHAPTER IV

### HENRY OWEN AND THE FAILURE OF REFORM, 1878-1887

Before discussing the events after 1878, it seems proper to present a biographical sketch of Henry C. Owen, an average Oregon pioneer who became the most active swampland claimant in the state.<sup>1</sup> Born in Lexington, Missouri in 1822, Owen crossed the plains to Oregon in 1844, arriving at The Dalles in September.<sup>2</sup> With this party was George Washington Bush, a mulatto who became interested in settling north of the Columbia River after learning of the prejudice toward blacks prevalent in the Willamette Valley. Others in the party included James Marshall, John Minto, Michael T. Simmons, and Cornelius Gilliam. Owen, with his brothers John and James, went with Bush and Simmons to Washougal and from that point traveled sixteen miles up the Cowlitz River. They had wanted to take a look at the Puget Sound area, but poor weather, difficult terrain, and dwindling provisions made this impossible.<sup>3</sup> In 1845, the Owen brothers and James Marshall went to California with the McMahon-Clyman party for cattle to graze in the Willamette Valley. Arriving at Sutter's Fort in July, Marshall, a carpenter by trade, took employment at the fort, and later became the discoverer of



gold in California. Owen returned to Oregon in 1846, surviving a "lively encounter" with the Rogue River Indians en route.<sup>4</sup>

Owen must certainly have heard of his companion's gold discovery, but, unlike many Oregonians, he chose to stay behind, working as a trader. One may speculate that either he was not interested in hard labor or that the Indians of southern Oregon had convinced him he had done quite enough travelling. In 1849, Owen joined with James W. Newmirth, just returned from the California gold fields, to purchase a flour mill on Rickreal Creek two miles west of Dallas. They enjoyed a brisk business, especially in selling flour to the men heading for California. Owen and Nesmith operated this mill together until 1854. Owen then engaged in the lumber business on the Columbia River.<sup>5</sup>

In 1850, Owen took a Donation Land claim a few miles west of Eugene which became his residence when he wasn't away on one of his business ventures. Apparently his first involvement in land speculation came in 1863 when he was one of the incorporators of the McKenzie Wagon Road Company. Although a short lived project, his experience with the wagon road, learning the intricacies of these schemes, provided a valuable education. In addition, two years later Owen contracted with the military escort of the Oregon Central Military Wagon Road, hiring out fifty pack animals at \$2.50 per day.<sup>6</sup> This exposure to wagon

road operations no doubt proved beneficial in 1870 when Owen became active in Salem during the legislative session which was marked by a small army of lobbyists who were urging legislative appropriations for various wagon road projects. The passage of the Swamp Land Act had reportedly calmed the wagon road people somewhat, and, as the Oregonian remarked, "It was largely due to his (Owen's) efforts that the enactment of the law was due."

While Owen's lobbying methods are unclear, it has been reported:

(Hen Owen) deposited his slender form in an old arm chair in the Secretary of State's office at Salem when the bill relative to swamp lands was pending. . . . There was a system of grapevine telegraph in vogue among the conspirators, and the moment the executive signature was affixed this vine was set in motion, and less than two seconds had not intervened before Hen Owen was shoving his document into the (Secretary of State's) hand demanding that it be put on file.<sup>8</sup>

One writer's belief that Owen's "shotgun" filings was a "modest claim for all of Eastern and Southern Oregon that was not proved to be high and dry land" is wrong on two counts -- his claim was not quite that large and he had no aversion to claiming dry land as swamp. Owen's filings, kept in sealed envelopes at Salem, have been estimated to contain from four million to thirteen million acres.<sup>9</sup> The smaller figure of four million acres is itself mind boggling, but quite possible. In one filing alone Owen had taken up 1,336,000 acres in a wide swath of land which ran southeasterly from Lebanon to Oregon's

eastern border. In 1887, a legislative committee of investigation reported that by 1879 Owen had filed on 918,216 acres plus "all the swamp land contained in 172 townships, . . . containing 3,862,880 acres."<sup>10</sup> By the end of 1881 Owen had acquired certificates of sale from the state for over 480,000 acres of swampland from his vague filings.<sup>11</sup>

In an 1884 editorial on H. C. Owen, the Oregonian wondered, "What potent influence has he brought to bear upon our state officials?"<sup>12</sup> As later events will show, Owen did seem to wield a disproportionate amount of power for a small businessman. But how? It seems likely that his business partnership with James Nesmith provided Owen with an excellent means to establish connections in Salem. After their partnership dissolved, Nesmith became a member of that staunch group of influential democrats known as the "Salem Clique." Other members of the clique included Lafayette Grover and Benjamin F. Harding, both of whom subsequently aided Owen's enterprise.

Governor Grover was a backer of the 1870 swampland bill, urging its passage in the legislature, and supervised its shoddy administration for seven years, much to Owen's benefit. In 1879, Owen lost a district court case which ruled he could not make a twenty percent payment on swampland with wagon road warrants, but a short time later, the Supreme Court of Oregon reversed this decision.

Defending Owen in this case was clique member Benjamin Harding and James K. Kelley.<sup>13</sup> Though not part of the Salem Clique, Kelley was powerful in state politics, knew how to extract land funds via his Oregon City Canal and Locks project, had pushed for Oregon's right to swampland while in the U. S. Senate, and, last but certainly not least, was Chief Justice of the Supreme Court of Oregon when this decision was made. Meanwhile, Nesmith, who became U. S. Representative from Oregon in 1873, took the huge filings of Owen quite lightly, going so far as to whimsically file a claim which described the state boundaries and claimed all the swampland within. While this does not necessarily indicate there was a grand conspiracy afoot, it is suggestive and shows Owen was quite able to gather strong men in his corner. It should also be remembered that it was not uncommon for special favors to be given the friends of those in power, as the investigation of 1878 discovered.

The 1878 investigation of the land board administration did not affect private citizen Owen, nor did it dampen his high spirits. One particularly blustery October morning, while the investigation was in progress, Owen told an Oregonian correspondent he promised "to file on the whole Willamette valley as swampland if the wind doesn't change and the rains cease within a reasonable time."<sup>14</sup> The 1878 investigation uncovered a significant

source of Owen's influence. While questioning T. H. Cann, clerk of the land board, the committee, after much badgering, discovered Owen had paid the clerk \$250. Although Cann maintained Owen had never "paid" him anything, he admitted Owen "might have made me a present." Cann refused to say any more because "it was a private affair" and "I am in Hen Owens' employ now." The committee reminded him that when the "present" was made he was employed by the state, not Owen.<sup>15</sup> Cann, of course, was also a swamp-land claimant.

The revelations and accusations made in government publications and the press did nothing toward eroding Owen's influence in Salem. Late in 1878, Owen was still considered respectable enough to be loaned \$2,000 from the Agricultural College fund.<sup>16</sup> One can only guess how he used this money, but the loan was taken about one month before he offered a twenty percent payment on swamp-land in wagon road warrants; warrants which had devalued to less than fifty cents on the dollar but were accepted at face value by the state.<sup>17</sup> Owen's activities in the 1870's are impressive, but his schemes reached fruition in the next decade. One court case of the 1880's best illustrates how this was done. The case was H. C. Owens vs H. C. Perkins, Owen charging Perkins of not repaying a loan. Perkins, a swampland agent appointed by Governor Thayer, declared under oath, "the money was due him for

services rendered Owens in reporting to him the listings or survey of swamp land made for the state." Owen soon withdrew the suit, saying "he could not go on without 'peaching' his friends the state officers."<sup>18</sup>

When William W. Thayer was elected governor in 1878, his inaugural address emphasized the need to revise the operation of state government. Thayer believed ending extravagant state spending and eliminating state indebtedness were essential, and warned against the past policy of making wagon road appropriations on the anticipated sale of swampland. Thayer also regretted that much of Oregon's swampland had gone to non-resident speculators. He went on to emphasize, "The swamp lands were granted to enable the state to reclaim them (and this) should be faithfully performed."<sup>19</sup> The state, he believed, should also be cautious in its selections:

Lands of a swampy character, or which are occasionally overflowed, are not necessarily "swamp and overflowed lands," within the intent and meaning of the law; it is only those that are thereby rendered unfit for cultivation, and which require the construction of levees or drains to reclaim them. A different policy will unavoidably lead to embarrassing conflicts detrimental to the most important interests of the state.<sup>20</sup>

It appeared that the sound ideas of Thayer, followed by the 1878 investigation and the enactment of the 1878 Swamp Land Act, would result in a more responsible administration of these lands. There were, in fact, notable improvements in the years following 1878. The land board

began keeping accurate books and all money received from swampland sales was duly reported and immediately transferred to the treasury. Outstanding wagon road warrants were paid off, and that aspect of state indebtedness was, for the first time, gradually reduced.

Unfortunately, the promising Thayer administration had a serious flaw. The land board's report of 1880 stated:

No sales of swamp lands have been made under the provisions of the Act of the Legislative Assembly approved October 18, 1878, nor have any applications to purchase under the provisions of this Act been received.<sup>21</sup>

The board believed "Some legislation is needed to facilitate the sale of those lands as it is feared that under the present law few purchasers will be found."<sup>22</sup> Without any swampland sales it would, of course, be difficult to reduce the state indebtedness payable out of that fund, and this was one of Thayer's primary goals. While no sales had been made under the provisions of the 1878 law, the board reported that over \$19,000 had been received as the twenty percent payment on swamplands as provided in the 1870 law. Among the purchasers was W. B. Todhunter, an eastern Oregon cattleman, who had paid in over \$5,000 and H.C. Owen, who had paid more than \$11,000.<sup>23</sup> Owen's payment was made in the form of several Dalles and Sandy Wagon Road warrants and their interest. The sale to Owen was done with complete disregard of the act of 1878 which limited

the number of acres claimed to 320 and demanded the purchase price be paid in full (at \$2.50 per acre) by applicants acting under the 1870 law after the 1878 law took effect on January 17, 1879 and before January 1, 1880.<sup>24</sup> Todhunter's payments were made before the deadline, but he bought more after this date.

Thayer's justification was that the requirements of the 1878 law discouraged purchasers, which in turn would make it impossible to liquidate the outstanding wagon road warrants. He urged the legislature to modify the 1878 act, maintaining, "I am confident that it would be much better for the State . . . to dispose of its interest in (swampland) to any person who is willing to buy it, and in quantities to suit the purchaser."<sup>25</sup> In the meantime, he believed the land board "should be vested with discretionary power" as to the various qualifications and amount of lands sold to an individual.<sup>26</sup>

None of Thayer's proposed amendments were acted upon by the 1880 legislature, but the land board did exercise "discretionary power" in 1881 and 1882. During this biennium, the twenty percent payment was accepted on 109,415 acres. Of this amount, Todhunter acquired almost 35,000 acres and Owen received certificates of sale for over 67,000 acres of unsurveyed land merely on the strength of his "shotgun" filings made in the 1870's.<sup>27</sup> About 40,000 acres of Owen's lands were contested before



the land board in 1882 by the heirs of Jake Ish as being illegal under the 1878 law. Owen had filed on this land in his usual irregular manner, claiming all swampland "between a hill or mountain known as Beaty's butte and Stein mountain."<sup>28</sup> The twenty percent had not been paid on this vaguely described tract in the 1870's, but the land board ruled in favor of Owen. Governor Thayer, speaking for the board, justified this decision by declaring:

. . . a strict construction of the 1878 law might have the effect to forfeit all applications where the 20 per cent had not been paid, although the applicant had fully complied with the law as far as circumstances would admit of a compliance.<sup>29</sup>

Timothy Davenport lamented, "The governor's construction . . . makes the act of 1878 a practical nullity in all important particulars. . . ."<sup>30</sup> The 1878 law was designed to sell small parcels of land to actual settlers upon the full payment of two dollars and fifty cents an acre, but the interpretation of Governor Thayer allowed speculators and land monopolists to acquire vast tracts for twenty cents an acre. It is interesting to note the land board, so flexible in regard to Owen's claims, consisted of three swampland claimants: Governor Thayer had filed on 100,000 acres, Treasurer Edward Hirsch on 100,000 acres, and Secretary of State R. P. Earhart on 20,000 acres.<sup>31</sup>

