SJR

6

USE COMMITTEE REPO

(9)

Date Referred: February 8, 1995

FURTHER REFERRALS:

Date of Committee Action: 2/22/95

The RESOURCES Committee considered: SJR 6

SENATE JOINT RESOLUTION NO. 6 — TRANSFER FED. LAND TO POST-1802 STATES

Relating to federally held property in those states, including Alaska, admitted to the Union since 1846.

recommends it be replaced with the following committee substitute ______ [ ] the same title [ ] a new title

[ ] additional referral to ______ Committee
[ ] attached amendment(s)

ADOPTS: ______ Letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept) | APPROVES PREVIOUS: (Dept/Date)

[ ] fiscal note(s) ______ | [ ] fiscal note(s) ______

[ ] zero fiscal note(s) ______ | [✓] zero fiscal note(s) SEN RES 2/3/95

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
[signature]	✓			
[signature]	✓			
[signature]	✓			
[signature]	✓			
[signature]	✓			
[signature]	✓			
[signature]		✓		
[signature]		✓		

CHAIR'S SIGNATURE [signature]

HOUSE RESOURCES COMMITTEE
Roll Call and Members' Bill Votes

* (indicates first public hearing)

Room 124, Capitol Bldg. | (Mon.), Wed., Fri.

Date: 2/20/95

Tape# 95-20 | Joint ______

Time: 8:10 (am)/pm | Time Adjourned: ______ am/pm

ROLL CALL:	PRES	ABS	TIME AR			
Rep. Joe Green	✓					
Rep. Bill Williams	✓					
Rep. Scott Ogan	✓					
Rep. Alan Austerman	✓					
Rep. Ramona Barnes						
Rep. John Davies	✓					
Rep. Pete Kott						
Rep. Eileen MacLean						
Rep. Irene Nicholia						

Other Legislators Present ______

AGENDA:

Bill No.	Short Title	Action Taken
HB 128	Waste Disposal Permit Exemption	
SJR 6	Transfer Federal Land to [illegible] States	

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Copies of minutes listed below were originally included in this file. The minutes are available on the legislative computer database. In order to save space copies of minutes have not been left in the files.

Mary Pagenkopf

House Resources
2-20-95 8:10 am
Tape #95-20
SJR 6

HOUSE RESOURCES COMMITTEE

Alaska State Legislature
House of Representatives

DATE: 2/20/95

PLACE: ROOM 124

SUBJECT OF MEETING:
HB 128 Waste Disposal Permit Exemption
SJR 6 Transfer Federal Land to Post-1802 States

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?		WHAT SUBJECT/ WHICH BILL?
Wayne Regelin	Fish & Game	PO Box 21556				Y	N	HB 170
Molly Sherman	A & L	PO Box 22155	99801		463-356	(Y)	N	HB 128
Sena Herman	AEL	" "	"		"	(Y)	N	HB 170
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	

Page ___ of ___

HOUSE RESOURCES COMMITTEE

Alaska State Legislature
House of Representatives

DATE:

PLACE: ROOM 124

SUBJECT OF MEETING:

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?		WHAT SUBJECT/ WHICH BILL?
Joel Bennett	Defenders of Wildlife	114 W. 6th St Juneau AK	99801	586-1255		(Y)	N	HB 170
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	

Alaska State Legislature

Chairman,
Judiciary Committee

Vice Chairman,
Transportation Committee

Member,
Resources Committee
Western Legislative Forestry Task Force

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Senator Robin L. Taylor

MEMORANDUM

FEB 09 1995

TO: Representative Joe Green, Co-Chairman
House Resources Committee

FROM: Senator Robin L. Taylor R.L.T.

DATE: 2/8/95
REF: Hearing Request - SJR 6

****

Please consider this to be my formal request for a hearing on Senate Joint Resolution No. 6 at your earliest convenience. This resolution passed the Senate 15-0 on Monday.

As the attached letter from Senator Murkowski indicates, our efforts on this issue have already drawn attention. I have circulated this resolution among the land poor states and I hope Alaska will lead the charge by being the first to pass this measure.

Thank you in advance for your consideration of this request.

Alaska State Legislature

Chairman,
Judiciary Committee

Vice Chairman,
Transportation Committee

Member,
Resources Committee
Western Legislative Forestry Task Force

Senator Robin L. Taylor

State Capitol
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SPONSOR STATEMENT

SENATE JOINT RESOLUTION NO. 6

Before the House Resources Committee
February 13, 1995

The Founding Fathers recognized that land was power and that a centralized federal government with a substantial land base would eventually overwhelm the states. That is why the original 13 colonies and the next five states admitted to the Union were given fee title to all land within their borders.

The Constitution even includes a provision allowing for the donation of land to the federal government for the creation of the District of Columbia. The Founders guarded land ownership jealously, writing into the Constitution's first article a provision allowing the federal government to purchase, with the consent of the Legislatures of the states, land it needed for "the erection of forts, magazines, arsenals, dock-yards and other needful buildings".

The opening of the West, with its wealth of resources, led an envious federal government to begin to withhold for itself large portions of land within the borders of newly admitted states under the guise of "public domain".

The result of this doctrine was the creation of what SJR 6 refers to as "land poor" states, admitted to the Union as unequal, federally dominated entities.

SJR 6 calls upon the Congress to right this wrong and release to the states all federal holdings within their borders. The action proposed by this resolution would make land-use decisions now being decided by the Congress mute and empower the states to settle those issues on their own.

Sponsor Statement - SJR 6
2/1/95

Copies of the draft of SJR 6 were sent to members of the Congressional delegations from the "land poor" states as well as to groups and individuals interested in this issue.

I urge prompt passage of SJR 6, making Alaska the first land poor state to go on record calling for equal footing among the states where land ownership is concerned.

No. 1

FISCAL NOTE

Bill Version: SJR 6

(S) Publish Date: 2/3/95

STATE OF ALASKA
1995 LEGISLATIVE SESSION

Revision Date:
Title: CS SJR 6(RES) Relating to federally held property
Sponsor: Senator Taylor
Requester:

Dept. Affected:
BRU:
Component:
COMPONENT SERIAL NO.

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0					
CAPITAL EXPENDITURES	0					
CHANGE IN REVENUES ( )	0					

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0					

Estimate of any current year (FY95) cost: $ 0

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Senate Resources Committee Phone: 465-4907
Division: Date: 2/1/95
Approved by Commissioner: Senator Loren Leman, Chairman Date: 2/1/95
Agency:

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FRANK H. MURKOWSKI
ALASKA

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January 17, 1995

The Honorable Robin Taylor
Alaska State Legislature
State Capitol
Juneau, Alaska 99801

Dear Senator Taylor:

Thank you for your letter of December 7, 1994, concerning land status in the states. With a greater percentage of federal land than any other state except Nevada, Alaska has been forced to struggle along with minimal ability to provide economic opportunities for her citizens.

Promises of earning a living from federal lands such as forests have been dashed in Southeast. Access in Denali has been limited to a 90 mile dirt trail, sometimes called a road by the Park Service, in a park larger than numerous states. Tourists are turned away with their cameras and their wallets.

Currently, an effort to remake the federal-state relationship is underway in everything from unfunded mandates to land policies. One proposal which I support is to turn as much land as possible over to the states. However, it is very unlikely in this budget conscious era that the federal government would then be required to purchase back land that it needed or wanted. The best that can be hoped for would be a substantial return of federally controlled land back to the states, probably starting with BLM land.

I will work as Chairman of the Energy and Natural Resources Committee in this Congress to turn back years of restrictive land grabs, policies, and regulations. The American public has spoken out against the overreaching powers of the federal government and I will assist the rollback effort. Thank you again for your comments.

Sincerely,

Frank H. Murkowski
United States Senator

Additional back-up information on SJR 6

Summarized from *The Federal Lands Revisited* by Marion Clawson.

Relations between the federal and state governments on land matters have a long and involved history. There was never any significant acreage of federal land in the original 13 colonies or in the states formed from the original 13. There was no significant federal land in the states of Texas and Hawaii, which were both independent countries before being their admission to the Union.

The matter of federal land grants to the states was an important political issue in all remaining states, which were formed from the so-called "public domain", the areas consisting of the territories created by treaty, purchase and settlement. The first was these states was Ohio, admitted in 1802.

The Congress insisted and the new states, often under protest, accepted a disclaimer by which they relinquished all further claims to federal land. Some advocates of a transfer of federal lands to the states believe this disclaimer was only forced on the western states; in fact, from Ohio onward, every new state, with the exceptions of Texas and Hawaii, were forced to agree to the disclaimer.

While the states agreed to relinquish future claims to federal holdings, there is nothing in the enabling legislation that established those states to prevent the Congress from increasing the land allocations. The states have made great progress in the management of their lands from the days early in the late 19th and early 20th centuries, which were marred by incompetence mixed with fraud.

The subject of the transfer of federal holdings is still very much alive, given such movements as the Sage Brush Rebellion and other stirrings.

Regardless of the terms of any proposed transfer, major opposition can be expected from conservation groups nationwide. The opposition can be expected to argue that past episodes prove state incompetence and that states would manage new land holdings with an eye on cash returns rather than preservation.'

Proponents would be expected to argue that state administration would be closer to the users and that in the state's with the greatest percentage of federal land, land could be transferred into private ownership.

On America's long march toward the welfare state, retention of public lands by the feds was the first milestone. Let's demolish that milestone.

Federal imperialism

BY ROBERT H. NELSON

Robert H. Nelson is a professor in the School of Public Affairs at the University of Maryland. His forthcoming book is *Public Lands and Private Rights: The Failure of Scientific Management.*

IS CONGRESS SERIOUS about devolving major federal responsibilities to the states? It can show it is by transferring the public lands to the states.

The federal government owns almost 30% of the U.S., most of it in the West. Nevada is 83% federal. Nevadans complain of being a federal colony. That's because the federal government makes decisions over this vast domain on matters that everywhere else would be state and local. Can pipelines be constructed, dams erected, ski resorts built? The feds decide.

Economist Randall O'Toole has commented that the assets of the U.S. Forest Service would rank it in the top five among corporations in the U.S., but in terms of net income, the agency "would be classified as bankrupt."

But it won't be enough just to give title to the states. If the western states were required to follow all the existing federal rules and procedures, the land might become a burden. To be workable, the transfer must be done with few strings attached. That's why I say this is a real test of how serious Congress is about devolution. Congress would really have to keep hands off.

The states could cut management costs and get revenue from these valuable properties. Or they could preserve them intact. The decision would be made locally.

Whatever the states decide, land management would improve. A 1994 study by Donald Leal of the Political Economy Research Center in Bozeman, Mont. shows why. It found that on adjacent forests in Montana, the state earned $13.7 million on its own timber operations over a five-year period while the nearby federal timber programs cost taxpayers $42 million.

In one region, state managers required 4.5 hours of labor per thousand board feet of timber sold. The Federal Forest Service took 11.6 hours to do the same thing. Did the savings achieved come at the expense

> **If Congress is serious about devolution, what better place to start than with federal lands.**

of the environment? Absolutely not. The state lands received higher ratings for environmental protection.

A 1980s Interior Department study found that when all costs were accounted, livestock management by the Federal Bureau of Land Management was costing over $100 million a year, while total grazing fee collections were less than $25 million. Recreationists were even more heavily subsidized, paying less than $1 million in user charges, while the Bureau of Land Management was spending more than $100 million on their behalf. Would it be so horrible to require backpackers to pay a few bucks for the scenery and solitude they so desire?

The federal government in 1992 did manage to collect $865 million in royalties from its oil and gas, coal and other mineral leases. But most of the revenues were disbursed to state governments or to accounts other than the U.S. Treasury.

It wasn't always thus. In the 19th century the policy of the federal government was to dispose of the public lands in the interest of economic development to homesteaders, railroad builders and others. But around the turn of the century, there was a change of policy. Public lands became pawns to the new vision of scientific management of society. Conservationists such as Gifford Pinchot in 1905 argued that private management would inevitably waste the nation's timber and lead to a "timber famine." Only the federal government, Pinchot argued, could supply the scientific skills to use the forests and rangelands of the nation for the long run.

Progressivism was an American version of socialist planning, based on a dream of applying "science" to public policy. That dream has ended as badly here as those dreams have elsewhere, though luckily for us not on the same scale. Everywhere in the world today, privatization is on the march. Nations are dismantling the dismal 20th-century legacy of government property and resource ownership.

So, what is Congress waiting for? It can turn the public lands from a liability for taxpayers into an asset. Transfer them to the states, perhaps retaining at the federal level a few park and wilderness areas that for environmental or historical reasons are of genuine national distinction.

Devolving ownership would not necessarily result in state management. The states would have many options. They could continue to own the lands or further decentralize ownership to local governments. They could create public corporations to run them. Ownership could continue to vest in the state, but management could be contracted out to private parties. Many policy flowers would bloom, and we would find out which blossomed the best. What better place to start if we are serious about scaling back the welfare state? ■

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C O N S T I T U T I O N A L   S T U D I E S

Prepared on behalf of the

ALASKA STATEHOOD COMMITTEE

for the

ALASKA
CONSTITUTIONAL CONVENTION

Convened
November 8, 1955

P U B L I C   A D M I N I S T R A T I O N   S E R V I C E

Volume 1 of 3

2933 11

THE ALASKAN CONSTITUTION AND THE STATE PATRIMONY

Of the many problems and issues facing the Delegates at College, none has so great a long-range importance as that involving Alaska's lands and resources. The lands and resources problem may be stated thus: What should be the nature, scope, and possible verbiage of constitutional provisions, if any, that may be necessary to assure that the lands and natural resources of the new State of Alaska will be developed (1) to their highest potential and (2) for the benefit of all the people of Alaska? The two aims of development are not incompatible and both are of equal importance.