Governor Thayer considered it very important to settle the muddle of the swamplands for two reasons:

First, in order that the State could liquidate the Road Warrants . . . , which were made payable out of the swamp land fund; second that the confusion occasioned by the grant might be removed.<sup>32</sup>

As regards the first point, Thayer had succeeded in reducing the amount of outstanding warrants by almost 22,000 dollars during his term. However, this was made possible only by accepting the extralegal claims of men such as Owen and Todhunter and selling lands which still belonged to the federal government. This, of course, did nothing to remedy the confusion mentioned in his second point. In fact, Thayer added to the confusion. In 1881, the governor sent agents onto the Klamath Indian Reservation to examine lands which might belong to the state as swamp. Even though the reservation had been established in 1864, Thayer resorted to the defunct grant in presenti argument, and believed the state was entitled to these lands or lands in lieu of these.<sup>33</sup> This matter dragged on until 1904 when the Secretary of the Interior ruled against Oregon's 92,000 acre swampland claim on the reservation.<sup>34</sup>

Zenas F. Moody continued the policies of Thayer as governor from 1882 to 1887. The chief concern remained paying off the wagon road warrants, and Governor Moody proudly pointed out that between 1878 and 1887 the board had received almost \$190,000 from swampland sales and the outstanding wagon road warrant debt had been nearly extinguished. But Moody had also ignored the 1878 law, admitting, "This sum has been received, mainly, from first payments

on these lands, and there still remains due . . . from \$800,000 to \$1,000,000."<sup>35</sup> Hen Owen was, of course, one of the larger purchasers, making several payments on about 230,000 acres in the 1882-1885 biennium.<sup>36</sup>

Typical of Oregon's governors, Moody rigidly upheld the state's right to swampland, but during the course of his term the governor exhibited an interesting change of attitude. In his 1885 message to the legislature Moody spoke of Washington's reluctance to patent swampland as "a constant source of vexation in the past," complained about the tedious delays to which the state had been subjected, and protested the filings of preemptors and homesteaders on state swampland.<sup>37</sup> But by 1887, Moody sounded more like a man hedging his bets. In that year's land board report, Moody maintained the state had been very careful in not accepting payments on swampland until proper evidence had been furnished, and in all cases where these lands had not yet been approved by the Interior Department it was plainly understood by the purchasers, as expressed in the certificates of sale, that the agreement was conditional and depended on the federal government approving these lands to the state. Although Moody believed not all of the lands claimed as swamp would pass to the state, he felt "this will work no hardship on anyone except the swamp land claimant, and not on him, because he proceeded with full knowledge of the transaction."<sup>38</sup>

Moody went on to recognize that the state's acceptance of twenty percent of the purchase price did not prevent these lands from being taken as preemption or homestead claims. However, he pointed out that swamp-lands were withdrawn from settlement "by virtue of the grant from the United States. . . ." <sup>39</sup> While seemingly more cautious than his predecessors, Moody nevertheless remained a strong supporter of Oregon's right to swamp-lands:

Swamp lands in their unreclaimed state are not suitable for agricultural purposes, and will not be settled upon by any person proceeding in good faith in search of agricultural lands. These lands belong to the State, and should be sold by the State . . . and, if it can be prevented, the United States should not be permitted to sell these lands under the pre-emption or other laws and appropriate the proceeds to its own use. <sup>40</sup>

The wavering position of Moody did little toward easing the problem of conflicting claims on Oregon's quasi-swampland. The preemption settler was still not certain where he stood legally if his tract of land had also been filed upon as swamp by another. This is not surprising because Moody believed the grant was too valuable "to be treated lightly or handled carelessly" and saw no reason why the state should not realize at least another million and a half dollars in addition to the money already received. The governor's stand vacillated because some revelations in Washington during the 1880's had made most the state's swampland selections untenable. These discoveries were in

regard to events which had occurred during the administration of Governor Thayer.

Even though Thayer had accomplished little toward remedying the confusion of the swamplands during his term, some positive steps were initiated. Irritated over Washington's reluctance to approve or act in any way on Oregon's claims, Thayer requested the Department of the Interior to send an agent to Oregon to make a personal examination of the lands in question.<sup>41</sup> On June 30, 1880, the commissioner of the General Land Office cooperated by sending Rollin V. Ankeny to the state to work with an agent appointed by the governor, examine the lands claimed, and take testimony as to the character of these lands. Thereupon, Governor Thayer appointed J. C. Whiteaker state agent to work with Ankeny and send Captain John Mullan to Washington as an intermediary to "urge speedy action."<sup>42</sup> Upon his arrival in Oregon, Ankeny received word from Washington that his original instructions had been changed. Rather than taking testimony, which was believed to be too expensive and time consuming, the two agents were only to examine the lands, make out lists of the swampland, and attach affidavits. This was agreeable to all concerned, Thayer believing this investigation would be "highly successful" and "highly satisfactory to the parties concerned."<sup>43</sup>

At the completion of their investigation, agents Ankeny and Whiteaker reported their findings on "list

number five" (apparently, this would mean the fifth list of swampland selections forwarded to the General Land Office by the Surveyor General of Oregon) to Washington for approval. Of the area claimed as swampland, most of it in southern and southeastern Oregon, the agents found 97,641 acres of swampland and about 48,000 acres of dry land. The state seemed content with the swamp areas reported, but complained vigorously and repeatedly to the Department of Interior on the 48,000 acres reported as dry, claiming a mistake had been made and that these were actually swamplands. The state based its protest on the fact that Ankeny's instructions had been changed and no testimony was taken, even though Thayer had heartily approved of the modified instructions.<sup>44</sup> However, Secretary of Interior L. Q. C. Lamar ruled:

As to the lands reported as not swamp and overflowed, it has been decided by the Department that the State is estopped from further examination of said lands and can not now be heard to show that such lands are swamp and overflowed; and that the government and all other parties are equally estopped from investigation of the character of the lands reported by said commission as swamp and overflowed, and which have been approved and certified as lands inuring to the State under the swamp land grant, unless fraud or mistake be shown.<sup>45</sup>

This ruling changed the situation dramatically. It not only put an end to the protest over lands reported as dry, it also put Oregon on the defensive. The mention of "fraud or mistake" must have been especially alarming.

On October 10, 1885, Governor Moody asked the Department of the Interior to discontinue all hearings and investi-

gations relating to swamplands selected by the state -- a curious aboutface for a state which had pleaded with the federal government to take action for over fifteen years.<sup>46</sup> The position of the state had shifted because many contests had been filed by settlers in southeastern Oregon which denied that "the lands so reported are . . . swamp lands, and asserting that they are public lands of the United States, which its citizens have a right to enter."<sup>47</sup> The Secretary of the Interior had also become suspicious when it was found that there were many cases of swampland claims and desert land entries side by side in Oregon. The secretary wondered which, if either, were legitimate.<sup>48</sup> Secretary Lamar had suddenly become quite interested in Oregon's swamplands:

. . . I can not pass by with indifference the charges openly made that a large amount of lands claimed as swamp in this State have been procured by affidavits of irresponsible persons, and that much of it is more of the character of desert than swamp, and that bona fide settlers have been thereby prevented from obtaining legal subdivisions of lands, the greater part of which is fit for cultivation without artificial drainage.

I do not know whether these charges are true or false, but being brought to my attention, a judicious administration of this subject would require that every means should be adopted whereby the truth may be obtained and the true character of these lands determined.<sup>49</sup>

It was with this in mind that the federal government sent special agent Charles Shackelford to Oregon in 1886.

Governor Moody was under the impression that Shackelford's mission was to examine lands that had not yet been

acted upon by the Interior Department. When Moody discovered Shackleford was reexamining the swamplands in list number five he sent an angry letter to the Interior Department complaining that the special agent was "dealing with matters entirely foreign to his instructions. . . ." <sup>50</sup>

The secretary replied that Shackleford had been authorized by his office to examine the lands in list number five and investigate the conduct of agent Ankeny while in the state. The secretary agreed the federal government was "estopped from investigation of the character of the lands . . . approved and certified as inuring to the State under the swamp land grant, unless fraud or mistake be shown." <sup>51</sup> The italics were ominous. The secretary had received many allegations of fraudulent conduct by special agent Ankeny, and if this proved to be true he saw no reason why the lands in list number five should not be "revoked and cancelled." <sup>52</sup> No response was made by Moody as his term as governor expired a few days after the above letter was written.

The extent of fraudulent activity was disclosed early in 1887 by Shackleford. It was found that Ankeny had never examined the lands in question, as he was confined to bed with a broken leg at the time he claimed to have been viewing the land. <sup>53</sup> To make matters worse, prior to submitting his report to the Department of the Interior, Ankeny had made a contract, in writing, with Henry Owen.



This agreement, made with Ankeny and James H. Fisk, involved 115,000 acres on which Owen held certificates of sale from the state, though not patented by the federal government, and about 1,400,000 acres which Owen held no certificates but only some filings in Salem. The 115,000 acres were to be sold by Fisk and Ankeny for \$140,000, of which they were to receive \$42,000. They were also to receive fifty-five percent of the proceeds gained from the sale of the other 1,400,000 acres. In addition, it was found that Owen had given Ankeny money and paid his bills and expenses while performing his "examination." This money was apparently delivered by Whiteaker who, while "nominally the agent of the State, was really to some degree the agent also of Owen." Owen had once complained to Fisk that "Ankeny had cost him a good deal of money."<sup>54</sup>

It was argued by the attorneys of Charles N. Felton and R. A. West, the purchasers of some of this disputed land, that this situation implied not official misconduct, but that Owen was merely employing them to sell his land.<sup>55</sup>

To this allegation Secretary William Vilas replied:

It is very obvious that inasmuch as the title of Owen to the lands from which Fisk and Ankeny hoped to derive so large gains if they effected a sale, was essential to that result and depended upon the report of Ankeny and Whiteaker and subsequent certification by the Secretary of Interior, the interest of Ankeny in this was entirely antagonistic to his duty as an officer of the government.<sup>56</sup>

Vilas' predecessor, Secretary Lamar, had put it more bluntly: ". . . these reports were falsely and corruptly

made, and the approval of the list by the Secretary of the Interior was procured by means of bribery and corruption of said Ankeny. . . ."57

Had all the land reported by Ankeny been swampland, the situation would not have been quite so distasteful, but this was not the case. The report of agent Shackelford on the lands contained in list number five showed that of the 90,000 acres declared as swamp by Ankeny and Whiteaker 20,000 acres were:

. . . situated on hills or steep mountains or sagebrush deserts, in many instances lava rock hills ranging from four to eight hundred feet in height above overflow, and that of each legal subdivision in this body of land no part can by any question be regarded as wet or other than entirely dry land.<sup>58</sup>

This evaluation was backed by the affidavits and petitions of over three hundred residents of southeastern Oregon who stated that most of the acres in the list were "dry and good agricultural lands."<sup>59</sup> The 20,000 dry acres were, of course, claimed by Owen as swamp. One early settler of the area recalled Owen's method of claiming swampland:

. . . I well remember when Jake Ish and Henry Owens were filing claims on the Island Ranch and adjacent county. Later on when the settlers were contesting the swamp lands in their proof Ish and H. Owens had sworn they rode from Camp Harney to the Venator Ranch in a boat. They did, but it was on a wagon.<sup>60</sup>

Of the remaining 70,000 acres, 12,000 were approved as swamp and 58,000 were considered "doubtful."<sup>61</sup> Upon hearing Shackelford's report, Secretary Vilas declared, "The

certification of the list number five of the Lake View district is accordingly revoked and cancelled and that list entirely set aside."<sup>62</sup>

In 1889, another team of agents was sent to Oregon to inspect the 58,000 doubtful acres now contained in a separate list. Of this list 37,000 acres were approved as swampland and 5,000 acres rejected. The agents had found the additional 16,000 acres to be swamp, but these were rejected because settlers had preempted this "swamp-land."<sup>63</sup> This illustrates how loosely even presumably honest federal agents defined what was and was not uninhabitable swamp. Nevertheless, of the original 140,000 acres of swampland claimed by the state in list number five, almost two thirds was found to be dry by the three federal investigations, granting the state less than 50,000 acres, and this was giving the benefit of the doubt to the state.<sup>64</sup>

By 1891, the matter of list number five had been before the Department of the Interior for ten years, and the government officials were apparently growing weary of the constant bickering. In September of 1891, Secretary John W. Noble wrote the Commissioner of the General Land Office:

The matter of List No. 5 of the Oregon swamp lands has been repeatedly before this Department, and is now here on certiorari. . . . It seems to me, in view of the long years during which said list has been pending before this Department, and during which the character of said tracts have been under investigation by all the instrumentalities at its command, the personal examination and investi-

gation of its agents as to the swampy character of the land, most of it being located, as shown by the map adjacent to, if not parts of, Lakes Harney and Malheur, . . . to be clearly lands to which the State is entitled under said grant. . . .

And, finally, "Surely there must be some end to investigation."<sup>65</sup> But the Interior Department had not heard the last of the swampland conflicts in Oregon. Neither had the investigations subsequent to that of Ankeny affected the schemes of Henry Owen.

After making their contract with Owen, Fisk and Ankeny proceeded to Toronto, Canada where they found a party interested in their swampland in the form of a syndicate known as Wells, Garden and Sampson. Representing the Canadians, Wells came to Oregon to inspect the lands with state agent H. C. Perkins and notary public William H. Barnhart. Wells was delighted by the opportunity to acquire these cases in Oregon's largely arid cattle country for the pittance asked, and reported back to his partners:

(Oregon's swamplands) are for the most part meadow lands. They are the only lands in Lake and Grant Counties . . . which are fit for cultivation. The rest of the land in these counties consists principally of mountains and sagebrush plains. These plains have generally good soil, but as there is no rainfall from May until November, they are quite sterile. . . .<sup>66</sup>

Wells then asked Governor Thayer: "Would the owner of these lands be compelled . . . to make any extensive improvements on these lands in the way of draining or otherwise. . . ." <sup>67</sup> Thayer replied that "any slight evidence of reclamation would be considered sufficient. The land board fully

recognize the fact that draining in the ordinary way is out of the question."<sup>68</sup> He also told Wells there seemed to be no problem with Owen's claims.

Satisfied with the legal situation and anxious to have these lands, Wells raised the money needed for purchase in London. Eventually, Wells was able to purchase three lots of land from Fisk and Ankeny: 122,000 acres for \$120,000; 400,000 acres for \$150,000; and 1,000,000 acres for \$300,000. Owen held a certificate of sale from the state on the first lot and only some vague filings on the remainder. However, it was understood Wells could get certificates of sale from the state by paying twenty percent of the purchase price at any convenient time.<sup>69</sup> Unfortunately for the parties involved, Owen had become impatient over the delay and took it upon himself to sell these same lands to Charles N. Felton and Charles Hodsell of California. Fisk, having lost his handsome commission, took over Ankeny's half of the original contract and filed suit against Owen. This suit never came to trial, but it did provide the Secretary of Interior with some interesting reading when it fell into his hands.<sup>70</sup>

When Owen sold his swampland he wisely made a common practice of selling quitclaim deeds for the land. These deeds absolved him in all future litigation over these lands. He had paid nothing on the lands for which he held only filings and usually less than twenty cents an

acre for those which he held certificates of sale. Owen usually sold this same land for one dollar an acre and realized two dollars and fifty cents an acre for the better tracts; a satisfactory profit.<sup>71</sup> For Owen the reclamation of Oregon's swampland was complete; his speculative crop bore fruit and the harvest was successful.

## CHAPTER IV

### FOOTNOTES

<sup>1</sup>Owen's name is given as both "Owen" and "Owens" in various sources. Occasionally, both spellings are alternately used in a single document. This leads to some confusion, but "Owen" seems to be the most reliable spelling.

<sup>2</sup>Oregonian, January 10, 1900, p. 6.

<sup>3</sup>Horace S. Lyman, History of Oregon, III (New York: North Pacific Publishing Society, 1903), pp. 400-402; Clinton A. Snowden, History of Washington, II (New York: The Century History Company, 1909), p. 423; Bancroft, History of Oregon, I, p. 458.

<sup>4</sup>John Minto, "Reminiscences," Oregon Historical Quarterly, II, p. 216; Oregonian, January 10, 1900, p. 6.

<sup>5</sup>Harriet Nesmith McArthur, "Recollections of the Reckreal," Oregon Historical Quarterly, XXX, p. 364; Lewis A. McArthur, "Geographic Names," Oregon Historical Quarterly, XXVII, p. 175; Oregonian, January 10, 1900, p. 6.

<sup>6</sup>L. C. Merriam, Jr., "The First Oregon Cavalry and the Oregon Central Military Road Survey of 1865," Oregon Historical Quarterly, LX, pp. 97-98; Robert W. Sawyer, "Beginnings of McKenzie Highway," Oregon Historical Quarterly, XXXI, p. 262.

<sup>7</sup>Oregonian, Rebruary 28, 1884, p. 2.

<sup>8</sup>George W. France, The Struggle for Life and Home in the North-West, (New York: I. Goldman, Steam Printer, 1890), pp. 500-501.

<sup>9</sup>Oregonian, February 28, 1884, p. 2; France, Struggle for Life and Home, p. 500.

<sup>10</sup>France, Struggle for Life and Home, p. 492; Oregon, Journal of the House, 1887, pp. 512-513.

<sup>11</sup>U. S., Department of Interior, Decisions of the Department of Interior Relating to Public Lands (hereinafter cited as "L.D."), VII, p. 573.

<sup>12</sup>Oregonian, February 28, 1884, p. 2.

<sup>13</sup>Oregonian, January 3, 1879, p. 2; Oregon, State Treasurer's Report, 1880, p. 84. Bancroft relates a description of Harding given by Judge Matthew Deady, part of which reads: "He is of excellent habits, is thrifty, industrious, and never forgets No. 1. In allusion to his reputed power of underground scheming and management among his cronies, he has long been known as 'Subterranean Ben.'" Bancroft, History of Oregon, II, p. 639n.

<sup>14</sup>Oregonian, October 14, 1878, p. 1.

<sup>15</sup>Oregon, Report of the Committee, pp. 74-76.

<sup>16</sup>Oregon, State Treasurer's Report, 1880, p. 80. The Agricultural College Fund was meant to support the state college in Corvallis.

<sup>17</sup>Oregonian, February 25, 1886, p. 6.

<sup>18</sup>Ibid.

<sup>19</sup>Oregonian, September 21, 1878, p. 2.

<sup>20</sup>Ibid.

<sup>21</sup>Oregon, Land Board Report, 1880, p. 27.

<sup>22</sup>Ibid.

<sup>23</sup>Oregon, Land Board Report, 1880, p. 28.

<sup>24</sup>Oregon, General Laws, 1878, p. 46.

<sup>25</sup>Oregon, Journal of the House, 1880, p. 30.

<sup>26</sup>Ibid.

<sup>27</sup>Oregon, Land Board Report, 1882, p. 48.

<sup>28</sup>Oregonian, February 25, 1886, p. 6.

<sup>29</sup>Ibid.

<sup>30</sup>Ibid.

<sup>31</sup>Ibid.

<sup>32</sup>Oregon, Journal of the House, 1882, p. 37.

<sup>33</sup>Oregonian, August 31, 1881, p. 1.



<sup>34</sup>O'Callaghan, The Disposition of the Public Domain in Oregon, p. 69.

<sup>35</sup>Oregon, Land Board Report, 1887, p. 1.

<sup>36</sup>Ibid., 1885, p. 57.

<sup>37</sup>Oregon, Journal of the House, 1885, pp. 8-10.

<sup>38</sup>Oregon, Land Board Report, 1887, p. 1.

<sup>39</sup>Ibid.

<sup>40</sup>Ibid., p. 2.

<sup>41</sup>Oregon, Journal of the House, 1880, p. 28.

<sup>42</sup>Ibid., 1882, p. 39.

<sup>43</sup>L. D., III, p. 336.

<sup>44</sup>Ibid., V, p. 32; VII, p. 572.

<sup>45</sup>Ibid., V, p. 33.

<sup>46</sup>Ibid., p. 31.

<sup>47</sup>Ibid., p. 33.

<sup>48</sup>U. S., Department of Interior, Annual Report, 1885, p. 199.

<sup>49</sup>L. D., V, P. 33.

<sup>50</sup>Ibid., p. 300.

<sup>51</sup>Ibid.

<sup>52</sup>Ibid., p. 301.

<sup>53</sup>Ibid., p. 375.

<sup>54</sup>Ibid., VII, pp. 573-574.

<sup>55</sup>Britton & Gray, Attorneys, In the Matter of Lakeview, Oregon, Swamp Land List, No. 5: Reply of R. A. West and Chas. N. Felton, Purchasers From the State of Oregon, To Secretary's Order of January 20, 1887 (Washington, D.C.: Gibson Bros., 1887), pp. 1-9. Britton and Gray operated out of Washington, D.C., and were said to be the most influential land law firm in the nation. Their argument was a complete denial of everything contained in Shackelford's report. Based largely on the testimony of swamp-

land claimants and cattlemen of southeastern Oregon such as Peter French, it portrayed Shackelford as man who was generally under the influence of alcohol while performing his duties, encouraged his own bribery, illegally used his government expense account for personal gain, and was totally irresponsible in the main. Ankeny, on the other hand, was presented as somewhat of a saint. The Secretary of Interior disregarded this argument.

<sup>56</sup>L. D., VII, p. 574.

<sup>57</sup>Ibid., V, p. 375.

<sup>58</sup>Ibid., VII, p. 575.

<sup>59</sup>Ibid.

<sup>60</sup>George Francis Brimlow, Harney County, Oregon, and Its Rangeland (Portland, Oregon: Binforde & Mort. 1951), pp. 60-61. This same procedure for claiming high and dry swampland was used by Henry Miller in California.

<sup>61</sup>L. D., XIII, p. 260.

<sup>62</sup>Ibid., VII, p. 576.

<sup>63</sup>Ibid., XIII, p. 260.

<sup>64</sup>Ibid., VII, p. 575.

<sup>65</sup>Ibid., XIII, pp. 259-262.

<sup>66</sup>T. W. Davenport, The Swamp Lands (Albany, Oregon: Burkhardt & Pfeiffer, 1886), p. 34.

<sup>67</sup>Ibid.

<sup>68</sup>Ibid., p. 15.

<sup>69</sup>Oregonian, February 25, 1886, pp. 6-7.

<sup>70</sup>Britton & Gray, In the Matter of Lakeview, Oregon, pp. 8-9.

<sup>71</sup>Oregonian, February 29, 1884, p. 2; Harney County, Oregon, Land Records, Deed Book A, pp. 294-296.

## CHAPTER V

### GOVERNOR PENNOYER CORRECTS "A GREEK GIFT," 1887

In the midst of the federal investigations of Oregon's swamplands a new governor had been elected in Oregon, the Democratic-Peoples Party candidate, Sylvester Pennoyer. Fiercely independent and an advocate of general reform, Pennoyer was labeled one of three Populist governors in the nation. The 1880's had witnessed a growing dissatisfaction with the state government's swampland dealings, and it has been said that the poor management of these lands and the funds arising from their sale "was a real point of attack upon a past administration, when a democratic governor was elected in 1886."<sup>1</sup>

This dissatisfaction was shared by the 1885 legislature which passed a bill introduced by Timothy Davenport to investigate swampland matters. Unfortunately, the ensuing examination proved a dismal failure when the chairman of the joint committee became seriously ill and the other members of the committee, being bogged down by regular legislative work, relied on information gathered by a clerk who "did not appear to comprehend exactly what was wanted."<sup>2</sup> The material gathered was all but worthless. That same legislature had also passed a joint resolution

prohibiting the state land board from issuing certificates of sale for swamplands not yet patented to the state by the federal government, but this was set aside by the supreme court.<sup>3</sup> Nevertheless, the atmosphere was ripe for a governor honestly opposed to continuing the swampland policies of the past.