Emphasis must be placed at the outset upon two points. The term Alaskan "lands and natural resources" is a broad concept as it is used in this paper. It comprehends not only the agricultural and grazing uses of land so traditional in the midwestern and some of the western states but subsurface mineral wealth, forests, wildlife, and the resources of the navigable waters and the sea, including the subsoil of submerged lands and tidelands. The facts of Alaskan geography and economic existence require the use of this somewhat broadened conception of the term "lands and natural resources."

In the second place, the problem of lands and resources development and management has three phases: (1) the establishment of constitutional policy; (2) the creation of a resources code by the legislature or the passage of necessary legislation in the land and resources field; and (3) the implementation of the constitutional and statutory provisions by administrative agencies of the state government. The second and third phases of resources development and management are not properly subjects for inclusion in the State constitution. It is of vital importance that the administrative machinery should not be made a part of constitutional provisions. Nor should a "resources code" be incorporated into the document, for the writing of such a code is the proper province of the legislature. The establishment of a resources code, or the passage of legislation, and the creation of an administrative agency or agencies to administer the lands and resources development of the new State should not be undertaken until an extensive and relatively complete study of Alaska's resources, as defined in this paper, has been undertaken. Such a study would necessarily be a lengthy one and would entail considerable expenditure.

This staff paper is confined to the constitutional phase of resources development and management.

The Nature and Extent of Alaska's Patrimony

There are many elements that in their totality comprise the patrimony of the future State of Alaska. Land is, of course, the element of most common consideration.

Land Grants

The new State of Alaska will receive substantial land grants at the time of its admission to the federal Union. The exact amount and type cannot be forecast with complete accuracy, but there is a sound reason for belief, based on enabling legislation which has been previously introduced in the Congress, that the total amount may equal something over 103 million acres. This acreage is approximately equal to that of the total land acreage of the State of California.

The transfer of this vast acreage from the public domain of the United States into the hands of the State of Alaska represents in effect the transfer of an Empire. Even though Alaska's choice, to be exercised over a twenty-five year period if provisions of recent enabling legislation are followed, will be considerably limited by United States withdrawal and reservation policy, no other state has ever received, either dollar-wise or acreage-wise, so great a patrimony.[1]

The provisions of Senate 49, 84th Congress, one of the recently proposed enabling acts, are typical of most recent proposed land grants to Alaska. Section 205, in summary, provided for the following acreages to be granted for the purposes

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[1] Texas had a greater state public land acreage than that which Alaska will receive. Texas entered the Union, however, from independent republic status. The agreement at the time of her admission required the new State to assume the payment of the debts of the Republic of Texas; in return the State was allowed to retain its public lands.

noted:[2]

	Acres
From national forests for community development	400,000
From public lands for community development	400,000
From public lands for State	100,000,000
From public land for:	
Government buildings	500,000
Institutions for mentally ill	200,000
Schools and asylums for deaf, dumb, and blind	200,000
Normal schools	500,000
State charitable, penal, and reformatory institutions	200,000
Needy pioneers	250,000
University of Alaska	500,000
Penitentiaries	200,000
Total proposed grants to Alaska	103,350,000

H. R. 331, introduced by Delegate E. L. Bartlett in 1949, had followed the traditional pattern in providing for land grants in his proposed Alaskan enabling legislation; sections 2, 16, 32, and 36 of each township, plus certain special grants, were to be given to the new state for the support of its common schools.[3] As amended by the Senate Committee on Interior and Insular Affairs and reported in 1950, the section provided for a round figure grant of 20 million acres, rather than a grant based on specifically numbered sections. The change was made because such a minor fraction of Alaska has been surveyed; grants of specific sections would have nade very little land immediately available to the State. The 20 million acres so granted was to

[2] Section 205 also included small specific property grants, e.g., Block 32 in the City of Juneau. The provisions of H. R. 2535, 84th Congress, as reported, were identical.

[3] Section 5 of the measure as introduced.

be held in trust for the support of public schools and public educational institutions, and restrictions were placed on the state as to the size of tracts which might be sold and with reservation of royalty rights in minerals.[4]

The Bartlett Bill had followed tradition. Utah, Arizona, and New Mexico had been admitted to the Union with such grants of specific sections for school purposes.[5] Discussion of statehood measures by Congress through the years, however, caused many members to reach the conclusion that the traditional formula would not give Alaska a broad enough economic base on which to found a fiscally sound state government. S. 50, as introduced in the 93d Congress, for example, called for a grant of 20 million acres plus other special grants; as reported, with a substitute, by the Senate Committee on Interior and Insular Affairs, however, the land grant provisions called for 100 million acres plus special grants. All enabling legislation introduced in the 84th Congress calling for Alaskan statehood, save one, contained the 100 million acre provision. The hope, expressed in committee hearings and congressional debate, was that the greater acreage would enable the new state to get off

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4. "Such lands may be granted or sold by the State in tracts of not more than 640 acres for any purpose, but with a reservation to the State of a royalty of not more than 12½ per centum on all minerals produced therefrom." Section 5(b), as reported by the Senate Interior and Insular Affairs Committee.

5 Oklahoma, which entered the Union after Utah, but before Arizona and New Mexico, received sections 16 and 36 only. Wyoming, Idaho, Washington, Montana, and North and South Dakota, the six states admitted before Utah, received sections 16 and 36.

to a flying start. There was full appreciation on the part of members of Congress that the historical grant formula was being abandoned; some few members of Congress opposed the greater acreage grants. Because of the tremendous acreage involved, the basic 100 million acre grant was not limited to direct support of public education. Such a limitation would have been unrealistic, for the new State would need financial support for many other necessary activities besides education.

But of one fact, there can be little doubt. Whether the acreage is 20, 40, or 100 million, Alaska will receive, upon the assumption of statehood, a tremendous amount of public land. The State will make its choices within some set period of years, probably 25, and from those lands in the United States public domain which are "vacant, unappropriated, and unreserved" at the time of selection.[6] The national policy of withdrawal[7] and reservation very definitely will restrict the State's freedom of choice, as the following chart demonstrates:

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[6] Most enabling legislation which has been introduced would have allowed selections of specific acreage from national forest lands which were "vacant and unappropriated" for the purpose of developing and expanding Alaskan communities. The highest figure in any legislation on this type of acreage has been 400,000 acres.

[7] Withdrawn land is land removed from the status of vacant public domain by the federal government. It is not open to settlement and is generally not available for selection by the future state.

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PUBLIC LAND AND MINING LAW

Text and Cases

By Loren L. Mall, J.D.
Instructor, Program of Advanced Professional Development
University of Denver College of Law

Third Edition

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1 ASSEMBLY OF THE PUBLIC DOMAIN

A. Colonial Period

The public land laws of the United States are deeply rooted in the earliest history of the country. The present system has evolved steadily over the generations from the first European settlement in the New World to the present day.

The discovery by Columbus of a new American continent in 1492 was followed quickly by other exploratory voyages by the English, French, Spanish, Dutch, and others. The English navigators were the first to find and explore the northern part of the Atlantic coast of America. In 1498, they claimed title to those lands in the name of the King of England by right of discovery.

The competition for the rich bounty which America promised was fierce among the European nations. Great Britain supported its land claims with its superior navy. Soon the English had the best claim to the eastern seaboard and parts of the interior west to the Mississippi River. Spain appropriated the western lands and those far south. France settled the St. Lawrence Valley in the north and advanced its claims along the waterways into the interior of the new continent.

For a hundred years after its initial claims by right of discovery, the title of Great Britain to the Atlantic seaboard was maintained only by exploratory voyages along the seacoast and expeditions into the interior on navigable streams. No settlements were established. Even land explorations were rare and limited because the few early explorers were awed by the concentration of Indians which they encountered near the seacoast and the rivers.

In the last quarter of the 1500s, Queen Elizabeth of England granted several charters for the establishment of colonies in America. All of these attempts failed, and no permanent toehold was established on the new continent in Elizabeth's time. The first successful English colony was established in Jamestown, Virginia in 1607. Over the next 125 years all of the original thirteen colonies were founded. The English title to the eastern part of the New World was bolstered by its rapidly expanding colonies.

The English charters given by the Crown for the New World colonies were extraordinary grants. The charters were issued to proprietors who hoped to profit by their risky investments. The charters granted vast tracts of untamed land to the proprietors. The Virginia grants extended for several hundred miles north and south along the seacoast, and the western territorial limits ran all the way from the Atlantic to the Pacific Ocean. Other early grants extended from the Atlantic west-

ward for vague and uncertain distances. The result was that a few colonies were granted all the land westward to the Pacific. Because the geography was little known, the territorial limits of the grants were uncertain, and the colonial grants frequently overlapped.

Neither Great Britain nor the colonies accorded the aboriginal Indians any title to the lands they occupied except the right of occupancy. The colonies, acting through their proprietors and governors, negotiated treaties and other purchases of the occupancy rights of the Indians. Some of the colonies took title to such lands for the English Crown, but others took title for the benefit of the colony. Some individual settlers purchased Indian rights for themselves. The colonies awarded bounty land to soldiers, sold lands to buyers, and gave land grants in exchange for development. Thus, the lands within the colonies passed into private ownership.

The French, expanding from their settlements in Canada, had extended their claims on the American continent into the Ohio and Mississippi basins by 1750. In 1752, the governor of Virginia sent George Washington to the French military commander on the Ohio River with a warning to stay out of that territory which was claimed by Great Britain. When Washington was ignored, he commanded troops in two military engagements against the French at the Ohio. When both skirmishes were lost, Washington retreated, and the Seven Years War between Great Britain and France had begun.

The Seven Years War was a worldwide struggle for domination of great colonial empires. After several years, France was militarily exhausted, and Spain planned to enter the war against Great Britain to help the French. Great Britain declared war on Spain and quickly took the Spanish holdings in Havana in th. 'est Indies and Manila in the Philippines. The warring nations settled their colon 'ispute by the Peace of Paris in 1763. The French treaty gave Great Britain both .ada and undisputed possession of the American continent as far west as the Mi. .sippi. The Spanish treaty gave Great Britain the territory of Florida in exchange for Havana while Spain was compensated by France with the great province of Louisiana, west of the Mississippi. The peace established English hegemony over the eastern third of the American continent. The French presence in America was virtually ended.

When the Peace of Paris settled the war, the British cabinet was painfully aware that British control over the thirteen colonies was weak. The British colonial governors often yielded to colonial pressures rather than following imperial dictates. The acts of trade prohibiting commerce with French colonies in the West Indies were being violated. The colonies were not fulfilling their quotas of troops and supplies to Great Britain for the defense of her world-wide empire. The colonies and frontiersmen were acquiring western lands on the frontier without accepting British control of them. Therefore, at the end of the war, the British king issued the Proclamation of 1763 in order to control the interior of the new continent. The Proclamation proscribed settlement of all lands west of the Appalachian Range, outraging the colonists. The Proclamation jeopardized established settlements and claims west of the line, nullified the old colonial claims to the interior, and confined the inexorable pressure for westward expansion.

By the Quebec Act of 1774, Great Britain transferred all rights to the lands north of the Ohio and west of the Appalachians to the British colony of Quebec which was considerably more respectful of the mother country. Great Britain also began to enforce the trade acts more effectively, and it imposed new taxes on the colonies to increase revenues. At the same time, the colonial governors were ordered to discontinue all land grants under the prevailing free system. They were ordered to make prior land surveys and to convey colonial land only after a public auction which produced an established minimum price for the British government.

These and other attempts of the British government to reassert control over the colonies led to the Declaration of Independence in 1776 and the beginning of the American Revolution. The state of war extended for seven years, and when it

ground to a halt, the English colonial period of 176 years had ended. The thirteen original British colonies were battered and deep in debt, but they had emerged victorious in the end.

The War was concluded by the Peace of Versailles in 1783. France and Spain had joined together to oppose Great Britain one more time, and this time Spain reacquired Florida from Great Britain. By the Peace of Versailles, the thirteen colonies established their individual sovereignty not only over the colonial lands but also over all of their western land claims in America.

B. Cessions by the States

By the Peace of Versailles of 1783, Great Britain confirmed the sovereign title which the new American states had claimed for themselves in the Declaration of Independence. During the course of the seven years of the Revolutionary War, the states had formed a loose association under the Articles of Confederation whose ratification was completed in 1781. The Articles, however, left intact the old claims of seven states to the vast tracts of unoccupied land stretching westward. Virginia and others opened land offices, made private land grants, granted military bounties and otherwise commenced to dispose of the western lands. Maryland, followed by the other five states with no western land claims, insisted that the western lands should be held for the common benefit of all the states. This disparity in land claims resulted in the first protracted national debate, one which threatened to prevent formation of a confederation.

The objections to western land ownership by the individual states were serious. Many of the claims overlapped because of the conflicting grants made by Great Britain. As a practical matter, it seemed impossible for states of co-equal dignity to adjust these boundaries. Even more compelling, the argument was made that the western lands had been won "by the blood and treasure of all, and ought therefore to be a common estate, to be granted out on terms beneficial to the United States." [Resolutions of Delaware of Feb. 23, 1779, to the Continental Congress during debate over ratification of the Articles of Confederation, quoted in T. Donaldson, *The Public Domain*, 60-61 (1884) (1970 reprint).] The states without western land claims also feared that the other states would eventually hold disproportionate power under any plan of elected representation based on population.

Among the three holdouts, New Jersey and then Delaware ratified the Articles in reliance on the good faith and sense of justice of the other states to eventually limit the western land claims. Maryland, however, still refused to sign because no amendment was reached fixing boundaries to limit the western reach of the frontier land claims. Because of the failure of the two sides to agree and the indispensable need to form a union, the Continental Congress asked the states with western land claims to relinquish them to the Confederation. The Congress then resolved that such lands as might be ceded would be held for the common benefit of the United States, that lands within the western territories would be granted and settled as any nine states might agree in Congress, and the lands would be settled and admitted to the Union as new states with the same rights as the original states. Thereafter, starting with New York on March 1, 1784 and ending with Georgia in 1802, the seven states ceded the western territories to the federal government. On the same day on which New York deeded her land claims, Maryland ratified the Articles on promises that the western lands would be surrendered by all seven states. The Confederation was then complete. Congress exercised the national powers of government for eight years under the Articles until they were superseded by the Constitution on March 4, 1789.

The cessions of western land resolved the conflicting claims between states to those territories by uniting the title in the central government. The cessions also created the first public domain of the United States, reaching all the way from the

Alleghenies to the Mississippi. The public domain was that land over which the United States acquired not only title before any private rights attached but also sovereign jurisdiction since no states then had jurisdiction.

Not all of the state cessions became part of the public domain, however. The land which is now the present state of Kentucky was reserved by Virginia. Later, Virginia agreed to the separation of Kentucky as a state and ceded that part of Virginia within Kentucky directly to the new state for that purpose. Tennessee was created out of lands ceded to the federal government by North Carolina, but it was almost entirely subject to private claims. Accordingly, it has not been considered either an addition to the public domain or one of the public land states. Congress gave Tennessee the authority to dispose of the unappropriated lands within the state in 1841. Vermont was never a public land state; rather, its territory was claimed by both New York and New Hampshire. The early Vermont settlers organized a de facto government, but could not gain admission to the Confederation of States because New York opposed recognition of Vermont as a separate state. Only after adoption of the new constitution in 1789 was Vermont admitted to the Union, becoming the fourteenth state in 1791.

Besides the original thirteen states and Kentucky, Tennessee and Vermont, two other eastern states were never public land states. Maine was created out of Massachusetts in 1820 and West Virginia was carved out of Virginia in 1863.

There were also numerous private claims of individual settlers in the cessions of the original states based on state grants, state settlement laws or mere occupancy. Also, Virginia and North Carolina had granted military bounties to their soldiers who had fought in the Revolutionary War. Much litigation, numerous acts of private legislation, and years of effort were required to settle all the disputes which arose over the private claims and military bounties.

C. Purchases, Conquests and Treaties

Between 1803 and 1853, the new Republic founded on the Atlantic seaboard acquired a vast empire by expanding south and west of the Mississippi. The last deed of cession by the state of Georgia to the United States on June 16, 1802 had barely been delivered when the United States purchased Louisiana from France in 1803.

Louisiana had been traded between France and Spain more than once. France claimed it originally by right of discovery and early voyages on its rivers. In 1763, France ceded the Louisiana territory west of the Mississippi to Spain as part of the settlement of the Seven Years War. Spain, determined to prevent American expansion to the west or south, refused to recognize the American claim to transport through New Orleans at the mouth of the Mississippi. During the course of the Napoleonic Wars in Europe, Napoleon forced Spain into an alliance. As a consequence, in 1800 France acquired title to Louisiana from Spain. The new French position at the western border of the United States raised even more alarm in the young Republic than Spanish control had caused. President Jefferson concluded that the United States had to control the great thoroughfare of the Mississippi if it was to transport its products to market by sea. Moreover, Napoleon had established a pattern of invading countries in Europe, Asia and Africa. Jefferson probably perceived also that the real security of the United States depended upon its expansion to the Pacific Ocean. Napoleon understood that too and is reputed to have said that the nation which controlled the Mississippi Valley would eventually be the most powerful in the world. [T. Donaldson, *The Public Domain*, 95 (1884) (1970 reprint).] Napoleon, however, was sorely pressed for funds to continue his European wars, and he could not defend the Louisiana territory from his European enemies.

Accordingly, he agreed to sell the entire province. The treaty was concluded in 1803. The Louisiana Purchase added land equal to another quarter of the contiguous 48 states to the United States.

Jefferson had originally sought to buy only the City of New Orleans and the Island of New Orleans as shipping ports. Napoleon would only sell all or nothing, and the whole of Louisiana was so large that President Jefferson believed that this addition to the public domain would provide settlement lands to the American pioneers for at least 500 years. Indeed, the Louisiana Purchase nearly doubled the size of the nation. Yet this acquisition was followed over the next half century by a series of other great acquisitions which extended the western boundary of the United States to the Pacific Ocean.

Spain still held Florida. The Spanish king rejected Jefferson's attempts in 1805 to purchase Florida. In 1810, the people of West Florida declared themselves independent of Spain, and the United States occupied that territory on the ground that it was a part of the Louisiana Purchase which had been loosely defined in the treaty. In 1818, American troops led by Andrew Jackson invaded Florida to stop an Indian war against the white settlers of Georgia. Other disputes with Spain continued until Spain finally ceded both East and West Florida to the United States by treaty in 1819. The Spanish treaty also fixed the southwestern boundary between the United States and Spain, something which the Louisiana Purchase had not done.

The Mexican War for independence from Spain began shortly thereafter. Its inception caused Spain to fail to implement the southeast boundaries with the United States as established by the treaty of 1819. After Mexico won independence in 1821, Mexico and the United States reaffirmed the Spanish border of 1819 by their own treaty in 1828. American settlers flooded into Texas, while in 1835, the Republic of Mexico proclaimed a new constitution which denied rights to its states. The proclamation caused the secession of Texas, and its war of independence began at the Alamo in 1836. In that year, the Texans drove the Mexican army out of Texas, and the insecure Republic sought annexation to the United States as a protection against return to Mexican control. Texas was admitted to the Union in 1845, but the state retained the right to dispose of her public lands. Land within the present state borders of Texas which was not owned privately did not become public domain lands. Instead, Texas enacted settlement laws and made her own dispositions of lands and grants to railroads from these state lands. Some land lying outside the present state boundaries of Texas did serve, however, as an addition to the public domain. The United States purchased those lands from the state of Texas in 1850. The Texas purchase included what is now the southwestern corner of Kansas, southeastern Colorado, the eastern part of New Mexico, and the present panhandle of Oklahoma.

There was doubt in Europe that the United States could win a war with Mexico which promised to break out at any time after the annexation of Texas in 1845. In addition, the simultaneous dispute with Great Britain over the Oregon border threatened to bring Mexico and Great Britain into alliance against the United States. The United States claimed the Oregon territory on three grounds. They were, first, discovery and prior occupation, second, cession from Spain by the treaty of 1819, and third, inclusion of the Pacific Northwest in the Louisiana Purchase. President Polk wanted to be free of war with Great Britain so as to better fight Mexico for the Southwest, so he and the Senate quickly accepted Great Britain's offer for a compromise boundary on the north. By the Treaty of 1846, the United States gained the area encompassing the present states of Oregon, Washington, Idaho, northwestern Montana and western Wyoming. Except for private claims of settlers, all of this land became part of the public domain.

President Polk and the country wanted California too. Attempts were made to ferment sentiment for another war of independence from Mexico on the west coast. When those efforts failed, General Zachary Taylor and the American army crossed from Texas into Mexico, provoking war with Mexico. A few American settlers in California then revolted, and by 1846, California was controlled by American settlers. The United States army took Mexico City by a sea route and defeated the Mexican Army in 1847. By the Treaty of Guadalupe Hidalgo of 1848, Mexico ceded to the United States the great Southwest. The area acquired by the Mexican cession included what are now the states of California, Nevada, Utah and Arizona (except the Gadsden Purchase), that part of New Mexico west of the Rio Grande and north of the Gadsden Purchase, that part of Colorado west of the Rocky Mountains, and southwestern Wyoming. This large area, with the exception of prior Spanish and Mexican land grants, was added to the public domain. Determining the validity of the huge land grants by prior governments consumed much time and litigation effort until recently.

The expansionists in the United States wanted still more of Mexico. Proposals to link the Missouri Valley with California by railroad produced a demand for acquisition of the northern tip of Mexico. After long negotiations, Mexico agreed to sell a strip of land. The Gadsden Purchase in 1853 added the southern part of Arizona and the southwest corner of New Mexico to the public domain of the United States.

In 1851, Russia had claimed that the southern border of its Alaska territory extended to latitude 51 north, well into Oregon territory. Based on that, Russia appeared ready to expand its colonies in the New World at the expense of the young United States. The Anglo-Russian Treaty of 1825 settled these fears, but left the border vaguely described as the Alaskan panhandle, a matter later resolved with Canada.

Most European nations assumed at the end of the Civil War that President Johnson, with a large army at his command, would seize Canada or Mexico or both. Johnson merely demobilized the Union army within a matter of months. The nation had no further stomach for war. Still, when Russia pressed hard to sell Alaska in 1860, Secretary of State Seward was eager to buy. Strong hope persisted in the United States that the purchase would sandwich British Columbia between American territory and make its annexation inevitable. Also, many persons believed shipping, commercial, and resource values could be developed in Alaska, a land which was only slightly touched by human habitation. When Alaska was purchased in 1867, it was home only for the Eskimos, Indians, and a few scattered Russian trading posts.

The purchase of Alaska was the last addition to the public domain. The later acquisitions of Hawaii, Puerto Rico, the Philippines, and various Pacific islands were never part of the public domain, private ownership having been established before they became territories.

D. Creation of Public Land States

The assembly of public lands which began with the British treaty in 1783 ended with the purchase of Alaska in 1867. This new land, of which the federal government had entire and complete jurisdiction, was known as the public domain. Out of it, new states were formed and private titles were established. Ohio was the first of the public land states, gaining admittance to the new United States of America in 1802. In succeeding years, other states were admitted to the Union as they became populated and state governments were organized. As the frontier of settlement was

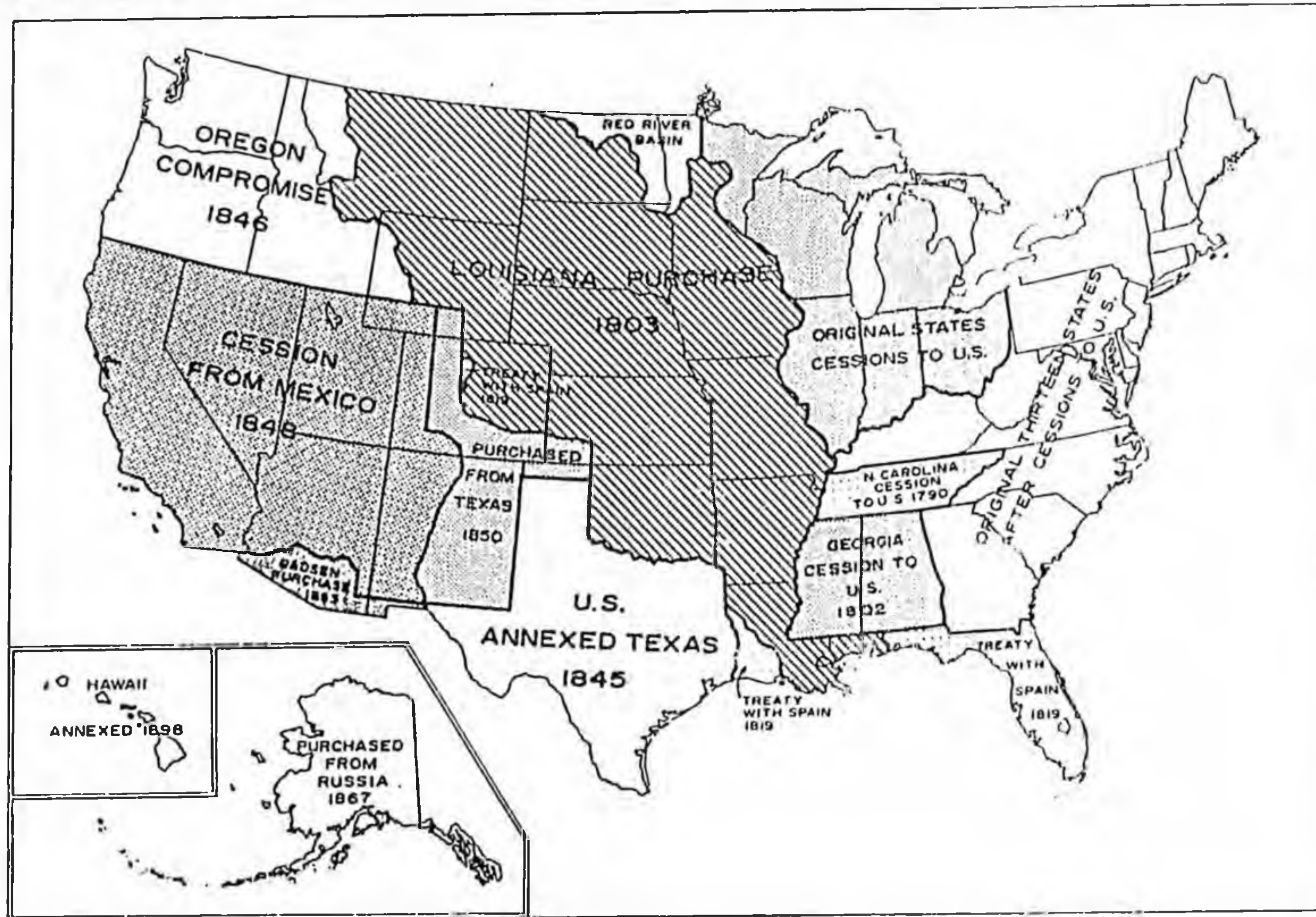
pushed ever further westward, the open, vacant and unappropriated lands outside the original non-public land states were entered, settled and appropriated for private use. Ultimately all of the states except the original thirteen colonial states, Kentucky, Tennessee, Vermont, Maine, West Virginia, Texas and Hawaii, were carved from the public domain. For that reason, these thirty are known as public land states.