Governor Moody remained guardedly optimistic in his last address to the legislature in 1887. While admitting the swamp grant "has been a fruitful source of embarrassment and prolific of disputes and litigation," he maintained that within the next two years funds received from these sales would be "sufficient to pay all indebtedness chargeable thereon" and leave an eventual surplus in the fund of "not less than \$1,000,000, and it may considerably exceed that sum."<sup>4</sup> This was, of course, dependent on a continuation of the policies of Thayer and Moody rather than those advocated by reformers, the federal government, and, as it turned out, the new governor.

The Oregonian headlined Pennoyer's inaugural address simply "A Document of Originality." Even though it didn't agree with all of the new governor's "radical" ideas the newspaper did believe his recommendations concerning wagon roads, assessment and taxation, and the swampland question were "of a practical kind."<sup>5</sup> Pennoyer's views on the swampland matters had been heard before in the press, but they were certainly original when compared

to the ideas of his predecessors who had pushed hard to take full advantage of the grant:

The gift by the General Government of March 12th, 1860, to the State of Oregon of all the swamp and overflowed land within its limits was a Greek gift. The result of that gift has been, that some of the fairest and most productive portions of our State, susceptible of supporting a large population, have been monopolized by a few individuals; immigrants that would have helped build up our free institutions, have been turned away; and a few cattle barons claim the soil. A prompt and decisive step should now be taken by the State. It would be much better for the State if it was forced to accept the alternative that every single acre of the swamp land grant, not now gone beyond its control, should be turned back at once to the Federal Government, to be taken up by settlers under the homestead and pre-emption acts than that it should pass into the hands of a few large land owners. A thrifty enterprising yeomanry is a richer endowment to the State than a few thousand dollars in the treasury, as the price of turning large areas of our most valuable lands over into the possession of a few large alien stock raisers. But the State should secure all of its swamp lands to which it is entitled and parcel them out in small quantities to actual settlers.<sup>6</sup>

Pennoyer proposed to remedy the abuses of the swampland grant simply by enforcing a strict interpretation of the 1878 law, maintaining that the claims of all violators of this law "should be cancelled and declared to be of no force or effect whatever."<sup>7</sup> The state, he believed, should then work closely with the federal government to determine which lands properly belonged to the state.

The 1887 legislature shared the governor's enthusiasm for ending what was generally considered to be "a prodigious swindle." Five days after Pennoyer's inaugural address, the house approved a senate resolution for

he organization of a joint committee to investigate the swampland business, and all who took part in the floor discussion "avowed a wish to see the swamp land question probed to the bottom."<sup>8</sup> A further indication of the legislature's earnestness was the selection of Timothy Davenport, a long time opponent of swampland operations, as clerk of the investigation and chief author of the final report, thus ensuring a thorough examination.

Two weeks after the joint investigative committee had been established, Governor Pennoyer delivered a message to the legislature which "threw a bombshell into the swamp land ring."<sup>9</sup> The governor reported that at a meeting of the land board it was decided that all applications, payments, and certificates of sale made on swampland which were in violation of the 1878 law, despite Governor Thayer's interpretation, were now declared void. An attached list of these voided certificates revealed that \$142,847 had been illegally received for 564,970 acres of land, and Henry Owen was the recipient of over eighty five percent of these lands. It was presumed no arguments would arise over the ruling because it "is only the plain letter of the law. It must be observed and enforced."<sup>10</sup> The certificates were cancelled and the money paid in was to be returned to the purchasers. Of course no argument came from the largest holder, Owen, as he had sold these lands years before.

Having displayed the course his administration would take, Pennoyer then turned to the matter of outstanding warrants drawn upon the swamp land fund. It was noted that this indebtedness amounted to \$52,406 and \$41,759 in interest, making a total of \$94,165. The bulk of this presented itself in the form of warrants still held by wagon road companies and upon which the interest had accumulated over the years to the point where the amount owed as interest would soon be greater than the face value of those warrants. While dealing with this matter, Pennoyer pointed out an obvious fact that had not occurred to previous governors:

The greater bulk of these warrants are drawing ten per cent interest. At the same time the State is loaning money at eight percent. This is very poor finance, and should be stopped.<sup>11</sup>

To eliminate state indebtedness due to swampland dealings he proposed the legislature enact a special tax to pay off the outstanding warrants and, since there was no money in the swamp land fund, to cover the amounts owed swamp-land purchasers for voided certificates. Pennoyer made it clear he intended to put an end to this foolishness. The Oregonian, after lamenting over the huge sums still being paid companies for wagon roads never constructed, said of Pennoyer's swampland policies:

At length we have an administration that is unanimously and solidly right on this question. The whole profligate and dirty business ought now to be cleaned up, once and for all.<sup>12</sup>

One week after Pennoyer's bombshell message, the joint committee reported the findings of their investigation. This report was not as startling as that of the 1878 committee largely because in the period after that investigation opponents of this land law had been watching it closely and had openly criticized its management on a regular basis. Most of the criticism in the 1887 report was aimed at Governor Thayer's ruling in the Owen-Ish case which effectively negated the 1878 law and remained the land board's policy up to 1887. Even though there was nothing shocking in the report, the committee proved its worth by gathering and publishing all available data on swampland transactions since its inception. This committee, like that of 1878, found the land board records from 1870 to 1878 to be one confusing and incomplete heap of notes, but gathered and organized those "records" as best they could, reporting all that was available and intelligible to the legislature. While admitting it was impossible to comprehend the business of the board during those eight years, the committee did its best, reporting:

- |     |  |                |
|-----|--|----------------|
| (1) | Total amount patented as swampland .                     | 31,311 acres   |
| (2) | Total amount certified by the<br>United States. . . . .  | 97,946 acres   |
| (3) | Twenty percent paid (prior to<br>1/17/79) on. . . . .    | .255,744 acres |
| (4) | Twenty percent paid (after<br>1/17/79) on. . . . .       | .524,506 acres |
| (5) | Full payment made on . . . . .                           | 91,190 acres   |
| (6) | Total amount received from swamp<br>land sales . . . . . | \$238,153      |
| (7) | Amount due on sales already made .                       | \$587,752 (13) |



Attached to the report were lists of all those who had legally made payments on swamplands and the details of Owen's and Todhunter's claims. This was the first time the details of these transactions had been made public.

Even though the committee was critical of the poor supervision and liberal selling habits of past land boards, it remained optimistic that through this grant Oregon would eventually realize one million dollars and believed this anticipated small fortune due the state must be guarded from fraud and mismanagement. But the committee came to the conclusion that the defects in the past and present systems of disposing of these lands were "in the laws rather than in the methods of the board. Change the laws and the methods will necessarily conform."<sup>14</sup>

Realizing the nature of Oregon's swamplands, the committee recommended the requirement of reclamation be done away with and the land sold at an appraised rather than a fixed amount simply because: "If swamp land is worth six dollars an acre it should not be sold for one dollar."<sup>15</sup> They also believed actual settlement should be a condition of sale and the limit of acres purchased be raised to six hundred forty from three hundred twenty acres which was believed to be too little for even a small stockman. In many ways these recommendations were a radical departure from traditional swampland policies, displaying a realistic attitude as regards the nature of Oregon's swampland.

The suggested terms of sale, however, were not as well thought out. The conditions recommended were one third down, the balance receivable in five years, and a quit claim deed given to the purchaser by the state, thus releasing the state from any disputes which might arise over the validity of the claim, placing all responsibility on the shoulders of the purchaser.<sup>16</sup> While this policy might simplify matters for the state government, it would not appear to be very responsible for the state to adopt a method long used by speculators such as Owen, whose worthless quit claim deeds lined the pockets of several hapless purchasers. But these were only suggestions made by the committee for the legislature to consider when drawing up a new law. Other suggestions from the governor and the land board, legislators, and private citizens would also be considered.

On February 4, 1887, a swampland bill was introduced in the house which was intended to carry out Governor Pennoyer's wishes by rigidly enforcing the 1878 law. After its introduction, the Oregonian's Salem correspondent remarked:

Of course the swamp land ring, through corrupting agents, will try to beat this measure, and no effort that cunning or money can prompt will be lacking. . . . The policy of the land ring no doubt will be to delay action and to keep the bill out of sight, hoping to let it die on the calendar.<sup>17</sup>

As the session wore on, this appeared to be exactly what was happening. Several bills were introduced in the first

two weeks of February but nothing ever became of them. The climax came when state representative Robert McLean, chairman of the house committee on public lands, introduced a swampland bill in the house which was prepared by the governor, secretary of state, and the treasurer. McLean did so at their request, but announced he did not approve of the measure. It was reported there was now "a great deal of ugly gossip that he was not really disposed to bring about reform."<sup>18</sup>

Robert McLean had been recently elected state representative from Klamath County over swampland claimant John Miller on a platform of land reform and was made chairman of the house committee on public lands for that reason. However, it soon became evident to Timothy Davenport that he was the chief obstructionist to the passage of swampland bills and accused McLean of selling out to the swampland ring. Davenport was in turn charged by McLean of falsehoods, defaming his name, and of actually working for swampland claimants himself. Most land reformers and political observers were quite sensitive to any indication that the swampland ring was obstructing reform, and some were easily convinced that McLean was working with the "swamp angels."<sup>19</sup> Contrary to this, it appears McLean's delaying tactics were stimulated by his desire to pass a better bill than those being introduced. Many of McLean's views were embodied in the land committee's

recommendations mentioned earlier. It was frequently charged that McLean's efforts to eliminate the requirement of reclamation indicated he was working for the ring, even though other bills contained the same provision. In the past it had proved to be a worthless, vague, and easily avoidable requirement anyway.<sup>20</sup> He was also opposed to levying a special tax to pay the outstanding warrants, recommending instead the use of whatever was available in the swamp land fund after forcing all legal claimants to pay in full or using idle monies out of the general fund.<sup>21</sup> As to the quantity of land allowed purchasers, McLean believed a closer examination be given because in many cases 320 acres might not be sufficient for a small cattle raiser and cooperation for the purpose of reclamation and irrigation, by an organization of actual settlers to establish irrigation districts (an idea eventually embodied in the federal Carey Act of 1894), had been ignored. Also overlooked, he believed, was a provision for the punishment of those who had obtained swampland illegally.<sup>22</sup>

McLean defended his actions and exhibited his frustration by entering a protest against the swampland bill during the floor discussion before the final vote on the measure. Criticizing its lack of originality and farsightedness, McLean complained the bill was "not worth the paper it was written on" and that "it merely declared the

effect of the law of 1878."<sup>23</sup> Representative Summers followed, pointing out that because it was "so late in the session it ought to pass: It might not be the best measure, but it was the best now possible." He then gave McLean credit for honest intentions.<sup>24</sup> The "McLean-Davenport Row" got more attention than it deserved. It seems McLean was an obstructionist with good intentions rather than a tool of the swampland ring and was more the victim of misinterpretation by old guard reformers, whom he termed "a ring outside of the ring."

In light of the mood of the 1887 legislature it is not surprising McLean ran into problems with his views of reform. Few were opposed to the law of 1878, wishing only that it be enforced rather than expanded or rewritten. This attitude was shared by the Oregonian which believed if it hadn't been for the land board's violation of the 1878 act, that law "would itself be about all that was required. In the entire history of Oregon's affairs there has been nothing so culpable as this deliberate and continued violation by officers of the state of a statute expressly framed to stop a great abuse."<sup>25</sup>

The 1887 Swamp Land Act did nearly all the governor and land reformers had asked, and easily passed in both houses of the legislature. The measure made it plain that all swampland sales on which the twenty percent had not been paid prior to January 17, 1879 (the date the 1878

law took effect) were declared void and the certificates of sale cancelled. Those who had purchased land by making the twenty percent payment prior to that date were to receive a deed for the land, provided the balance be paid by January 1, 1889, but no deed would be given for more than 640 acres or if there were a conflict over this same tract with a homestead, preemption, or any other claim. All future purchases were to be made under the conditions of the 1878 law. The act also eliminated the requirement of reclamation and provided for the repayment of voided certificates out of the swamp land fund whenever sufficient amounts were available.<sup>26</sup>

The Oregonian said of the first section of the law, which declared void certificates of sales on which the twenty percent had not been paid, "This is a blow directly at the root of the principal abuse developed in the administration of this trust."<sup>27</sup> It was believed that at long last management of the swamplands would proceed in a logical manner. The effect of this law and the new administration was soon apparent. The 1889 land board report read quite differently than past biennial reports, stating that during those two years after the passage of the 1887 law only 12,438 acres of swampland had been sold and \$21,445 received.<sup>28</sup> Generally, these sales were in quantities of 320 acres or less, and there was no indication of land grabbing. The only exceptions to this might be the

curious clusters of names which occasionally appear in the report of land sales. Groups of several persons are shown as making cash payments for the maximum allowable acreage at the same time, with the surnames of the purchasers often the same. This could indicate the use of dummy entries by large land holders to evade the law or the efforts of clans, wives and daughters included, to claim as much land as possible under the new law. This was hardly a new practice and not strictly legal if the dummy entrants were not actual settlers, but it was on a relatively small scale and much easier to live with than the shotgun filings of Owen. More importantly, the transactions of the land board were not being reported by listing each purchaser, the date of purchase, and the amount paid for each category of state lands. The biennial land board report became a much more complete and responsible document than ever before, holding nothing back from the legislature and the public.

The 1887 appropriation bill also became involved with the effort to clear up the swampland muddle. Considering all the money which had to be paid out to the holders of outstanding wagon road warrants and returned to the purchasers of cancelled certificates coupled with the belief that little money would be immediately received for swampland under the new law, the legislature found it expedient to appropriate \$33,000 out of the general

fund for the purpose of returning money paid into the swamp land fund for claims now declared void.<sup>29</sup> As the general fund consisted largely of tax dollars from the counties, the taxpayers of Oregon indirectly ended up paying for the poor management of state lands.

When the appropriation bill came to the senate for a vote after passing in the house, it was moved to ammend the bill so that John Mullan's claims for \$2,118 and \$7,000 be included. These claims originated during the Thayer administration when the governor appointed Mullan agent to represent the state in Washington, D.C., although his precise responsibilities were, at best, unclear. When this amendment was proposed it was hotly contested by senators arguing that there was "nothing in the archives that even showed Capt. John Mullan was ever employed by this state," and that:

. . . Capt. John Mullan had been an annoyance ever since he knew anything about the legislature. He (Senator Veatch) failed to find any record authorizing his employment, but somehow he turned up every year and got into the appropriation. He was a leech or a parasite that they could not shake off.<sup>30</sup>

The legislature was generally not in a mood to honor vague claims which had their roots in the loose administration of Thayer when it had just finished the struggle of coming up with a remedy to the problems it had created. But the effective argument against this amendment was not whether Mullan's claims were legal or not but that the house



would defeat the entire appropriation bill if this amendment were included. It being late in the session, the amendment was withdrawn.<sup>31</sup>

When special agent Shackelford's report was released in January 1887, the Oregonian captioned its column on his findings, "Hen. Owen, the Swamp Angel, Getting A National Reputation," and when his complete report made the newspaper's pages three weeks later it raised many eyebrows.<sup>32</sup> It was also rumored that California's U. S. Representative Charles Felton was in deep trouble because of Oregon's swampland dealings. Felton was a major purchaser of Owen's lands, and it was argued there was enough evidence on hand about the frauds in Oregon to justify his indictment for conspiracy to defraud the government. There is little evidence to support such a charge against Felton because it does not appear, as the Oregonian remarked, "he was anything but a purchaser in good faith of the certificates offered."<sup>33</sup> Furthermore, it was reported that Felton was not altogether pleased with his purchases when he discovered most of his valuable "swampland" contained nothing but sagebrush and lava rock.<sup>34</sup>

With all the attention being given the subject during the first quarter of 1887, it is not surprising to find the United States grand jury begin work on Oregon's swampland frauds in late March. It was said, "Ex-Officials and others who have connived at the frauds

may take an interest in the subsequent proceedings."<sup>35</sup> The first land grabber to find himself "dancing attendance on the court" was Quincy A. Brooks. An unnamed prominent Democrat said Brooks "will be very lucky if he escapes indictment for perjury in connection with these frauds. I tell you, he is considerably worried over it."<sup>36</sup> Another man considerably worried was Brooks' deputy, one Mr. Waters, who fled to British Columbia upon hearing of the grand jury's intentions so as to be out of the court's jurisdiction. Brooks was sent to Canada to retrieve Waters and present him to the jury. It was believed that "Brooks and Waters may not be indicted, but if they escape it will be by the skin of their teeth."<sup>37</sup>

Brooks and Waters were not indicted, but others were not so fortunate. Indicted by the grand jury for conspiracy with intent to defraud the United States were Henry Owen, R. V. Ankeny, James Fisk, and William H. Barnhart.<sup>38</sup> Barnhart, a notary public employed by Governor Thayer to take testimony which confirmed swampland claims and who accompanied British speculator Wells and state agent H. C. Perkins during their investigation of Oregon's swamplands, was also charged on four separate counts of subordination of perjury and forgery. These indictments were based on the events detailed in the Shackleford report on list number five, and Barnhart, another of Owen's "agents," had the additional charges for forging affi-

davits swearing to the swampy character of the lands claimed by Owen, presumably lands Owen wished to sell to Wells.<sup>39</sup> There was overwhelming evidence against all involved and they were fortunate to avoid conviction, but Judge Matthew Deady, who presided over these cases, ruled that even though there was little doubt of their guilt they were protected by the statute of limitations.<sup>40</sup> Henry Owen, so deeply involved with all the chicanery, corruption, and incompetence that marked the first seventeen years of Oregon's swampland business, had his final triumph.

## CHAPTER V

### FOOTNOTES

- <sup>1</sup>Bancroft, History of Oregon, II, p. 760.
- <sup>2</sup>Davenport, The Swamp Lands, p. 4.
- <sup>3</sup>Oregonian, February 25, 1886, p. 7.
- <sup>4</sup>Oregonian, January 13, 1887, p. 2.
- <sup>5</sup>Ibid., p. 4.
- <sup>6</sup>Oregon, Journal of the House, 1887, Appendix, pp. 32-33.
- <sup>7</sup>Ibid., p. 33.
- <sup>8</sup>Oregonian, January 18, 1887, p. 1.
- <sup>9</sup>Oregonian, February 3, 1887, p. 1.
- <sup>10</sup>Oregon, Journal of the House, 1887, p. 243.
- <sup>11</sup>Ibid., p. 244.
- <sup>12</sup>Oregonian, February 4, 1887, p. 2.
- <sup>13</sup>Oregon, Journal of the House, 1887, pp. 469-475; Oregonian, February 11, 1887, p. 2.
- <sup>14</sup>Oregon, Journal of the House, 1887, p. 479.
- <sup>15</sup>Ibid.
- <sup>16</sup>Ibid.
- <sup>17</sup>Oregonian, February 4, 1887, p. 1.
- <sup>18</sup>Ibid., February 12, 1887, p. 1; ibid., February 14, 1887, p. 1.
- <sup>19</sup>Ibid.
- <sup>20</sup>Ibid., February 15, 1887, p. 2.

- <sup>21</sup>Ibid., February 12, 1887, p. 1.
- <sup>22</sup>Ibid., February 15, 1887, p. 2.
- <sup>23</sup>Ibid., p. 4.
- <sup>24</sup>Ibid.
- <sup>25</sup>Ibid., February 14, 1887, p. 2.
- <sup>26</sup>Oregon, General Laws, 1887, pp. 9-11.
- <sup>27</sup>Oregonian, February 14, 1887, p. 2.
- <sup>28</sup>Oregon, Land Board Report, 1889, p. 5.
- <sup>29</sup>Oregonian, February 17, 1887, p. 2.
- <sup>30</sup>Ibid., February 19, 1887, p. 2.
- <sup>31</sup>Ibid.
- <sup>32</sup>Ibid., January 24, 1887, p. 1; ibid., February 13, 1887, p. 7.
- <sup>33</sup>Ibid., March 17, 1887, p. 4.
- <sup>34</sup>Ibid.
- <sup>35</sup>Ibid., March 24, 1887, p. 4.
- <sup>36</sup>Ibid., April 7, 1887, p. 1.
- <sup>37</sup>Ibid.
- <sup>38</sup>U. S., Federal Reporter, XXXII (1887), pp. 534-538.
- <sup>39</sup>Ibid., XXXIII (1888), pp. 459-468.
- <sup>40</sup>Ibid., XXXII (1887), p. 534; Malcolm Clark, ed., Pharisee Among Philistines: The Diary of Judge Matthew P. Dady, 1871-1892, 2 vols. (Portland: Oregon Historical Society, 1975), p. 525.

## CHAPTER VI

### THE EFFECT OF THE SWAMP LAND ACT

#### IN HARNEY COUNTY, 1870-1895

Harney County (carved out of Grant County in 1889) occupies a large part of the remote, semiarid southeastern corner of Oregon, and would appear to be an unlikely place to find swampland. Eighty percent of the county is part of the Malheur Lake Basin, an interior drainage basin which has no outlet to the sea, its rivers running only into lakes such as Malheur, Harney, and Silver where the water evaporates. A vast majority of the basin's rivers, however, flow only intermittently through land which consists mainly of sagebrush plains, igneous rimrock, and has very little precipitation. The few exceptions to this overall dryness are in valleys where streams such as the Silvies and Donner and Blitzen rivers flow and are subject to annual flooding during the spring runoffs. The flow of these rivers and the levels of the lakes varies dramatically from year to year depending on the amount of rainfall or snow received in the winter. Silver Lake, for example, can vary from being perfectly dry, outside of a few pools of water, to covering an area of about 4,000 acres. In 1889, an extremely dry year, Malheur

Lake shrank from its average maximum area of 45,000 acres to a dry lake bed, and Harney Lake, which receives Malheur's overflow, was also dry. In this region water is at a premium and arable land near streams and lakes are much sought after; the scarcity of both have kept the population and economy of Harney County in check over the years.<sup>1</sup> Nevertheless, this area was the scene of great swampland activity, and best illustrates the methods and motives of swampland claimants and the effect of the Swamp Land Act on a local population.

Because of its remote location and unfavorable climate, early settlers bypassed this region for the more hospitable environment of the Willamette Valley. Prior to the 1870's, the population of what is now Harney County consisted largely of various Indian groups, military personnel in outposts such as Camp Harney, and scattered groups of prospectors who had drifted down from gold fields in the Blue Mountains. The arrival of cattleman John S. Devine in 1868 marked the beginning of permanent settlement in the basin. Devine was followed by other cattlemen in the 1870's who were often the more adventurous half of California based partnerships. The ranches of Todhunter and Devine, French and Glenn, and Miller and Lux all had their roots in California, expanding into Nevada and then Oregon when increasing settlement greatly reduced the opportunity to expand their California ranges.<sup>2</sup>

In this dry region the best grasslands were along the moist banks and plains of the few rivers and lakes of the basin, or what became the so-called swamplands. There is no indication that the cattlemen came into the area to improve swamplands, but rather that these lands were simply the most desirable in the area. True swampland, in fact, was something ranchers avoided, as cattle wandering through swamp could easily drown in a few inches of water if they became mired.<sup>3</sup> Wells, the speculator who examined the appraised the value of these "swamplands" in the 1880's, reported to his British syndicate:

(Oregon's swamplands) are for the most part meadow lands. They are the only lands in Lake and Grant Counties . . . which are fit for cultivation. The rest of the land in these counties consists principally of mountains and sagebrush plains. These plains have generally good soil, but as there is no rainfall from May until November, they are quite sterile (and difficult to irrigate).