Figure 1.1: Acquisition of the Public Domain
(P. Gates, *History of Public Land Law Development* 86 [1968])

	Total Area	*Public Domain*
Area conceded to the United States by Great Britain in 1783 and by the Convention of 1818. (Lake of the Woods boundary)	525,452,800	
Ceded by seven states to the United States		233,415,680
Louisiana Purchase, 1803	523,446,400	523,446,400
Florida, 1819	43,342,720	43,342,720
Annexation of Texas, 1845	247,060,480	
Oregon Compromise, 1846	180,644,480	180,644,480
Treaty of Guadalupe Hidalgo, 1848	334,479,360	334,479,360
Purchase from Texas, 1850		78,842,880
Gadsden Purchase, 1853	18,961,920	18,961,920
Alaska Purchase, 1867	365,481,600	365,481,600

Based on Donaldson whose figures the Bureau of Land Management has found sufficiently dependable to use in its *Public Land Statistics, 1964*. Included in the figures of public domain are somewhere between 40 million and 50 million acres of private land claims of which 34 million were confirmed and patented. The United States insisted on examining all such claims, even when the title was as clear as crystal and when approved to give a patent for the same. But the ownership of the bulk of the claims was not so clear. Though in all instances they were regarded as part of the public domain until the patent had issued the United States never did own them if the specifications in the treaties providing for acquisition meant much.

Figure 1.2: Acquisition of the Territory of the United States (prepared by the Bureau of Land Management)



2 EARLY DEVELOPMENT OF PUBLIC LAND POLICIES

A. Northwest Territory

The vast lands between the Ohio River and the Great Lakes had been coveted by the growing American population for years before the American Revolution. Public pressure to allow settlement of these lands northwest of the Ohio River, therefore known as the Northwest Territory, had been suppressed by wars and title disputes. The American victory over the British in the Revolutionary War was sealed with the Peace of Versailles in 1783, eliminating the British claims to the territory. The title of the United States government was still challenged, however, by the states whose claims were based on their colonial grants. The state cessions, starting with New York in 1781, ending with Georgia in 1802, and especially the cession of Virginia accepted by Congress in 1784, finally cleared the title of the federal government to the Northwest Territory. Indians still held their rights of occupancy, but they were pushed back by Revolutionary War veterans, squatters and speculators who simply entered the lands under claim of right.

Typical of the frontier across the public domain, the Indians organized, fought back, and drove white settlers out of their traditional homelands in the Northwest Territory. As became commonplace, the first Indian victories over the settlers in the northwest brought in the American army. The army lost two battles, but soon had the Ohio Territory under federal control.

With its title to the Northwest Territory finally secure, the United States could decide the future of that new land. From the first, the Continental Congress had anticipated that revenues from the public domain would be used to pay the war debt. Revenues from the land depended on land sales, and that required the new government to adopt a procedure for sales of the public land.

The Congress of the Confederation appointed a committee to develop a plan for government, management, and land sales in the Northwest Territory. A heated dispute flared between proponents of the Virginia land sale method and advocates of the New England system. These two disparate land policies had developed in their respective regions over the preceding 150 years.

1. Colonial Land Policies

In Virginia, the colony granted a "headright" of 100 acres (later 50 acres) to planters for each person they transported to the colony and domiciled there for three years. A great trade in headrights resulted, enabling the wealthy to accumulate large acreages. Large speculative holdings also resulted from prodigal grants of land to land companies, prominent individuals, and influential land speculators. To pro-

mote ownership by actual settlers, tracts of public lands were later sold in 50-acre lots, but small tract ownership did not prevail. To curb speculation and encourage actual settlement, a 4,000-acre limit was enacted in 1705. Despite these restrictions, however, the powerful assembled huge tracts through fraud in headrights, large grants, outright purchase, and intermarriage.

A Virginia warrant for land entitled the original owner or his assignee to locate his right to land on unclaimed and unsettled land where Indian claims had been surrendered. Virginia did not survey its public lands into sections so the holder of the warrant searched out the land he chose to claim. It was only prudent to avoid land claimed by a speculator. Even though the land was unimproved and unmarked, the speculator who had previously filed in the land office had superior title. Likewise, the speculator who was granted title after a settler improved the land had better title if he filed first. Nevertheless, unless the settler anticipated a contest over his claim, it was not legally necessary for him to file his entry in one of the two state offices within any definite period. Virginia conceded squatter's prior rights to land, and the settler who made rough improvements was reasonably secure in his location. If ousted by prior title, the squatter was to be paid for the improvements. When he had roughly outlined his entry by metes and bounds, made a rude survey, and completed his entry with improvements such as a cabin, well, barn, or corrals, he was ready to file his warrant with a certificate of location in the land office. The land office waited some time before issuing a patent to convey title from the colony; this permitted adverse claimants to file caveats describing the adverse nature of their claim. In fact, conflicting and overlapping claims became so common in Virginia that the land offices and courts were clogged with disputes and trials over final disposition of title.

Later, starting with the beginning of the Revolution, most of the colonies did more to protect actual settlers who lost possession than to require payment for their improvements. In 1776, Virginia developed a preferential or preemption right in favor of those who improved the land against absentee record owners. By their entry on the land and its improvement, settlers were deemed to have preempted it from acquisition by others. Notice of the preemption claim could be listed in the land office, and that protected the settler from adverse claimants for ten months. During that time, the settler was to perfect his claim by making improvements, running a survey, marking the metes and bounds, and filing, as the final entry, proofs of these events. Thereafter, patents were issued with fewer land office disputes and court contests.

Other colonies had different land systems, but the New England policies were the most at variance with those of Virginia. The New England colonies granted townships free of charge to groups of proprietors, reserving lots or sections for schools and churches. Townships, in later years, were six miles square and divided into lots or sections. The townships were surveyed before land sales were made, and the lots and sections were numbered in a fairly regular plan. Since the proprietors acquired six square miles, they were often induced, by the hope of increasing later profits, to build roads and promote sawmills, gristmills, schools and churches. These development efforts greatly increased the value of their remaining lots and made the initial community investments worthwhile.

The township method of land grants kept control over settlements in the legislatures and meant a more compact advance into the frontier. It resulted in a systematic and intensive use of the land, more so than outside New England, even though the lands were less favorable for agriculture than those of the fertile South. Towns grew among the compact farm communities, and commerce began to flourish.

2. Land Ordinance of 1785

The respective merits of the Virginia and New England land systems were debated hotly while a land policy was under consideration. Southerners wanted to protect

squatters and free spirits who located where they chose. They thought individualism was more important than the disadvantages of the self-initiated choice, namely indiscriminate locations, delayed filing, caveats, and costly litigation. Those who appreciated orderly group process wanted prior surveys, compact settlement, roads, churches, schools, and local government. Thomas Jefferson, a southerner, supported the New England system, and it was made the basis of the Land Ordinance of 1785. Yet, as with most steps of the new Confederation, the ordinance was a compromise for it retained some aspects of the southern land policy.

The Land Ordinance of 1785 made the rectangular government survey a part of the United States land policy. It was a great addition, and it has remained part of American land policy ever since. At a point where the Ohio River crosses the Pennsylvania border, a north-south line called a principal meridian was to be surveyed. A base line was to be run westward. Then parallel lines of longitude and latitude were to be surveyed westward. Each longitude and latitude line was to be six miles apart, encompassing a township of 36 square miles each.

Seven rows, or ranges, of townships running south from the base line and west from the principal meridian were to be surveyed. Each township was to be divided into 36 sections of one square mile containing 640 acres. To establish uniformity, each section was to be numbered in a regular sequence.

The principal compromise between the two differing land systems was in the acreage sold. At the beginning, the Ohio territory was to be sold by both methods. That is, alternate townships were to be sold intact to foster the New England community concept, and the other townships were to be sold in sections to promote the southern ideal of rugged individualism.

Because of the urgent need for revenue, land was to be sold and grants were discontinued. The ordinance provided that public lands, when surveyed and ready for sale, should be sold at auction to the highest bidder at $1 per acre or more. The exception was for actual settlers who had made improvements; they were permitted, under limited preemption acts, to buy at a minimum price before the auction.

Section 16 of every township was to be reserved from sale to provide funds for public schools within the township. Also, the ordinance reserved a "third part of all gold, silver, lead and copper mines, to be sold, or otherwise disposed of as Congress shall hereafter direct."

Exclusions from the Ordinance of 1785 were significant. No land was reserved for support of religion, as was the New England custom. There was no limit on the acreage individuals or companies could buy, and no requirement to improve or settle the land. Rights of preemption were not included; indeed, the common practice of squatting was not addressed in the document, probably because it had been occurring for some 150 years of the colonial period despite efforts to ban it. Even though trespassers had been driven off by troops and their cabins and crops burned, the squatters had always returned and rebuilt. In fact, the failure to resolve the dilemma of settling people with little or no money on the land while producing sales revenues for the Confederation was the major deficiency of the Ordinance of 1785.

When the first sales of the Ohio territory commenced in New York, the Confederation found few individual purchasers for its land. Primarily land companies and wealthy speculators purchased, but they were wary of the auction system. The large sales occurred more often through private Congressional legislation on special terms than through public auctions.

Despite favorable purchase terms, the land investors had difficulties collecting from those who settled on the land. Indian claims clouded some land titles, and Hamilton's fiscal reforms made the war securities worth more and consequently less advantageous in making land payments.

3. Northwest Ordinance of 1787

The state cessions had empowered the Confederation to control the public domain only, not to sell lands, make laws for the inhabitants, create governments or

organize new states. These fundamental deficiencies did not promote the security of title which would have encouraged sales, but events compelled the Congress of the Confederation to proceed. Therefore, without express authority, it adopted the Ordinance of 1785 to dispose of the western lands and the Northwest Ordinance of 1787 to govern them.

Land sales required security of title, and that depended upon strong and effective local government. The Congress of the Confederation therefore adopted the Northwest Ordinance of 1787 to provide for government of the western territory. Rights of government were to be transferred to the territorial inhabitants in three stages. At the outset, federal appointees were to govern. In the second stage, the territorial governor, still appointed by the president, was to share power with a representative assembly elected by the people. The last phase could occur when there were 60,000 inhabitants, or less if Congress considered that to be in the interest of the federal government. The people were to draft their own constitution, create their own state government, and determine qualifications for voting and holding office, upon which the territory was to be admitted to the Union as a new state on equality with the old states.

B. Constitutional Provisions

At the same time that the 1787 ordinance was adopted by the Congress of the Confederation in New York, the Constitutional Convention was in session in Philadelphia to draft a new constitution. Many of the delegates shared utmost concern that the new constitution authorize the powers over the western territory which the Confederation had set out to exercise. Achieving such authorization was not easy, but finally two clauses were hammered out on the subject, both contained in Article IV of the Constitution.

Article IV, Section 3, Clause 1:

New states may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State, nor any State be formed by the Junction of two or more States, or Parts of States, without the consent of the Legislatures of the States concerned, as well as of the Congress.

Article IV, Section 3, Clause 2:

The Congress shall have Power to dispose of, and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

LAND ORDINANCE OF 1785
MAY 20, 1785

An Ordinance for ascertaining the mode of disposing of Lands in the Western Territory.

Be it ordained by the United States in Congress assembled, that the territory ceded by individual States to the United States, which has been purchased of the Indian inhabitants, shall be disposed of in the following manner:

A surveyor from each state shall be appointed by Congress or a Committee of the States, who shall take an oath for the faithful discharge of his duty, before the Geographer of the United States. . . .

The Surveyors, as they are respectively qualified, shall proceed to divide the said territory into townships of six miles square, by lines running due north and south, and others crossing these at right angles, as near as may be, unless where the boundaries of the late Indian purchases may render the same impracticable . . .

The first line, running due north and south as aforesaid, shall begin on the river Ohio, at a point that shall be found to be due north from the western termination of a line, which has been run as the southern boundary of the State of Pennsylvania; and the first line, running east and west, shall begin at the same point, and shall extend

throughout the whole territory. Provided, that nothing herein shall be construed, as fixing the western boundary of the State of Pennsylvania. The geographer shall designate the townships, or fractional parts of townships, by numbers progessively from south to north; always beginning each range with No. 1; and the ranges shall be distinguished by their progressive numbers to the westward. The first range, extending from the Ohio to the lake Erie, being marked No. 1. The Geographer shall personally attend to the running of the first east and west line; and shall take the latitude of the extremes of the first north and south line, and of the mouths of the principal rivers.

The lines shall be measured with a chain; shall be plainly marked by chaps on the trees, and exactly described on a plat; whereon shall be noted by the surveyor, at their proper distances, all mines, salt-springs, salt-licks and mill-seats, that shall come to his knowledge, and all water-courses, mountains and other remarkable and permanent things, over and near which such lines shall pass, and also the quality of the lands.

The plats of the townships respectively, shall be marked by subdivisions into lots of one mile square, or 640 acres, in the same direction as the external lines, and numbered from 1 to 36; always beginning the succeeeding range of the lots with the number next to that with which the preceding one concluded. . . .

. . . And the geographer shall make . . . returns, from time to time, of every seven ranges as they may be surveyed. The Secretary of War shall have recourse thereto, and shall take by lot therefrom, a number of townships . . . as will be equal to one seventh part of the whole of such seven ranges . . . for the use of the late Continental army. . . .