The lands in question can not only be utilized in the cattle ranch business, but they are indispensable to it. . . . the business could not be carried on without them, and whoever controls them controls the cattle business of the state.<sup>4</sup>

While it is true that much of this land is subject to annual spring flooding, this natural irrigation was necessary for cattle ranching and in no way made it swampland. As late as 1967 it was still reported that wild hay was being produced on a permanent basis on fields affected by flooding. During years of low runoff the crop is often a near failure, making it a common practice for ranchers to carry over a full season's supply of hay as



insurance against such an event. One hundred years after the first cattlemen came into Harney County, flooding was still being encouraged in the basin valleys to increase crop production.<sup>5</sup>

An important factor in the history of land ownership in Harney County was the limited and fairly compact nature of fertile land adjacent to rivers and lakes. When homesteaders and small ranchers began moving into the basin in the late 1870's, their presence was immediately felt. A major result of this "remarkable eastward movement" was, as the Oregonian reported in 1883, that the "famous ranges of eastern Oregon" were being cut up into farms and small ranches and in the near future the greatest cattle production would come "from the farm and not from the range."<sup>6</sup> When the large cattle companies first moved into virtually unpopulated southeastern Oregon land ownership was not as important as open range with ample grass to graze herds, but with the rapid influx of settlement the cattle barons soon realized the need to gain title to the land they had been using freely.<sup>7</sup> The cattlemen, however, found it a simple matter to control huge blocks of land by making selective purchases of watered lands, thus making it impossible for anyone to realistically hope they could cultivate the surrounding desert. Federal and state land laws made many opportunities available to the ranchers through the Preemption Act,

Homestead Act, Timber Culture Act, Desert Land Act, Timber and Stone Act; through the purchase of state school lands; and through other laws.<sup>8</sup> Between 1882 and 1889 the French-Glenn company acquired 26,881 acres through these purchases, of which 16,096 came from its employees. Occasionally, but rarely, the General Land Office cancelled entries made in this way.<sup>9</sup> In 1878, Todhunter and Devine requested the lease of a portion of the Malheur Indian Reservation on which their cattle were trespassing, offering to lease some five hundred square miles for fifteen years at the rate of two hundred dollars a year. This arrangement fell through when another cattleman offered the more attractive price of fifteen hundred dollars a year.<sup>10</sup>

Of all the methods used by cattlemen to extend their holdings, it was the Swamp Land Act which was of particular importance. In one way or another, all of Harney County's major ranches dealt with large quantities of swampland. This period of cattle range expansion coincided with the activities of Hen Owen, who at that time was "busily peddling Oregon swamp lands for small down payments."<sup>11</sup> On May 20, 1883, Owen issued a quit claim deed to the Riley and Hardin cattle company for vast tracts of land north of lakes Malheur and Harney and southwest of Lake Harney. A year later, Owen sold them an additional 7,000 acres for \$19,000 cash. Owen also issued W. B. Todhunter a quit claim deed to 22,000 acres

on March 7, 1885.<sup>12</sup> Although these and Owen's many other sales were not on a solid legal footing, cattlemen were able in this way to control thousands of acres of good land and valuable water rights for many years.

Purchasing swampland from Henry Owen was not, of course, the only means of acquiring these lands. W. B. Todhunter also took advantage of Governor Thayer's interpretation of the Swamp Land Act in the 1880's. In one filing alone Todhunter was allowed to make his twenty percent payment as late as January 1882, receiving title to 40,332 acres of land alleged to be swamp north of Lake Malheur.<sup>13</sup> French and Glenn also purchased large quantities of swampland to increase their range. On September 13, 1877, A. H. Robie sold to French and Glenn 48,570 acres of swampland he had claimed in the Diamond Valley adjacent to their holdings in the Blitzen Valley. Well aware that this land might not be legally classified as swampland, they persistently appealed to the state for final title, which they ultimately received in 1882.<sup>14</sup> On July 30, 1885, French and Glenn bought an additional 22,057 acres of swamp which they had illegally filed upon at the late date of 1882.<sup>15</sup> It was also reported by special agent Shackelford that French and others had been in negotiation with R. V. Ankeny over the disputed lands in list number five. French, represented by the powerful Washington, D. C. land law firm of Britton and Gray and Portland's

W. Lair Hill, denied all allegations he had paid agent Ankeny even though Shackelford maintained French had agreed to furnish him with an affidavit verifying the fact until dissuaded by his attorneys. The matter was dropped.<sup>16</sup> Todhunter and Devine, too, were involved with lands in list number five, but when the scandal was eventually uncovered some of their certificates were no longer recognized and Devine complained that he had to "rebuy them from speculators."<sup>17</sup>

While virtually all cattlemen in the area used swamp-land purchases to control grazing land and water, The Dalles Weekly Mountaineer emphasized the purchases of French and Glenn:

The stock range of one firm in the south end of Grant county is 50 miles wide and one hundred and twenty-five miles long. This firm, by taking advantage of the nefarious swamp land laws of Oregon now hold firm possession of the watering places in this vast region, and as effectually keep settlers out as if they had a patent to the whole region.<sup>18</sup>

Around 1883, there were many complaints that both French and Glenn and Todhunter and Devine were monopolizing the arable land of southeastern Oregon.<sup>19</sup> The Oregonian editorialized:

. . . this country is a vast cattle range. The lakes in which it abounds are surrounded by natural meadow lands, invaluable to stock men. Selections of lands under the robbers act of 1870 (the Swamp Land Act) have been made with a view to cutting off every access to the water. . . . and as no one can find means to live away from the water, the surrounding country for some miles becomes a cattle range for the land grabber. . . .<sup>20</sup>

One historian has maintained that among the greatest fears of the small farmer in western America was "that ogre -- land monopoly."<sup>21</sup> Beyond the use of selective purchases of land, the cattlemen of Harney County used fencing, both legal and illegal, to control pasturage and water supplies. The U. S. General Land Office reported in 1887 that French and Glenn had some 30,000 acres of public domain fenced, Miller and Lux 20,000 acres, and Todhunter and Devine an unspecified amount. By 1890 this practice had been halted, but, like the purchase of swamp-lands, it allowed stockmen to control the land and water for many years.<sup>22</sup>

An even more alarming development to the settlers was the process of consolidation, which proceeded to place more and more land under the control of a few wealthy ranchers. One example is Pete French, who came to the basin in 1872 and by 1879 was managing both the P Ranch in the Blitzen Valley (by itself one of the largest single ranches in the United States) and the Diamond Ranch in Diamond Valley. In 1882, French and Glenn enlarged their holdings by purchasing for \$102,000 the ranches of John Catlow around Steens Mountain and by that date had also gained control of Happy Valley.<sup>23</sup> Furthermore, French took advantage of every opportunity to buy the property of small farmers and ranchers whose operations to buy the property of small farmers and ranchers whose operations

collapsed during years of drought or hard winters, thus adding a considerable number of acres to the estate and eliminating competition.<sup>24</sup>

John S. Devine, with the financial backing of W. B. Todhunter, arrived in 1868 to establish the White Horse Ranch south of Steens Mountain and the Island Ranch along the Silvies River on the well-watered alluvial plain of Harney Valley north of Malheur Lake. In 1880 Todhunter and Devine bought the ranch of Abbott and Whiteside near Camp Harney for \$65,000 and in 1883 bought out Crowley and Whiteside near Steens Mountain.<sup>25</sup> In 1887 Todhunter suffered severe losses and had to sell out, a sale leading to the greatest consolidation of all. Two years after Todhunter's collapse, the ranches of Miller and Lux, N. H. A. Mason, and Todhunter and Devine merged to form the Pacific Livestock Company under the leadership of Henry Miller and managed by John Devine.<sup>26</sup> Soon after this merger the Burns East Oregon Herald wrote that this company was "perhaps the strongest on this coast if not the strongest in the world. Their dominions extend from Grant county, Or., to the southern confines of California. They can travel hundreds of miles from here in a southerly direction and camp every night on their freeholds."<sup>27</sup>

Consolidation naturally meant many individual swamp-land titles of dubious character came under the control of

only a few ranchers. One can only guess how much of this land the Pacific Livestock Company fell heir to, but when Todhunter sold his holdings for \$2,230,000 possibly half of his 200,000 acres were at one time or another claimed as swampland. The company also found itself in possession of many acres Owen had originally claimed, and his legal title to these lands was highly questionable.<sup>28</sup> But Henry Miller, head of the new company, was no stranger to swampland matters. Although he had entered Oregon too late to take full advantage of the state's loose swampland administration, he had earlier grabbed over 80,000 acres of grazing land in California's San Joaquin and Sacramento valleys under that state's swampland law.<sup>29</sup> Unlike many of the ranchers in Harney County Miller proved to be a more formidable opponent to the settler; where most ranchers seemed content to merely hang on to their swampland, Miller had visions of taking over all of Harney Valley.<sup>30</sup>

The settlers who had moved into the Malheur Lake Basin did not share Miller's enthusiasm for the development of huge cattle ranches. They and the townspeople of Burns desired increased settlement which would provide local markets, expand business, and raise property values. Because the cattlemen did not need local markets to prosper, this was viewed as an undesirable trend which would lead only to a shrinking of the cattle ranges. They were determined to fight it.<sup>31</sup>

In the battle between the settlers and the large ranches the cattlemen held a great advantage for many years, as Timothy Davenport wrote:

The men who own the meadow lands ("swamplands") encircling the lakes of Eastern Oregon have control of the lakes and surrounding deserts . . . they are the virtual masters . . . of the cattle business (and), to a ruinous extent, the sovereigns of the people of that section.<sup>32</sup>

Davenport also told of one settler in southeastern Oregon who staked his claim on a sagebrush plain so as to be certain he was not on anyone's swampland claim, dug a well forty feet deep, and built a house but was told he had to leave by a "non-resident cattle king" because he was trespassing on swampland.<sup>33</sup> One pioneer later described the unenviable situation of the settler:

Quite naturally the cattlemen were hostile to settlement. They claimed all available lands as swamp, including ridges and hills, in which claim they were strenuously sustained by the State Land Department. In order to file on land the settler had to journey one hundred and fifty miles, taking his witnesses to the land office at Lakeview to initiate an expensive contest. Nor was the Land Office more favorable to the settler than was the state and decisions were uniformly against him. Everything seemed to be against him, the cost of goods, absence of building material, and lack of means of communication.<sup>34</sup>

This being the case, it was not unusual to find that rather than initiating a futile court battle, legitimate homesteaders and preemptors would simply sell their claims to cattlemen who had filed on the same land as swamp, accepting whatever amount was offered.<sup>35</sup>



It was with the discovery of Ankeny's fraudulent survey of list number five that things began to change. The federal patents to many of these lands were set aside and opened to settlement under United States laws, leading to further clashes between settlers and cattlemen. Some of this land, claimed by Todhunter and Devine, was known as the "Red S Field" because the map in the Lakeview land office designated these swamplands with a large red "S." John Devine was largely responsible for these selections.<sup>36</sup> Shortly after settlers had moved onto some of these 40,000 acres, which were presumed to have been opened to settlement, a joint investigation by state and federal agents declared this land to be swampy.<sup>37</sup> Angry settlers immediately sent a petition with 240 signatures to Governor Pennoyer asking that these lands not be patented because they were good agricultural land. Pennoyer forwarded the petition to the General Land Office along with his statement that he believed an error had been made, writing:

As I have before stated to the department, the state of Oregon does not want title to one acre of land that is not swamp land, and the more especially so when such title would be in conflict with the claims and interest of bona fide settlers. . . . (The matter) ought not be settled at all until it is settled right.<sup>38</sup>

This was followed by another petition in April 1888 which maintained the land was dry, had been "gained by fraud and in the interests of stockmen and monopolies," and was being successfully farmed by homesteaders. Pennoyer endorsed

this petition and it was sent to the Secretary of the Interior.<sup>39</sup>

In 1889 the General Land Office considered the question and compromised by rejecting a portion of the swampland claims, but left much of it in the hands of Todhunter and Devine who were soon bought out by Henry Miller and the Pacific Livestock Company. Soon after this unpopular decision, a delegation of settlers from southeastern Oregon was presented to the commissioner of the General Land Office by Oregon U. S. Representative Binger Hermann. The settlers here protesting the approval of certain lands, upon which they had been farming for four years, as swamp. They complained that they were being "Manipulated in the interest of land syndicates and monopolists."<sup>40</sup> Despite efforts such as these, by 1891 the Secretary of the Interior had decided in favor of Miller in the "Red S Case" and the settlers were ejected.<sup>41</sup>

Friction was at its greatest in the 1890's when court cases between cattlemen and "trespassing" settlers were constantly before the courts. Some disgruntled citizens of the county went further by using extralegal means to attack the ranchers; a rash of burnings was reported between 1889 and 1891. This supposed "spite work" cost French and Glenn 800 tons of hay and twenty miles of grazing land due to blazes in 1889. Arsonists also destroyed 250 tons of John Devine's hay in 1890 and Henry Miller's Pacific

Livestock Company lost 300 tons in 1891.<sup>42</sup> Isolated acts such as these, possibly the work of one or two parties, were blown way out of proportion by an unnamed sensationalist writer for the Oregonian in a column entitled:

BORDER OUTLAWRY

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EASTERN OREGON DESPERADOES

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How the "Cow Counties" Are Terrorized by Organized Gangs of Robbers--Noted Criminals<sup>43</sup>

The story spoke of gangs such as Harney County's "101 Society," "whose daring equals that of the James or Dalton boys." The society, it continued, had so "thoroughly terrorized the community that it is impossible to secure a conviction, . . ."<sup>44</sup> This gang was accused of murdering the employees of cattlemen, killing the cattle, and intimidating jurists, and the article bemoaned the fact that men such as Henry Miller and Peter French were virtually helpless against the gang. The "101 Society," it said, was "largely composed of land-grabbers and claim-jumpers, who enter the inclosures of the large companies. . . ."<sup>45</sup>

One disgusted settler of Harney County responded to this "tissue of falsehoods" in a letter to the editor:

All I know about The 101 Society is this:

Several years ago, when myself and a few others began unearthing the gigantic swamp-land frauds in Harney county, we each simultaneously received letters warning us to leave the country within 10 days, never to return. Those letters had, marked at the top of the page, a skull and cross-

bones, and were signed "101." It is useless to say that we did not leave, but continued our lawful purpose, until today thousands of acres of the so-called swamp lands have been restored to the settlers by the interior department. Since that time we have heard nothing of the "101 society," and we believe it only remains in the disordered brain of your informant. If the said society ever existed in Harney county, its members must have been the swampland claimants who were and are the cattle kings of Harney county.<sup>46</sup>

No mention of range burnings appeared in the original article, which would have given it at least a grain of truth; it merely distorted the conflict over swamplands held by cattlemen and served only as a piece of propaganda for those claimants.

Despite the forces working against them, the settlers continued to fight the cattlemen in the courts. Their prime target was Henry Miller and the Pacific Livestock Company which held the questionable swamplands near Burns. Miller once complained that he couldn't receive justice from the newly established Burns land office in swampland contests because its officials were very much in sympathy with the settlers.<sup>47</sup> This is probably true, but the higher courts of Oregon were traditionally in favor of a swampland claimant defending his right to state lands and who promised to deposit money in the state coffers. Funds generated through United States homestead and preemption sales, on the other hand, went to the federal treasury. These cases often found their way to the General Land Office and the Department of the Interior for a final

decision. Typical contests pitted an individual farmer against not only Henry Miller, but the Pacific Livestock Company and the State of Oregon as well. Although there were many of these cases, the 1895 case of De Witt v. State of Oregon et al., is representative of most of these appeals.

The De Witt contest was over a parcel of Henry Miller's "Red S" land just southeast of Burns. In a strictly legal sense, this contest should not even have been heard. The local land office had approved De Witt's homestead claim, notified the state government of this action in 1888, and neither the state or Henry Miller filed a protest in the allowed period of time on two separate occasions. This should have given title to De Witt automatically, but when he asked that a final decision be made in his favor by default, the local officers overruled the request. On appeal, the General Land Office upheld this decision.<sup>48</sup>

When the case was appealed to Secretary of Interior Hoke Smith, he wrote the commissioner of the General Land Office:

Your office decision of March 21, 1891 was null and void. The State of Oregon having twice disregarded notice, and refused to present either protest or application for a hearing, or otherwise appear and submit to the jurisdiction, there was no case before your office.<sup>49</sup>

Nevertheless, the case had been heard, and, upon completion of the hearing, few could argue in favor of this area's "swampy character."

The testimony for Henry Miller and the state consisted largely of travelers who had passed through the area some thirty years earlier and found the land near the river swampy during flood season. The witnesses for De Witt were much more convincing. Three of these witnesses had been settlers in the area in 1883 when John Devine claimed this land. They reported that in that year they saw 130 to 150 acres of good hay cut and stacked on the De Witt claim, and that this land was then "dry, fine meadow land, growing good hay, consisting of wild clover . . . and rye-grasses." This is the same year Devine had claimed and received this area as swamp. The only improvements Devine had made to reclaim this "swamp" was to run a fence through the southwest corner of the tract. De Witt testified that when he first moved onto his claim "a fire broke out near his residence and got away from him. Not only did the grasses burn, but the soil itself, like peat, burned to the depth of several inches, before it was extinguished."<sup>50</sup> Most would have to agree this is an occurrence not typical of swampland. One of the key witnesses for Miller was a civil engineer employed by the Miller and Lux company. He testified that he had gone over this land and found it swampy, but that "he could not remember any figures, and he had lost or misplaced his book of field notes and would not produce it."<sup>51</sup>

After reviewing all the testimony, Secretary Smith ruled:

I have no difficulty in finding that the evidence shows by a clear and palpable preponderance, that the tracts of land now in controversy were never swamp lands: that in their natural state they were subject to partial overflow every year for about four months, between the months of March and July, and that said tracts of land were made by said overflow fit for cultivation; and that without said overflow they would be unfit for cultivation, -- unfit even to make hay which is the staple crop of that region. The testimony also proves by a clear and palpable preponderance, that if said tracts of land were drained of water, or if, in the language of the statute, they were "reclaimed by levees and drains," they would be thereby reduced to a dry and inarable desert; and that it is necessary every year to supplement the natural overflow by artificial irrigation, in order to make<sup>52</sup> said tracts produce even an annual crop of hay.

De Witt was allowed to keep his claim.

This case was truly absurd. Even though there was little doubt that the land in question was not swamp, De Witt had to go all the way to the Secretary of Interior to have his claim upheld. With this in mind, it is quite apparent how difficult it would be for a settler to protect his claim if his land was truly doubtful in character. Surprisingly enough, however, most of the cases that reached the Interior Department were decided in the settler's favor. Those who lost their contest usually did so because they could not afford the legal expenses involved with these drawn-out affairs.

The efforts by actual settlers to wrest fertile agricultural lands from cattlemen claiming it as swamp was

a slow, painstaking process, each case being decided individually. Contests of this nature dragged on until well into the twentieth century, and it wasn't until 1914 that Henry Miller had to pay the state \$125,000 and open some of this land to settlement.<sup>53</sup>



## CHAPTER VI

### FOOTNOTES

<sup>1</sup> Oregon, State Water Resources Board, Malheur Lake Basin (Salem, Oregon, June 1967), pp. 1-12.

<sup>2</sup> J. Orin Oliphant, On the Cattle Ranges of the Oregon Country (Seattle: University of Washington Press, 1968), pp. 95-97.

<sup>3</sup> Giles French, Cattle Country of Peter French (Portland, Oregon: Binford & Mort, 1964), pp. 43, 60.

<sup>4</sup> Davenport, The Swamp Lands (Albany, Oregon: Burkhart & Pfeifer, 1886), pp. 34-35.

<sup>5</sup> Oregon, Malheur Lake Basin, pp. 51-52, 65.

<sup>6</sup> Oliphant, On the Cattle Ranges, pp. 177, 347.

<sup>7</sup> Margaret Justine Lo Picollo, "Some Aspects of the Range Cattle Industry in Harney County, Oregon, 1870-1900" (Unpublished master's thesis, University of Oregon, 1962), p. 53; Brimlow, Harney County, Oregon and Its Range Land, p. 75.

<sup>8</sup> Oliphant, On the Cattle Ranges, pp. 208-210.

<sup>9</sup> Margaret L. Sullivan, "Conflict on the Frontier: The Case of Harney County, Oregon, 1870-1900," Pacific Northwest Quarterly, LXVI (1975), p. 177.

<sup>10</sup> Oliphant, On the Cattle Ranges, pp. 314-315.

<sup>11</sup> Brimlow, Harney County, Oregon, p. 57.

<sup>12</sup> Lo Picollo, Range Cattle Industry, p. 61; Oregonian, February 28, 1884, p. 2.

<sup>13</sup> Lo Picollo, Range Cattle Industry, p. 59.

<sup>14</sup> Ibid., p. 58.

<sup>15</sup> Oregon, Journal of the House, 1887, p. 243; Oliphant, On the Cattle Ranges, p. 209.

<sup>16</sup>Oregonian, January 24, 1887, p. 1; ibid., February 8, 1887, p. 3; ibid., February 13, 1887, p. 7.

<sup>17</sup>Brimlow, Harney County, Oregon, p. 176.

<sup>18</sup>Oliphant, On the Cattle Ranges, pp. 208-209.

<sup>19</sup>Ibid., p. 190.

<sup>20</sup>Oregonian, February 29, 1884, p. 2.

<sup>21</sup>O'Callaghan, The Disposition of the Public Domain in Oregon, p. 68.

<sup>22</sup>Sullivan, "Conflict on the Frontier," p. 175; Oliphant, On the Cattle Ranges, pp. 206-207.

<sup>23</sup>Sullivan, "Conflict on the Frontier," p. 175; Oliphant, On the Cattle Ranges, p. 189.

<sup>24</sup>Lo Piccolo, Range Cattle Industry, p. 133; David L. Shirk, The Cattle Drives of David Shirk, ed. by Martin F. Schmitt (Portland: Champoeg Press, 1956), pp. 131, 140. Shirk wrote that at this time, French and other cattlemen were accumulating tens of thousands of acres "by every means, foul and fair. A corps of gun fighters was maintained to browbeat and intimidate settlers on the public domain, and small stock owners settling in the country were submitted to such annoyances, threats and despicable acts that they soon gave up the contest and sold out for whatever they could get." (Shirk, p. 131) Shirk went on to describe French as "a man of many admirable qualities of mind and heart, but whose tyrannical and overbearing temper brought about his own ruin." (Shirk, p. 140) French was shot to death by a frustrated settler in 1897. Shirk was a contemporary and foe of Peter French.

<sup>25</sup>Oliphant, On the Cattle Ranges, p. 190.

<sup>26</sup>Margaret L. Sullivan remarks: "The Harney Valley Items . . . made the name John Devine synonymous with dishonesty, perjury, and bribery." (Sullivan, p. 178). It was Devine's personality that aggravated the poor relations he had with settlers. Giles French wrote: ". . . he had gracious manners for his peers, but none for those of less fortunate circumstances." (French, pp. 94-96). Devine later worked for Henry Miller and the Pacific Livestock Company until Miller eventually had to fire him, saying, "I never knew a man who could make so many enemies." (French, p. 97).

- <sup>27</sup> Oliphant, On the Cattle Ranges, p. 192.
- <sup>28</sup> Sullivan, "Conflict on the Frontier," p. 176;  
Oliphant, On the Cattle Ranges, p. 190-191, 209.
- <sup>29</sup> Gates, History of Public Land, p. 327.
- <sup>30</sup> French, Cattle Country, p. 117.
- <sup>31</sup> Sullivan, "Conflict on the Frontier," p. 178.
- <sup>32</sup> Davenport, The Swamp Lands, p. 35.
- <sup>33</sup> Oregonian, November 18, 1886, p. 6.
- <sup>34</sup> Brimlow, Harney County, Oregon, p. 150.
- <sup>35</sup> Davenport, The Swamp Lands, p. 37.
- <sup>36</sup> French, Cattle Country, p. 96.
- <sup>37</sup> Lo Piccolo, Range Cattle Industry, pp. 63-64;  
Oregonian, February 6, 1888, p. 4.
- <sup>38</sup> Oregonian, February 8, 1888, p. 1.
- <sup>39</sup> Ibid., April 26, 1888, p. 3.
- <sup>40</sup> Ibid., February 25, 1889, p. 3.
- <sup>41</sup> Lo Piccolo, Range Cattle Industry, p. 64.
- <sup>42</sup> Sullivan, "Conflict on the Frontier," p. 64.
- <sup>43</sup> Oregonian, September 24, 1893, p. 8.
- <sup>44</sup> Ibid.
- <sup>45</sup> Ibid.
- <sup>46</sup> Ibid., October 2, 1893, p. 2.
- <sup>47</sup> Brimlow, Harney County, Oregon, p. 176.
- <sup>48</sup> L. D., XXI, pp. 256-258.
- <sup>49</sup> Ibid., p. 258.
- <sup>50</sup> Ibid., pp. 260-261.
- <sup>51</sup> Ibid., p. 259.