The board of treasury shall transmit a copy of the original plats, previously noting thereon the townships and fractional parts of townships, which shall have fallen to the several states by the distribution aforesaid, to the commissioners of the loan-office of the several states, who, after giving notice . . . shall proceed to sell the townships or fractional parts of townships, at public vendue, in the following manner, viz.: The township or fractional part of a township No. 1, in the first range, shall be sold entire; and No. 2, in the same range, by lots; and thus in alternate order through the whole of the first range . . . provided, that none of the lands, within the said territory, be sold under the price of one dollar the acre, to be paid in specie, or loan-office certificates, reduced to specie value, by the scale of depreciation, or certificates of liquidated debts of the United States, including interest, besides the expense of the survey and other charges thereon, which are hereby rated at thirty six dollars the township, . . . on failure of which payment, the said lands shall again be offered for sale.

There shall be reserved for the United States out of every township the four lots, being numbered 8,11,26,29, and out of every fractional part of a township, so many lots of the same numbers shall be found thereon, for future sale. There shall be reserved the lot no. 16, of every township, for the maintenance of public schools within the said township; also one-third part of all gold, silver, lead and copper mines, to be sold, or otherwise disposed of as Congress shall hereafter direct. . . .

And Whereas Congress . . . stipulated grants of land to certain officers and soldiers of the late Continental army . . . for complying with such engagements, Be it ordained, That the secretary of war . . . determine who are the objects of the above resolutions and engagements . . . and cause the townships, or fractional parts of townships, hereinbefore reserved for the use of the late Continental army, to be drawn for in such manner as he shall deem expedient. . . .

THE NORTHWEST ORDINANCE
(JULY 13, 1787)

An Ordinance for the government of the Territory of the United States northwest of the River Ohio.

Be it ordained by the United States in Congress assembled, That the said territory, for the purposes of temporary government, be one district, subject, however, to be divided into two districts, as future circumstances may, in the opinion of Congress, make it expedient.

. . .

And, for extending the fundamental principles of civil and religious liberty, which form the basis whereon these republics, their laws and constitutions are erected; to fix and establish those principles as the basis of all laws, constitutions, and governments, which forever hereafter shall be formed in the said territory: to provide also for the establishment of States, and permanent government therein, and for their admission to a share in the federal councils on an equal footing with the original States, at as early periods as may be consistent with the general interest:

. . .

It is hereby ordained and declared by the authority aforesaid, That the following articles shall be considered as articles of compact between the original States and the people and States in the said territory and forever remain unalterable, unless by common consent, to wit:

. . .

Art. 4. The said territory, and the States which may be formed therein, shall forever remain a part of this Confederacy of the United States of America, subject to the Articles of Confederation, and to such alterations therein as shall be constitutionally made; and to all the acts and ordinances of the United States in Congress assembled, conformable thereto. The inhabitants and settlers in the said territory shall be subject to pay a part of the federal debts contracted or about to be contracted, and a proportional part of the expenses of government, to be apportioned on them by Congress according to the same common rule and measure by which apportionments thereof shall be laid and levied by the authority and direction of the legislatures of the district or districts, or new States, as in the original States, within the time agreed upon by the United States in Congress assembled, nor with any regulations Congress may find necessary for securing the title in such soil to the *bona fide* purchasers. No tax shall be imposed on lands the property of the United States; and, in no case, shall non-resident proprietors be taxed higher than residents.

. . .

Art. 5 There shall be formed in the said territory, not less than three nor more than five States. . . . And, whenever any of the said States shall have sixty thousand free inhabitants therein, such State shall be admitted, by its delegates, into the Congress of the United States, on an equal footing with the original States in all respects whatever, and shall be at liberty to form a permanent constitution and State government: *Provided*, the constitution and government so to be formed, shall be republican, and in conformity to the principles contained in these articles; and, so far as it can be consistent with the general interest of the confederacy, such admission shall be allowed at an earlier period, and when there may be a less number of free inhabitants in the State than sixty thousand.

C. The Government Survey

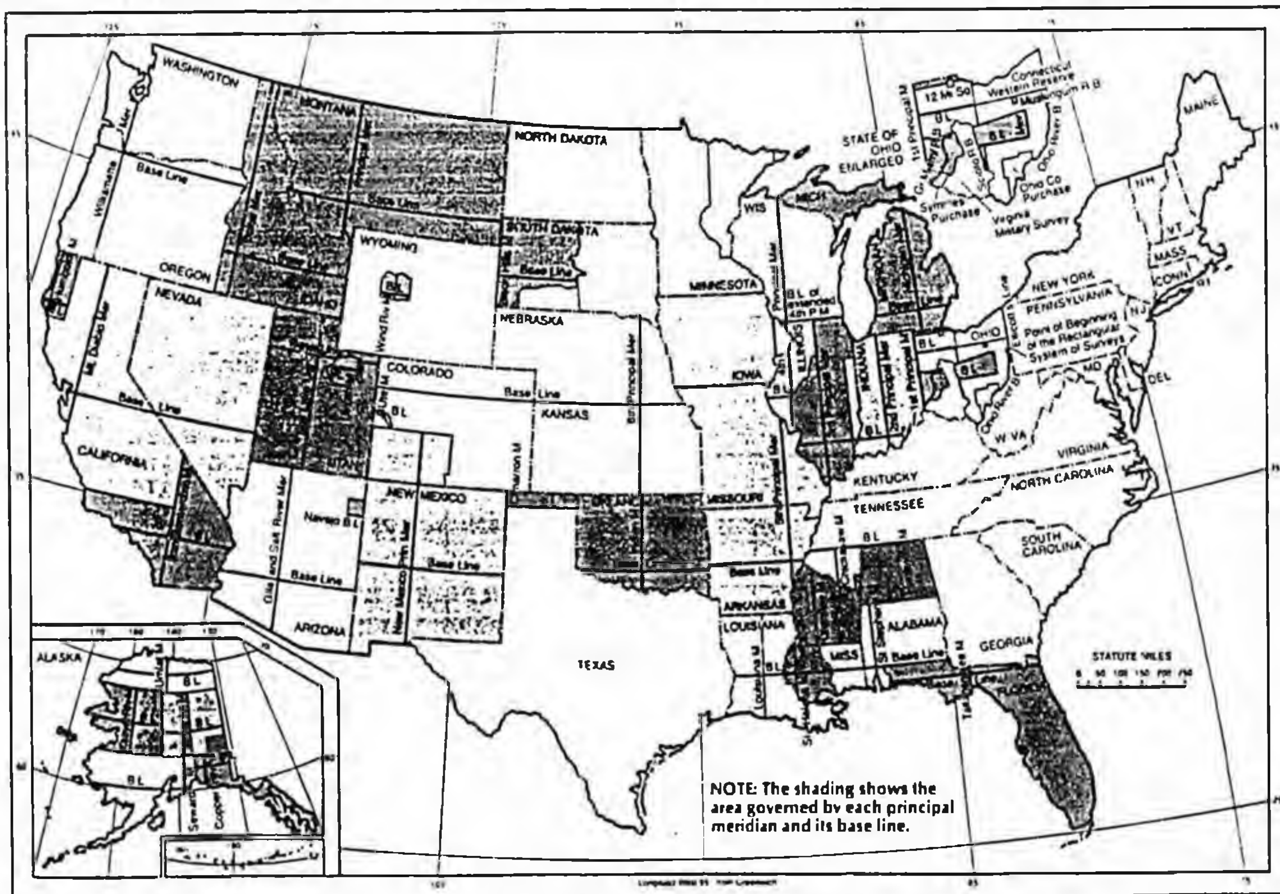
The surveys of government lands originate from the Land Ordinance of 1785. Since that time, no disposal of the public domain has been effective until the survey into townships and sections has been officially approved. According to the ordinance, a beginning point was established where the west boundary of Pennsylvania crosses the north bank of the Ohio River. The first surveys were run for those parts of Ohio northwest of the river. Detailed instructions were not developed for those first Northwest Territory surveys since only the exterior lines of townships were surveyed, and only one-mile corners were established on the township perimeters.

The original surveys were run with crude equipment under adverse conditions. The surveying instruments included magnetic compasses, which do not always show true north, and rope, cord, and chains. Running the survey required tremendous physical effort. Modern surveying is done with aerial maps, distance measuring devices which determine distances from one point, sophisticated electronic theodolites with built-in computers and recorders, and laser lights used to throw up vertical beams which can be located and measured from distances even if man-made obstructions block sight along the surface of the land. In addition, helicopters and other vehicles simplify what were great transportation feats.

Since the rectangular system of surveys was first adopted by the United States in 1785, detailed procedures have been developed governing government surveys. They are set forth in the *Manual of Instructions for the Survey of the Public Lands of the United States*, prepared by the Bureau of Land Management and republished periodically. Surveys were made by private contractors until 1910, after which they have been run by federal employees.

The survey process is simple in theory. In the early years it was difficult to apply, especially in rough terrain with crude equipment. A principal meridian is laid out on a true north-south line. Other north-south lines are run six miles apart, dividing the territory into strips six miles wide, running north and south. These six-mile widths are called ranges. They are numbered consecutively, starting at the principal meridian, and running both to the east and to the west. The ranges to the east are Range 1 East, Range 2 East, and so on. The ranges to the west are Range 1 West, Range 2 West, and so on. In some areas, only one principal meridian was established for an entire state or more. Colorado, for instance, has three principal meridians.

Figure 2.1: Principal Meridians of the Federal System of Rectangular Surveys



Base lines are run east and west according to parallels of latitude. These lines are at right angles to the range lines. From the base line, parallel east-west lines are surveyed at six-mile intervals, both to the north and south of the base line. These lines are called township lines because they divide the area into blocks approximately six miles square which are called townships. The townships are numbered consecutively, the first tier to the north of the base line being Township 1 North and so on in order, while those to the south increase from Township 1 South.

The government survey provides a cheap and easy way to survey and describe public land. The requirement to number ranges and townships according to a uniform system provides regularity to the surveyed lands. By using this coordinate

3 DISPOSAL OF THE PUBLIC DOMAIN

A. Sales Procedures

Disposal of the public domain began even before the first acquisition, the cessions of the states, had been completed. The importance of public land as the basis of an agrarian democracy was widely appreciated. To be sure, there were differences as to how the ideal democracy, founded on small, family farms, should be achieved. Hamilton led those who viewed the public domain as a means of raising revenue to strengthen the federal government and its weak currency. Jefferson spoke for those who wanted to settle poor people on the land without charge and thus achieve an independent citizenry which would make the nation strong through the loyalty, industry and initiative of these people.

Land sales by the new nation began in Ohio as the Constitution was being drafted. The dispute over whether to sell land or grant it dissolved in the face of the disastrous state of the federal dollar. War debts were due, and income was imperative. Thus a consensus emerged that the public domain must be sold to produce income, and the Land Ordinance of 1785, providing for sales, was the result.

Despite the need for revenue, there were few buyers at the first public auctions. There was cheap land available in the original states from the states themselves and from speculators as well. Indian attacks in Ohio frightened most settlers away from the new territories. The federal land sales produced virtually no revenue until after 1800 and had not reached ten percent of federal revenues by 1814. By then, the dire financial stress of the new government had been lessened by rapid economic development of the country. The public debt rose to its peak in 1815 and declined slowly until 1825 when large annual surplusses through 1836 left a substantial national treasury.

Since revenue was a prime objective of the public land system at the outset, Congress assigned sale responsibility to the Secretary of the Treasury. The Treasury Department had a surveyor general to supervise surveys of the lands, issue patents which were countersigned by the Secretary of State, and keep the land records.

At the start of sales, a few local land offices were established by the federal government in Ohio and then in Michigan Territories. The register of the land office was to receive applications for entries of land and note the entries on the tract and plat books. The receiver was to accept payments and maintain abstracts of entries for which payments had been made. Both the register and receiver sent copies of their separate work to the Treasury Department. Thus the Treasury had two differ-

ent but complete reports of all land business, each to serve as a check against fraud by the other. Nevertheless, fraud and embezzlement continually sprang up in the land offices and plagued some private titles to land.

In 1812, the administration of land sales was delegated from the Secretary of the Treasury. The General Land Office (GLO) was created, and a commissioner assumed the sale responsibilty from the secretary. Patents were no longer signed by the secretary but by the president.

The GLO was the administrative machinery of the federal government as civilization spread gradually from the East over the frontier to the West. There was a commissioner, the surveyors general (who numbered 15 in 1889), the registers and receivers (82 of each in 1871 and 94 of each in 1921), superintendents of public sales (auctioneers whose tenure was about 3 weeks per sale), and increasing numbers of clerks and deputy surveyors to do the work. The people visited the land offices to examine the plats of survey and field notes for likely lands, file entries, make payments, contest other entries, file relinquishments, and obtain patents. For most westerners, these visits were their only contact with federal officials.

The General Land Office continued as a bureau in the Treasury Department until 1849. When the "Home" or Department of the Interior was created in 1849, it absorbed the GLO which was its most important bureau. The GLO carried on its work, primarily disposal of the public domain, for nearly 100 more years after creation of the Department of the Interior. Registers and receivers remained a part of the land offices from 1800 to 1946 in the territories and public land states when sales were being made.