<sup>52</sup>Ibid., pp. 258-259.

<sup>53</sup>French, Cattle Country, p. 64.

## CHAPTER VII

### CONCLUSION

Oregon's reckless dealings in swampland sales had come to a halt by 1891, but the problems created by the poor administration of this grant would haunt the state for many years. In fact, litigation between swampland claimants (backed by the state courts) and actual settlers over disputed tracts was prolific in the 1890's and continued until well into the twentieth century.

Financially, the state was not yet out of the mire, either. Although the indebtedness for outstanding wagon road warrants had been eliminated, the state now found itself faced with the obligation to return money to the purchasers and assignees of swampland not patented by the federal government. The most notable example of this are the payments made by the state to C. N. Felton for lands he purchased in good faith from H. C. Owen. Even though Owen had paid the state next to nothing for these lands originally, Felton, in 1891, received \$11,897 from the state because it was unable to give him title,<sup>1</sup> and in 1893, he was given \$15,794, well over half of all disbursements made out of the Swamp Land Fund during that biennium.<sup>2</sup> This fund, which past governors had promised would someday

contain a million or more dollars, came to a ludicrous climax in 1895 when the state treasurer reported its balance, after twenty five years of operation, was eight dollars and seventy-six cents.<sup>3</sup> In addition to this, by 1891 the payment of outstanding wagon road warrants, appropriations originally stimulated by anticipated swamp-land sales, also nearly exhausted the tide land fund and the five percent fund.<sup>4</sup>

The swamp grant proved to be of absolutely no value to the state and the people of Oregon, but only a troublesome burden. The only beneficiaries of this grant were friends of the land board who lined their pockets with state funds for performing dubious services; speculators such as Owen; the owners of wagon roads never constructed; and cattle barons who were able to monopolize vast tracts of valuable land for many years with the state's blessing. It was well that Governor Pennoyer found reform necessary. Unfortunately, while the Pennoyer administration eliminated this source of fraud, it also persuaded the legislature to pass an act which allowed speculators fraudulently to acquire huge amounts of timber land for a pittance. Oregon thus soon entered into an even greater period of corruption.<sup>5</sup>

In conclusion, two historians have accurately summed up the history of the Swamp Land Act. In Oregon, F. G. Young came to the conclusion that this and other internal improvement grants were "a curse to the state," and maintained:

The handling of the Oregon's swamp land grant during the seventies and eighties wholly discreditable to the state. To say that it exhibits the extreme of credulity and supineness on the part of the Legislatures and Governors of these decades is placing the most charitable interpretation possible upon the policy pursued.<sup>6</sup>

Roy M. Robbins, writing on the effect of the grant throughout the nation, concurred. It was, he wrote, "one of the greatest land-grabs in the history of the public domain":

Only a small part of the proceeds of the original grants ever went to the purposes for which they were intended. Millions of acres fell into the hands of speculators and politicians. State and local governments in almost every case displayed such ineptness, corruption, and general inefficiency, that one wonders at the congressional decision to extend this land-grant policy in any form.<sup>7</sup>

## CHAPTER VII

### FOOTNOTES

<sup>1</sup>Oregon, State Treasurer's Report, 1891, pp. 172-173.

<sup>2</sup>Ibid., 1893, p. 187.

<sup>3</sup>Ibid., 1895, p. viii.

<sup>4</sup>See Tables 2 and 3.

<sup>5</sup>Young, "Financial History," XI, pp. 142ff.

<sup>6</sup>Ibid., X, p. 381.

<sup>7</sup>Roy M. Robbins, Our Landed Heritage (2nd ed: Lincoln, Nebraska: University of Nebraska Press, 1976), pp. 155-156.



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APPENDIX

TABLE I

SWAMPLAND SALES AS REPORTED BY THE  
STATE TREASURER AND THE STATE LAND BOARD,  
1872-1891

Biennium	Treasurer			Land Board		
	Received <sup>a</sup>	Disbursed <sup>b</sup>	Balance	Received	Forwarded to Treasurer	
1872	nothing reported	nothing reported		nothing reported	nothing reported	
1874	\$ 5,607.50	\$ 5,556.32	\$ 51.18	\$ 13,957.65	\$ 6,230.55	
1876	326.18	none	326.18	nothing reported	nothing reported	
1878	14,556.98	12,815.20 <sup>c</sup>	1,085.73	(gives total transactions from 1871 to 1878 as: \$42,989.32 received and \$20,736.35 forwarded to the treasurer.)		
1880	10,295.32	9,215.41 <sup>d</sup>	204.22	19,212.60	8,175.53 <sup>e</sup>	
1882	34,522.31	32,424.21	2,098.10	34,318.09	34,318.09	
1885 <sup>f</sup>	66,251.46	61,042.49	5,208.97	73,699.70	73,699.70	
1887	88,126.58	88,108.16	18.42	73,371.27	73,371.27	
1889	21,917.60	3,509.01	18,408.59	21,445.02	21,445.02	
1891	84,741.77	84,731.77 <sup>g</sup>	10.00	66,333.18	66,333.18	
Total Received	\$298,944.31					
Total Disbursed		\$297,402.57				
Ending Balance			\$ 10.00			

<sup>a</sup>Includes balance carried over from previous biennium.

<sup>b</sup>Nearly all of the disbursements were for the payment of outstanding wagon road warrants.

<sup>c</sup>In addition to this, \$656.05 was transferred to the school fund.

<sup>d</sup>Again, \$875.69 was transferred to the school fund.

<sup>e</sup>The receipts for 1880 included \$11,037 in the form of wagon road warrants presented by H. C. Owen. These were forwarded to the treasurer in 1882.

<sup>f</sup>Apparently, the decision to have the legislative sessions meet in January rather than September affected the bookkeeping for this biennium. However, when the figures for both 1885 and 1887 are added together, the land board report and the treasurer's report balance.

<sup>g</sup>The outstanding wagon road warrants having been paid off in 1891, the disbursements for 1891 returned the money of swampland purchasers who bought land not patented to the state. The original figure given in the treasurer's report was \$81,441.87. Shortly after that report had been written, an additional warrant for \$3,289.90 was paid (see: Oregon, General Laws, 1891, p. 1199).

<sup>h</sup>Total minus balances carried over.

Sources: Oregon, Biennial Report of the State Treasurer of Oregon (Salem: State Printing Office, 1872-1891).

Oregon, Biennial Report of the State Land Board (Salem: State Printing Office, 1872-1891).

TABLE II

OREGON'S FIVE PERCENT FUND, 1872-1891

Biennium	Received <sup>a</sup>	Disbursed <sup>b</sup>	Balance
1872	\$13,306.08	none	\$13,306.08
1874	18,532.44	\$18,526.86	5.58
1876	1,725.21	none	1,725.21
1878	6,716.79	2,458.33	4,258.46
1880	9,273.23	5,460.00	3,813.23
1882	3,813.23	none	3,813.23
1885	9,090.44	8,333.31	757.13
1887	17,122.82	17,023.97	98.85
1889	41,727.53	41,517.40	210.13
1891	29,100.45	22,711.33	6,389.12
Total Received <sup>c</sup>	\$122,420.32		
Total Disbursed		.\$116,031.20	
Ending Balance			.. \$6,389.12

<sup>a</sup>Includes balances carried over from previous biennium.

<sup>b</sup>Nearly all of the disbursements were for the payment of outstanding wagon road warrants.

<sup>c</sup>Total minus balances carried over.

Source: Oregon, Biennial Report of the State Treasurer of Oregon (Salem: State Printing Office, 1872-1891).



TABLE III

## OREGON'S TIDE LAND FUND, 1872-1891

Biennium	Received <sup>a</sup>	Disbursed <sup>b</sup>	Balance
1872	none	none	none
1874	\$ 3,025.75	\$ 2,854.24	\$ 171.51
1876	1,719.63	50.00	1,881.21
1878	3,142.48	2,161.65 <sup>c</sup>	472.24
1880	854.49	none	854.49
1882	2,196.77	1,902.78	293.99
1885	5,612.90	2,083.32	3,529.58
1887	4,813.08	3,804.98	1,008.10
1889	2,215.06	1,167.35	1,047.71
1891	2,834.00	none	2,834.00
Total Received <sup>d</sup>	.\$17,155.33		
Total Disbursed		\$14,024.32	
Ending Balance			.\$2,834.00

<sup>a</sup>Includes balance carried over from previous biennium.

<sup>b</sup>Nearly all of the disbursements were for the payment of outstanding wagon road warrants.

<sup>c</sup>An additional \$508.59 was transferred to the school fund.

<sup>d</sup>Total minus balances carried over.

Source: Oregon, Biennial Report of the State Treasurer of Oregon (Salem: State Printing Office, 1872-1891).

TABLE IV

OUTSTANDING WAGON ROAD WARRANTS, 1874-1891<sup>a</sup>

(Payable out of the Swamp Land Fund, Five Percent Fund,  
Tide Land Fund, and other minor funds)

1874 . . . . .	\$ 61,550.00	
1876 . . . . .	109,154.00	
1878 . . . . .	138,600.00	
1880 . . . . .	134,304.00	
1882 . . . . .	116,876.05	
1885 . . . . .	83,859.45	
1887 . . . . .	33,500.00	
1889 . . . . .	15,500.00	(plus accrued interest of \$18,698.37)
1891 . . . . .	None	

<sup>a</sup>The accrued interest on these outstanding warrants was not reported until 1889. The figures for that year may explain why the state treasurers were reluctant to give details. Compare these figures with the disbursements made toward this source of indebtedness (Tables 1-3).

Source: Oregon, Biennial Report of the State Treasurer of Oregon (Salem: State Printing Office, 1874-1891).

STATUS OF OREGON'S SWAMPLANDS IN THE  
DEPARTMENT OF THE INTERIOR, 1875-1892<sup>a</sup>

Fiscal Year	Number of Acres Selected for the State		Amount Approved		Amount Patented	
	By Year	Total	By Year	Total	By Year	Total
1875	none	none	none	none	none	none
1876	8,301	8,301	1,336	1,336	none	none
1877	1,715	10,017	3,113	4,449	4,449	4,449
1878	33,670	43,687	none	4,449	none	4,449
1879	9,609	53,296	none	4,449	none	4,449
1880	120,909	174,205	none	4,449	none	4,449
1881	none	174,205	1,211	5,660	none	4,449
1882	none	174,205	20,160	25,821	20,160	24,610
1883	none	174,205	99,772	125,594	3,074	27,685
1884	49,659	223,865	1,021	126,616	916	28,601
1885	99,635	323,500	2,709	129,325	2,709	31,311
1886	24,719	348,220	none	129,325	none	31,311
1887	1,615	349,836	none	129,325	none	31,311
1888	19,258	369,094	2,776	132,101	1,316	32,627
1889	38,767	407,861	71,026	203,128	72,270	104,897
1890	2,810	410,671	40,865	243,993	36,085	140,982
1891	8,598	419,270	53,137	297,131	58,135	199,118
1892	none	419,270	18,033	315,164	1,308	200,426

<sup>a</sup>Lands which were approved but subsequently revoked by the Interior Department when fraud was discovered were not deducted from the running totals in the annual reports.

Source: U. S., Department of Interior, General Land Office, Annual Report of the Commissioner of the General Land Office (Washington, D. C.: Government Printing Office, 1875-1892).