B. Installment Sales on Credit, 1800 to 1820

From 1800 to 1820, sales of the public domain were made on credit. From time to time, Congress directed the Office of the Surveyor General to survey large tracts into ranges and townships. If essential, new land offices were established in the vicinity of the opened land, but usually land offices were far away. These lands were sold at public auctions, but Congress fixed the minimum price by statute. The legal price of $2 per acre applied to all lands throughout the public domain, regardless of real value or the economy, and it was a high price at the time. At the start, tracts were sold in entire townships, but when that proved unattractive even to most wealthy speculators, the tracts were reduced gradually to 640, then 320 acres, and finally to 160 and even 80 acres in size. Even then, sales usually occurred at the minimum price. The highest bidder filed his entry with the nearest land office, and entered into an installment contract requiring annual payments, either in cash or government script or land warrants. Interest was charged by law, if not excused in hard times, and the rate was commonly six percent. When the price was paid in full, a final entry was noted on the books, and a receiver's receipt for the payment was issued and recorded to prove payment. The receipt also served as the first indicia of record title. A patent was issued in due course, often a year or more later.

The time extended for payments on credit varied according to acts of Congress. It was originally one year, but as delinquencies mounted, was steadily increased to five years. In the face of defaults by many entrymen, whether poor individuals or overextended speculators, Congress periodically enacted relief legislation forgiving payments or extending the time to pay. The alternative under the law was reversion of all rights to the land to the United States and forfeiture of all payments, a decidedly unpopular result politically.

After the boom and over expansion following the War of 1812 came the depression of 1819. Western land delinquencies were rife. In 1820, Congress once more gave temporary relief to the credit buyers and ended the troublesome credit sales. After that, full payment had to be made in cash on the day of the auction, but the price was reduced to $1.25 an acre.

The last credit buyers remained in trouble after credit sales ended in 1820. In 1821, Congress enacted another relief measure for these stragglers, introducing relinquishment into the collection of land policies. The 1821 act allowed debtors to relinquish a portion of the land they had bought and to have all their previous payments applied to the remainder. Those defaulters who stubbornly refused to relinquish, however, proved wise; Congress continued to make other concessions for their relief every few years. Finally, in 1832, Congress acted to give all these who had ever forfeited payments on land contracts certificates good at the land offices for public land. With this ultimate largess, a generally bad experience in credit sales was quickly ended.

C. Cash Sales, 1821 to 1862

As had happened from colonial times, the pioneers continued to roam at will over the public domain. More often than not, those who actually settled sought out the best lands despite the fact that they had not been surveyed and were not being opened to sale. They were intruders, convinced their actions were morally right. They set about clearing the land and building cabins, barns and fences to make a living. They sold their crops and produce for cash when they could, but most of their income went back into the land, buying seeds, implements, livestock, hardware and other essentials.

Understandably, the illegal settlers were fearful of the public auction when the president ordered land into sale which included their niche in life. In hard economic times, at least, their desperate pleas to the president or to the commissioner of the GLO often won postponements of sales so they could save enough cash to bid competitively for their claim.

The pioneers squatting on the public domain feared and hated investors from the East who had money to bid for public land. Investment groups composed of common workers, the wealthy, and powerful politicians, were always represented at the public auctions. The acreage any party could buy was unlimited, so in the early years of sales, speculators won bids for most of the good land. These investors soon learned to organize to suppress competition among themselves at sales, agreeing in advance not to bid against each other but to bid only for their allotted tract. Then the actual settlers on that land were forced to move further westward, become tenants or hired hands, or buy from the speculator at high prices.

By 1824, the settlers had developed means to curb the speculators. In advance of sales, the pioneers formed claims associations to control the bidding themselves. They intimidated outside bidders in advance of the auction by threats, and occasionally, actual violence. In advance of the auction, they also allotted land among themselves. In case of disputes, the associations designated who could bid for specific tracts by arbitration.

Unfortunately for many settlers, however, they did not have sufficient cash to pay in full on the day of sale. The capitalists and their agents who came to the sales but could not buy because of the claims associations were willing to become money-lenders. It was a common practice for pioneer groups to allow the lender to enter the land in his own name, pay for it, take title, and contract to sell, all on the sale day, to the family who had settled upon it. The sales terms were often so high as to provide 24, 36 or even 48 percent interest on the contract price, depending on the time to repay. Many settlers could not make the final installments and forfeited all they had paid to the lenders who kept the land too. This time entry business, as it was called, left millions of acres in the hands of the capitalists, and forced would-be landowners from the land they had claimed originally.

Federal officials learned land auctions were controlled, either by capitalists or settlers, and knew lands usually sold at the $1.25 per acre minimum because competitive bidding was prevented. In 1830, Congress made such fraudulent practi-

ces a crime. There were virtually no federal officers to enforce the law, however, so the practices controlling sales flourished on the frontier with impunity.

In the 1830s, more and more of the public lands were purchased by eastern speculator groups at public auction or, if lands failed to sell then, by private sales made afterward. Speculator purchases were aided by a presidential policy of ordering many more large tracts into sale than could be settled and farmed. It had been the practice to survey and bring to sale perhaps ten million acres when one to three million would have supplied the demand. These investment lands lay idle, and the absentee owners contributed no funds or labor for local roads, schools and other community improvements. Federal law exempted all of the public land from local real estate taxes for five years after its purchase. The local residents hated absentee owners whose main hope of profit depended on the local improvements made by poor settlers. The settlers therefore used these private investment lands for grazing, and raided the timber. These idle "speculator deserts" retarded development of local population and commerce.

Despite frontier objections, a national frenzy developed in western land investment. Large land sales had spurred a speculative boom, but the era of expansion came to an abrupt halt with the depression of 1837 which lasted through the mid-1840s. Cycles of boom and bust in western land speculation recurred regularly thereafter until the end of the settlement period after 1900.

D. Preemption, 1840-1891

Strong sentiment was growing in the West, and even among workers in the East, for land to be sold at low prices or granted free of charge to actual settlers. Westerners believed the frontier lands had little or no value. It was their thesis that only the labor of those who turned the prairies and woodlands into farms and communities gave value to their claims as well as to the lands owned by absentee investors. Yet the speculators acquired large tracts, and pioneers had to buy from them at inflated prices if they wished to stay where they had settled.

The major objective of frontiersmen from colonial times had always been preemption. It would authorize them to settle upon the public domain, improve the lands, keep the proceeds from several years of work, and later purchase title with that profit at a minimum price without having to bid against competitors at a public auction. From the time of the Revolution, squatting was the established practice for many. The government made squatting unlawful, but soon found its armies could not enforce the law. Congress gradually relaxed the prohibitions against the intrusions. Then it passed continual special legislation to forgive the intrusions and legalize squatting in areas where public outcry arose for assistance. Between 1800 and 1820, 24 special preemption acts were granted to aid specific groups or limited areas with distressed squatters. During that period, according to government statistics, only four percent of the land granted was conveyed by preemption rather than sale. Still the demands for preemption continued to grow.

As immigration to the West increased, the number of settlers affected by continuing special preemption laws was enlarged. Finally, general preemption came with the Preemption Act of 1841, but it sanctioned settlement only on surveyed public land. The usual 160 acres could be claimed by actual settlers who inhabited and improved the land and built a residence on it. Entry was made on the claim by a notation on the public land records and filing a written declaration of intent to improve and preempt a quarter section. Final entry was to be made within one year by proving up compliance with the law in all particulars under oath, and paying $1.25 per acre. Those eligible for preemption were heads of families, widows, or single men over 21 who were citizens or who filed a declaration of intent to become citizens. Persons owning 320 acres or more were not eligible, and only one preemp-

tion was allowed any one person. The 1841 Preemption Act specified that it was not to replace the public sales which were to continue as before.

As happened with all the public land laws in the era when there were no federal administrators, fraud was prevalent. In many cases, the various elements of eligibility were not met, but there were not enough federal officers in the local land offices to sort the false testimony from the true statements in the final entries. As with other disposal laws, violations were generally known to exist but violators were seldom caught.

Surveyed public land was still sold at public auction, subject to preemption rights filed after the survey was official, but not subject to preemption entries filed before. Since most settlers selected their claims long before the surveys, and since preemption rights were not extended to unsurveyed public lands, the Preemption Act of 1841 did not aid significant numbers of settlers. Only in 1862 were preemption rights extended to unsurveyed lands in all states and territories. In that year, with the new homestead privilege available only on surveyed lands, and since arable lands were generally not sold thereafter, preemption began to be significant. After 1862, it was the only means to purchase the better lands which remained unsurveyed.

Preemption was a large step away from the money raising purpose toward the long-sought goal of free land. It made the long standing practice of squatting an honorable act. It provided settlers a full year to raise funds to prove up and pay for their claims. Even though it was abused by many defrauders, it made thousands of honest tenants, immigrants and hired hands into owners. From 1862 to its abolishment in 1891, preemption was a major factor in passing government land into private ownership on the Great Plains, California, the forested part of the Great Lakes states and in the West.

E. Land Warrants and Government Script

The colonies, the Continental Congress, and the early states had more land than money. All of these levels of governments gave land bounties to induce community improvements and to meet other objectives which were otherwise impossible. The largest number of land bounties, by far, went to soldiers to obtain their military services in the various wars of the colonies, states and the nation.

The bounties were evidenced by land warrants for acreages ranging from thousands of acres to as few as 40. They were awarded according to public service and military rank. The warrants could be used to enter public land on the frontier, usually in reserved military tracts at first. Since these wild lands were neither safe to settle nor surveyed and opened, the soldiers usually sold their warrants cheaply for immediate cash in preference to years of waiting. When the military tracts proved to be smaller than the combined acreage granted by all the warrants, the federal government issued script, good for public land anywhere if it was open for settlement. Government script was also issued for other reasons, but typically it was given when land bounties could not be honored.

Over the years, land brokers succeeded in buying up most of the warrants and script. Then they were sold to speculators who used them to acquire public lands cheaply. The warrants were not assignable, but this restriction was evaded by powers of attorney. Conveniently for speculators, too, no residence requirements were imposed by the warrants as they were for script.

Land warrants were issued for service in many wars, including the Revolutionary War, War of 1812, Indian wars, Mexican War, Civil War, Spanish American War, and the War for Philippine Independence in 1898. A century after they were issued, warrants and script were still dribbling into the land offices, creating problems with validity and land titles. By legislation in the 1950s and 1960s, Congress sought to require recording and to buy up and nullify any unlocated

warrants and the various forms of script. The last period through which script was accorded validity was January 1, 1975. During the heyday of this "land office money," millions of acres of public domain were acquired through land warrants and script.

F. Land Grants to States

One of the early land policies which hastened settlement of the West and helped hold it against Indians and foreign powers was the policy of land grants to the new states. Not only did it speed their development, but land grants enlarged the economic basis of the eastern industrial areas of the country.

1. State Compacts on Admission to Statehood

The congressional policy of grants of public domain lands to the states had its inception in the Land Ordinance of 1785. The Land Ordinance called for the rectangular system of government survey and the reservation of section 16 in every township for the maintenance of public schools within the township. Both ideas survived the Confederation even though the Ordinance of 1785, itself, was never reenacted by the United States Congress. Each of the 30 public land states was given grants of school lands upon statehood.

The creation of new states from the public domain followed the plan of the Northwest Ordinance of 1787, as reenacted by Congress in 1789. The ordinance provided that the states to be created out of the Northwest Territory:

> [S]hall never interfere with the primary disposal of the soil by the United States ... nor with any regulations Congress may find necessary for securing the title in such soil to the *bona fide* purchasers. No tax shall be imposed on such lands the property of the United States; and in no case shall non-resident proprietors be taxed higher than residents. . . .

To protect the public domain from state interference and taxation, as the Northwest Ordinance stipulated, Congress required Ohio and each succeeding territory to adopt an irrevocable ordinance on these matters before admission to statehood. The first territories objected strongly to abandoning claims to the public domain within their boundaries, losing the right to tax federally owned land, agreeing to tax nonresident landowners the same as resident landowners, and most of all, to exemption of the public lands from local taxes for five years after the sale into private ownership. All these requirements were set out in the Ohio Enabling Act together with detailed provisions for the statehood vote. The act authorized the inhabitants of the territory to elect representatives to a convention by apportionment among the counties, specified when the elections were to be held and the time and place for the convention, and other details. The Enabling Act contained propositions for acceptance or rejection by the convention, thus introducing bargaining into the statehood process. If the statehood convention enacted the required irrevocable ordinance to disclaim rights in the public domain within the territory, the Enabling Act allowed it to accept or reject the other propositions. The propositions were offers to transfer specific property rights, including land grants, to the future state in exchange for the public land disclaimer. The Ohio convention voted for the irrevocable ordinance and statehood, but made counterproposals to enlarge the grants of various property rights. Congress accepted all but one of the counterproposals, and by resolution declared Ohio admitted to the Union in accordance with the Enabling Act on an equal footing with the original states.

The Ohio statehood procedure set a precedent for the succeeding states created from the public domain. The land grants to the states were not strictly unilateral bounties; instead they were important elements of bilateral compacts. Each new state, in effect, entered into a compact with the United States setting forth the terms of its admission to the Union. The agreements and bounties varied greatly ac-

cording to the circumstances of the times and the territories, and federal land grants were all part of the bargaining.

2. Statehood Admission Grants of School Lands

Starting with Ohio, the new states were granted section 16 in every township for the support of common schools. Those states entering the Union after 1850 were granted two sections, numbers 16 and 36. Utah and Arizona, when admitted after 1896, received four sections for public schools. As a general rule, the new states also received five percent of the net proceeds from the sale of public domain lands within their borders for construction of roads.

Most new states were granted the salt springs and adjacent sections within their boundaries. Interestingly, the enabling acts required the states to retain title and only to lease the salt deposits so they would continue to produce revenue for the states. This was the first government experience in mineral leasing, but the states have long since been allowed to discontinue leasing and sell the salt lands.

3. Special Grants for Internal Improvements

The admission grants did not satisfy the new states for long. Almost immediately, they sought additional land grants to finance the building of specified canals and wagon roads and the improvement of waterways. Congress recognized at the outset that it would have to pay at least some of the costs of building access ways to the interior of the public domain. The Cumberland Road, authorized at federal expense in 1806, was the first such effort, and it was an outstanding economic success. This wagon road connected Baltimore to Columbus, opening the Ohio Valley to settlement and commerce. The Erie Canal, completed in 1825, connected New York City to western New York, spawned Buffalo and other flourishing cities, and turned New York State from subsistence farming to commercial agriculture. Before the canal era passed, dozens of canals were built and rivers improved at a cost of over six million acres in land grants plus large expenditures for the construction bonds.

4. General Grants for Internal Improvements

The concept of special grants for specific improvements soon gave way to a desire for more local control by the new states. By an act in 1841, Congress adopted such a policy, making general grants to the states for internal improvements. The act provided for a grant of 500,000 acres of the public domain to each of the public land states and to each state admitted thereafter. These were quantity grants since they were for a specific total acreage. The general rule for all quantity grants applied; namely, the states were entitled to select acreage to fill the quantity granted from only vacant, unappropriated, nonmineral, surveyed public lands within the state to which the grant was made.

The internal improvements grant land was to be sold at no less than the federal price for United States land. It was expected that the state grants would be sold quickly to provide funds for many state construction projects. Instead, some states put much of the internal improvement lands into trusts for the support of schools. Other states sold the lands, committing the proceeds to small railroads for construction of local rail lines. The far western states which joined the Union later, especially after railroads were built there, learned to keep much of their state grant lands for future income. Congress also recognized the mistake of the early states in diverting much of the income from the 500,000-acre grants away from the intended internal improvements. Consequently, Congress began in 1889 to grant lands directly to specific institutions rather than to some of the states admitted thereafter.

5. Swamp Land Grants

Oddly, the Swamp Land Acts of 1849, 1850 and 1860 resulted in the transfer of much more land to the states than the general and specific grants. The middle western

and southern states persuaded Congress that many of the public domain lands left over after the first wave of settlement were flooded and poorly drained. These swamplands were relatively valueless to Congress since it believed, then, that it had no authority to allocate tax money to the states, even to drain federal lands. The states insisted for years that, if they became the owners, they would drain the swamplands and sell them to farmers. Congress acquiesced, and the swampland acts allowed the states to select for their own "those swamp and overflowed lands, made unfit thereby for cultivation." These grants were for lands of undetermined acreage and location. Title to the swamplands passed to the states immediately upon enactment of the granting statute, but identification of the land was contingent upon subsequent satisfactory proof of the qualifying facts. When the states filed their selections and proofs with the General Land Office, they were to obtain patents to such lands. Unfortunately, proof of swampland character could be made by state or individual survey or field notes, by private affidavits or by other testimony subject to manipulation. When the swampland acts were passed, it was expected that five or six million acres of such wet lands existed, but by 1966 a few states, by their own efforts and sometimes those of agents working for a commission, had succeeded in obtaining nearly 65 million acres These states included the thirteen states from Ohio and Minnesota south to Mississippi and Louisiana, and the states of Oregon and California on the West Coast.

Many of the lands granted as swamplands were not wet except in flood stage, heavy rain, or because one part of them touched lakes or water courses. Many were valuable lands which sold well to farmers, and despite the intent of Congress, the proceeds were not always used to reclaim those swamps which did exist. Few public lands acts were so loosely worded, caused so much trouble in selection and conflicting claims between settlers, and achieved so little of the original purpose.

6. Grants for Agricultural Colleges

The Morrill Act of 1862 for the creation of agricultural colleges was the next bit of land grant generosity by the Congress, albeit considerably limited in scope compared to others. It applied to all the states, both old and new. The purpose was to endow a college of agricultural and mechanical arts in each state. The results are the present land grant colleges. The public land states were given 30,000 acres for each of their representatives and senators in Congress. The non-public land states were given script to sell. The buyers were entitled to use the script to locate lands on the remaining public domain. The public land states received about three and a half million acres of public lands, and the older, more populous states received script for nearly eight million acres.

7. State Land Grants in Perspective

The land grants to the public land states amounted to a great federal subsidy at a time when it was believed Congress could not spend tax money for state projects. Most commentators agree the state grants achieved their overall purpose—the early settlement and development of the vast public domain.

Because of the bargaining circumstances between Congress and the 11 western territories for admission to the Union, especially their small populations, they did not receive as great a proportion of their areas as did the midwestern and southern states. With the possible exception of Minnesota and Oregon, only states, primarily in the West, admitted after the Civil War, have retained substantial portions of their grant lands. With some exceptions, it can be said fairly that those earlier states which received the most kept the least of their grant lands. The state grant lands remain important in the 11 western states, especially as sources of water, grazing forage, and minerals.

It is now impossible to equalize the land grants among the states without giving up the residual and reserved public domain in the process. Still, the western states

which contain the great bulk of the remaining public domain are deprived of the tax base they would otherwise have if those federal lands were in private ownership. It may be said that the western states have borne a disproportionate burden of the cost to retain these federal lands for the benefit of the nation. In recognition of this inequality, Congress in 1976 finally adopted a payments in lieu of taxes measure. By its terms, the federal government makes payments to states and local governments to compensate them for the tax immunity of federal lands. 31 U.S.C. §§ 1601-1607. The payments are in lieu of taxes those lands would generate if they were in private ownership.

By granting land to the states for education, public buildings and internal improvements, Congress made it necessary for the 30 public land states to create their own land offices. These state boards had to select the unlocated tracts, protect, manage, appraise, lease or sell the land, or the minerals and timber, collect payments and rents, eject squatters, determine boundary disputes, and even to survey where the original lines were defective. The state legislatures had to determine sale prices or lease terms and develop a framework of other policies to manage this great legacy. The state courts and administrative officers had to interpret the state laws in line with interpretations of the federal laws by federal courts and officers. Not the least of the results of the land grants was a fairly homogeneous system of state land agencies and laws, mirroring the federal legislative and administrative machinery. These duties of state land agencies continue today.

8. State Indemnity Rights for Land Grants

The statehood grants for schools are grants of land in place. That is, the enabling acts granted the states specific sections in each township, typically sections 16 and 36 in the West. The in-place grants were not immediate conveyances of title to the states, so the grants frequently failed to pass title. Whether the enabling acts contain words of present or future grant, title does not vest in the states until completion of the official government survey. *United States v. Wyoming*, 331 U.S. 440, 443-444 (1947). Prior to acceptance of the official survey, title to the designated lands remains in the United States subject to its rights to dispose of them in another fashion. Before acceptance of the official survey, many of the in-place grants were frustrated, either by private entries under the preemption laws or by federal reservations. Congress recognized this problem at the outset, and provided in the Ohio Enabling Act for a grant of "equivalent" lands where section 16 proved to be "sold, granted or disposed of. . . ."

Since the admission of Ohio in 1802, Congress has allowed the states to select other public domain lands as indemnity for in-place grants which the United States could not honor. As recently as 1966, Congress has periodically liberalized the rights of the states to select lieu-sections.

Even as late as the early 1980s, over one-half million acres of land grants for schools and other purposes remain unsatisfied in the contiguous states. The remaining selection rights there are confined to eight western states, principally to Arizona and Utah which are entitled to about 70 percent of the remainder.

Even after 1900, there was uncertainty whether in-place grants passed to the states if the lands were mineral in character. In 1927, Congress enacted legislation confirming that mineral lands encompassed within in-place grants did pass to the state. 43 U.S.C. § 870. Nevertheless, the 1927 law did not enlarge the indemnity rights under the 1891 general indemnity statute, 26 Stat. 796-797, which prohibited states from selecting mineral lands even if the lost land were mineral in character. It was not until 1958 that Congress recognized this unfair situation and allowed states to select mineral lands in lieu of lost mineral lands. 43 U.S.C. § 852. Congress determined in 1958 hearings that the federal interests were amply protected from a windfall to the states by the law which precludes states from selecting mineral land as indemnity for nonmineral land. On that basis, Congress declined to change the

equal acreage principle which has been the essence of the various indemnity statutes since 1802. H.R. Rep. No. 2347, 85th Cong., 2nd Sess. 2, 3-4 (1958).

Today, the 1958 legislation, founded in an 1859 law and amended in recent years, governs indemnity selection by the states. 43 U.S.C. §§ 851-852b. The states may select "lands of equal acreage" when school sections have been occupied by preemption or homestead settlers prior to survey, were included within Indian, military, or other reservations before title could pass to the state, or prove to be short of acreage through survey or any natural cause. Selection of indemnity land constitutes a waiver by the state of its right to the granted or reserved sections. The states have the option to await the extinguishment of any reservation and then take the numbered sections. Thus, there is no statutory requirement that lieu selection rights be exercised within any particular time.

The indemnity act permits states to select indemnity lands from "any unappropriated, surveyed or unsurveyed public lands within the State...." Selections may only include mineral lands or reserved mineral interests in lands previously conveyed to others if the grant lands lost are also mineral in character. If the selected lands are on a known geologic structure of a producing oil or gas field, they will be granted only if the lost lands also are on such a structure. Land subject to mineral lease or permit may be selected as indemnity for lost mineral lands if the selected land is not in "producing or producible status," and the state then succeeds to all the rights and obligations of the United States. In such cases, the state must select all of the land under the lease or permit; otherwise the United States reserves the mineral interest in the lease or permit for its duration and pays to the state 90 percent of the state's share of rents and royalties prorated according to the acreage selected by the state. The mineral status of lost grant lands must be determined upon the best evidence available at the time of application for selection.

Despite the progressive liberalization by Congress of the rights of states to select indemnity lands, the Department of the Interior has resisted lieu selections when the BLM believed the value of the selected land exceeded the value of the lost land. It does so even though there is no equal value test in the lieu selection law, but only an equal acreage requirement. Indeed, again in 1966, Congress expressly rejected such statutory proposals when it amended the law to allow selection from unsurveyed as well as surveyed public lands. S. Rep. No. 1213, 89th Cong., 2d Sess. 2, 4-5 (1966). Nevertheless, in its wisdom, the department, in 1967, adopted an equal value test for judging the selection of lieu lands for lost lands. Under the guidelines, values are estimated for lost lands in their "native" condition, that is, at the time of the grant, and for selected lands in their "present" condition, *i.e.*, at time of selection. These guidelines are applicable to all indemnity selections and are not limited to those involving mineral lands. If there are "grossly disparate values" such that the estimated value of the selected land exceeds that of the lost land by more than $100 an acre or 25 percent, the department has refused to allow the selection.

The United States Supreme Court upheld the department's policy of an equal value test in *Andrus v. Utah*, 446 U.S. 500 (1980), by a bare majority of five justices to four. The majority concluded that the provisions in the indemnity statute for equal acreage to be selected as indemnity for lost lands implies that Congress intended to provide roughly the same resources as those not available, holding that the Secretary of the Interior has power under the Taylor Grazing Act of 1934, 43 U.S.C. § 315f, to classify lands suitable for in-lieu selection. The minority, in a persuasive dissent, demonstrates that Congress consistently adopted an equal acreage test and that the Taylor Grazing Act does not authorize the secretary to reject indemnity selections which meet the requirements of the indemnity statute.

In 1979, the Department of the Interior recalculated the acreages which the public land states have received as school grants. In many instances, the western states were found to have received less acreage than the old records showed. These state allowances remaining to be honored were adjusted upward as a result. According to the department's information, as of 1980, the outstanding indemnity rights are as follows:

State	*Acreage*
Arizona	194,000
California	115,000
Colorado	11,600
Idaho	27,000
Montana	27,000
South Dakota	1,250
Utah	227,000
Wyoming	1,100
Total	602,700

In 1980, after winning its point in *Andrus v. Utah*, the Department of the Interior announced a new program to break the deadlock over the remaining in-lieu selections to be made by eight western states. The new policy would allow the states to select from among mineral-rich public lands, but only a smaller acreage equal to the value of the lost lands. Under the 1980 policy, the secretary predicted the old problem of agreeing on state lieu selections would be completed by 1984. That remains to be seen since disagreements on the land values can be expected to continue even if the other roadblocks are quickly removed.

Factors other than the equal value argument have contributed to the slow pace in completing the outstanding grants. These include disagreements on the acreages due, lack of funds for suveys, lack of mineral examinations, and administrative delays by federal and state agencies. Of these, failure of the government to complete surveys and lack of agreement on lands eligible for selection have been the chief sources of delay.

Figure 3.1: Comparison of Land Grants to States
(Public Land Law Review Comm'n, *One Third of the Nation's Land* 244 [1970])

State	Total Area of State	Total Acres Granted	% of Total Area Granted	Rank in Order of % of Area Granted
Alaska	375,296,000	104,568,280	27.9	7
Florida	37,478,400	24,118,000	64.3	1
Minnesota	53,803,520	16,422,051	30.6	5
New Mexico	77,866,240	12,789,916	16.4	12
Michigan	37,258,240	12,142,846	32.6	4
Arkansas	33,986,560	11,786,834	34.7	3
Louisiana	31,054,720	11,231,032	36.2	2
Arizona	72,901,760	10,543,753	14.5	15
Wisconsin	35,938,560	10,179,804	28.3	6
California	101,563,520	8,825,106	8.7	19
Iowa	36,025,600	8,061,262	22.4	8
Kansas	52,648,960	7,790,747	14.8	14
Utah	54,346,240	7,464,497	13.7	17
Missouri	44,599,040	7,417,022	16.6	11
Oregon	62,067,840	6,959,405	11.2	18
Mississippi	30,538,240	5,887,064	19.3	9
Montana	94,168,320	5,871,058	6.6	24
Illinois	36,096,000	5,754,655	15.9	13
Alabama	33,029,760	4,766,883	14.4	16
Colorado	66,718,080	4,433,898	6.6	24
Wyoming	62,664,960	4,139,209	6.8	23
Indiana	23,226,240	3,916,334	16.9	10
Idaho	53,476,480	3,639,554	6.8	23
Nebraska	49,425,280	3,458,711	7.0	21
South Dakota	49,310,080	3,435,373	7.0	21
North Dakota	45,225,600	3,163,551	7.0	21
Oklahoma	44,748,160	3,095,706	6.9	22
Washington	43,642,880	3,044,471	7.0	21
Nevada	70,745,600	2,723,647	3.8	25
Ohio	26,382,080	2,128,862	8.1	20
Total	1,836,232,960	319,759,585	17.1	

G. Land Grants to Railroads, 1850 to 1871

Turnpike and canal projects were the first internal improvements funded by land grants. By 1827, it was common to grant one-half the public domain along the line of the project to fund it and to reserve the other half for sale. Thus was born the practice of granting the fee in alternate sections of the public domain in aid of construction and retaining the other sections for sale. The congressional debate convinced Congress that by giving half the land away to make the construction possible and doubling the government minimum sales price for the other half, the government would receive as much for the retained half as it would have from the whole. The early road and canal projects showed this theory worked, but the government could not apply it long in the face of public demand for free lands on the frontier.

By 1850, Congress had granted only a few rights-of-way for railroads through the public lands of the Midwest. The first railroad grant, as usual for public land laws, set a precedent for many other grants to follow. It was made in 1850 for the Illinois Central Railroad to connect Chicago to Mobile, and the line was completed by 1856 as a considerable economic success. The grant was for a right-of-way of 100 feet in width, and, in aid of construction, one-half the land in even-numbered sections within six miles of the line on both sides, to finance construction. The six-mile strips were the primary grant, but an indemnity grant extending from six to fifteen miles on either side of the line was also made. This area was designated for selection of lands in lieu of those primary grant lands which were already subject to Indian or military reservations or private entries. The legislation made the double-minimum sales price of $2.50 an acre apply to the government land within the primary area but not within the indemnity area. Since earlybirds quickly entered the primary lands on the first notice of the grant, the railroad had to take much of its grant in the indemnity area. For the same reason, the remaining government land was also in the indemnity area. That government land was sold at the government minimum of $1.25 an acre, meaning that the United States did not break even on the grant as proponents of grants always tried to prove.

Figure 3.2: Public Land Donations to the States
(P. Gates, *History of Public Land Development* 384 [1968])

State	*For Railroads*	*For Wagon Roads*	*Canal and Other Internal Improvements*	*Swamp and Indemnity*	*All Grants*	*Percent of Total Area*
Alabama	2,747,479		400,016	441,666	5,007,088	15.3
Arizona					10,543,753	14.3
Arkansas	2,563,721		500,000	7,686,575	11,936,834	35.5
California			500,000	2,193,965	8,852,140	8.8
Colorado			500,000		4,471,604	6.7
Florida	2,218,705		500,000	20,326,708	24,208,000	68.8
Idaho					4,254,488	7.9
Illinois	2,595,133		533,368	1,460,164	6,234,655	17.3
Indiana		170,580	1,259,271	1,259,271	4,040,518	17.5
Iowa	4,706,945		821,342	1,196,392	8,061,262	22.4
Kansas	4,176,329		500,000		7,794,669	14.8
Louisiana	353,057		500,000	9,504,412	11,441,032	39.3
Michigan	3,134,058	221,013	1,751,236	5,680,312	12,143,846	33.0
Minnesota	8,047,469		500,000	4,706,591	16,422,051	31.7
Mississippi	1,075,345		500,000	3,348,013	6,097,064	20.5
Missouri	1,837,968		500,000	3,342,521	7,417,022	16.8
Montana					5,963,338	6.3
Nebraska			500,000		3,458,711	7.0
Nevada			500,440		2,725,666	3.8
New Mexico			100,000		12,794,659	16.3
North Dakota					3,163,552	7.0
Ohio		80,774	1,204,114	26,372	2,758,862	10.5
Oklahoma					3,095,760	6.9
Oregon		2,583,890	500,000	286,108	7,032,847	11.4
South Dakota					3,435,373	6.9
Utah					7,507,729	14.2
Washington					3,044,471	7.1
Wisconsin	3,652,322	302,931	1,022,349	3,361,283	10,179,804	28.7
Wyoming					4,343,426	6.9
Total	37,128,531	3,359,188	13,910,744	64,910,353	223,884,994	

The happy results of the first railroad grant for the railroad, the people, and the United States raised a new clamor for railroad grants running to every section of the public lands. Bills were introduced in Congress, and the national mood favoring western development was so pervasive that the Commissioner of the General Land Office withdrew from all forms of entry some 30 million acres of public domain along the routes of the proposed rail lines. President Pierce vetoed all railroad grant legislation in 1852 and 1853 and ordered withdrawals restored to entry on the basis that private enterprise should build the railroads. His objections were soon overwhelmed by public demand, especially from the new public land states. In 1856 and 1857, eight new railroad grants were made for almost 20 million acres in the midwestern states.

The Commissioner of the GLO withdrew land from entry along the new routes as soon as Congress passed the 1856-57 grants. Those lands were therefore closed to entry by preemptors and investors alike, but many farmers settled on the lands either in blissful ignorance of the withdrawals or in blind faith in their right. This procedure followed succeeding railroad grants. The courts in later years established a general rule favoring the rights of actual settlers on lands withdrawn but not yet selected by the railroads at the time of entry by the settler.

As early as the 1830s and 1840s, numerous suggestions had been made for building railroads from the Missouri River to the Pacific Ocean. These proposals

were stymied by the claims of foreign powers to the unsettled West, the primitive state of railroading, and the concentration on developing the Ohio Valley. When railroad land grants proved successful in the midwestern and southern states by the 1850s, public attention turned to achieving transcontinental railroads to the Pacific.

The Pacific Railroad Act of 1862 gave land grants to the Union Pacific Railroad for the first transcontintental line. The Union Pacific was given a 400-foot right-of-way through the public lands from Omaha on the Missouri River to Nevada where it was to connect with the Central Pacific line from the California coast. The land grant, as enlarged in 1864, was for 20 odd-numbered sections for each mile of the line constructed. The Secretary of the Interior was directed by the law to withdraw all lands from entry of any kind for a distance of 25 miles from the line. Thus a solid area 50 miles wide was withdrawn from entry to enable the railroad to fill its grant. The Union Pacific grant gave no right to select lieu land outside the primary grant area. When lands were finally selected by the railroad, it owned alternate sections in a strip of land 40 miles wide across the country from Nebraska to California. The railroad was denied the right to select mineral land, but a 1864 proviso permitted the selection of iron and coal lands. The grant included the right to take timber and stone from the public lands for construction and also provided large government loans to finance some of the construction costs. These general provisions were also applied to subsequent railroad grants.

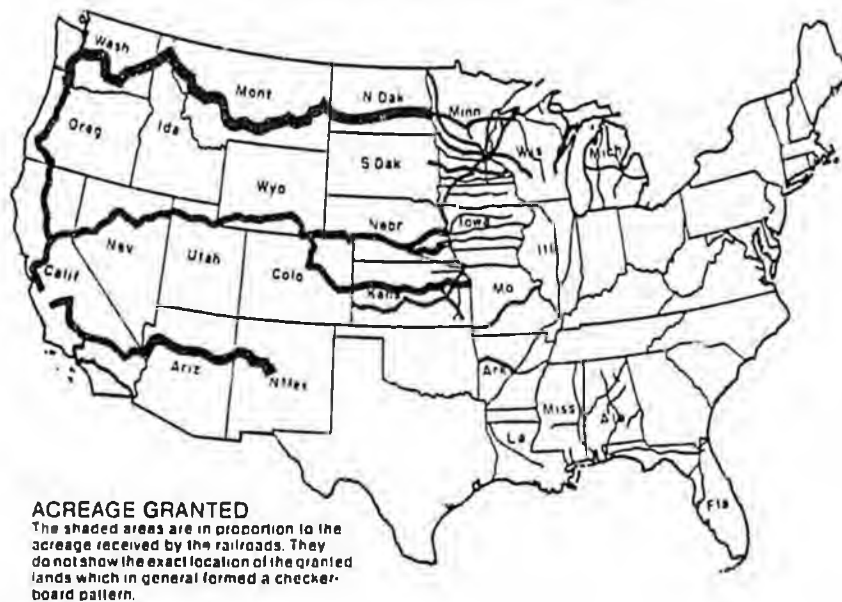
The Union Pacific grant enabled the construction of 2,720 miles of line at a cost of over 34 and a half million acres of public lands. This first transcontinental railroad was completed in 1869.

The Northern Pacific was the second transcontinental rail effort. In 1870 it received the largest land grant of all, nearly 50 million acres across the northern states from North Dakota to Washington. The grant was for alternate, odd-numbered sections at the rate of 20 sections per mile in states and 40 sections per mile in territories. Beyond the primary grants of these 40 and 80 miles was an indemnity area of ten more miles on each side, soon doubled to 20 miles on either side. The selection area was thus 80 miles wide in the states and 120 miles wide in the territories. Despite the huge size of the grant, the venture went into bankruptcy, in part because it went through virgin territory where there were no customers for shipping or land.

The third transcontinental land grant also led to bankruptcy for the railroad, but was finally completed by the Atchison, Topeka and Santa Fe Railroad in 1883. The terms of the grant were essentially those of the Northern Pacific. It ran from Atchison, Kansas to San Francisco.

Figure 3.3: Federal Railroad Land Grant Limits
(Bureau of Land Management)

Figure 3.4: Federal Railroad Land Grant Acreages
(Bureau of Land Management)



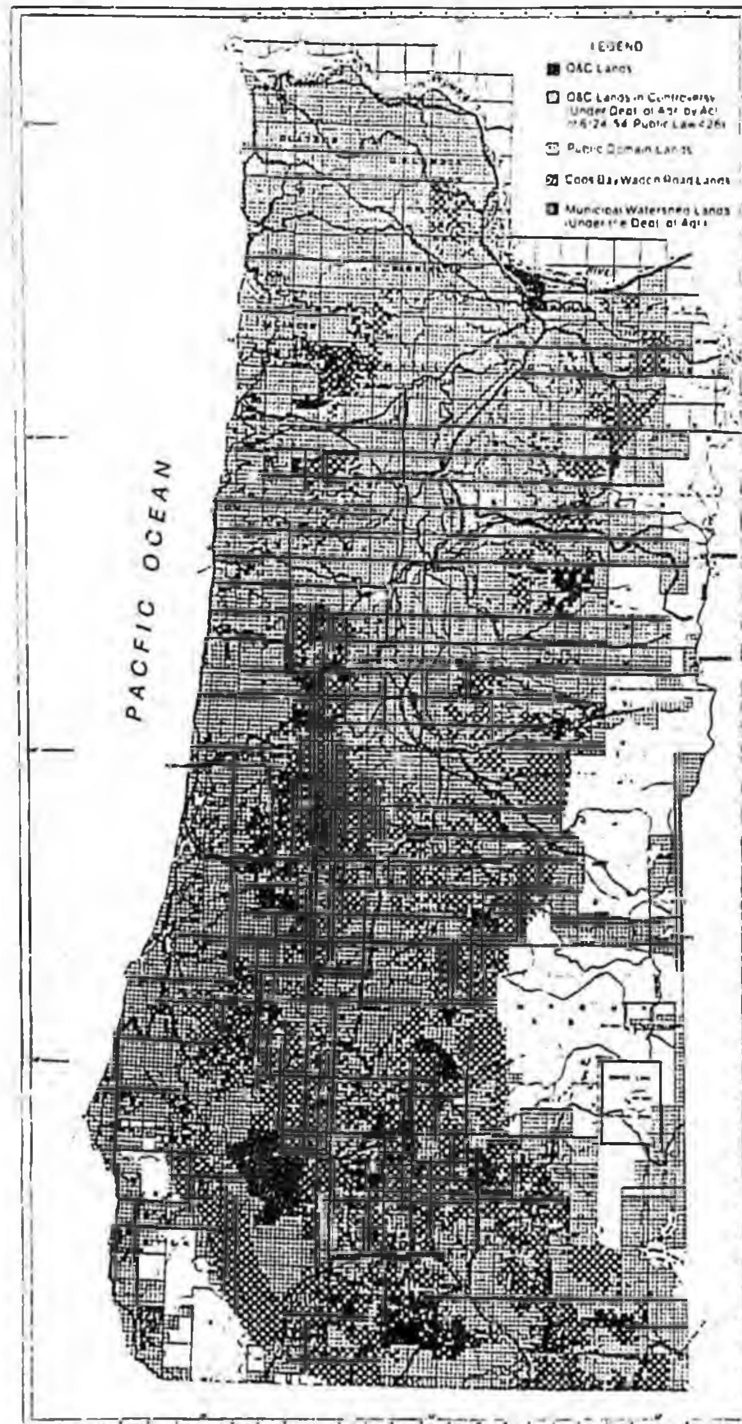
The West had originally demanded railroads for the economic development they promised, but the region turned against this new monopoly in land when it realized that these prodigal grants severely limited the area open to agricultural entry and delayed sales to settlers. To avoid obtaining patents and consequently obligations to pay real estate taxes, the railroads delayed paying the surveying and conveyance costs imposed on them by the grants, or failed to establish their routes and select land for the lines. By such delays and failures to complete the lines on schedule, the railroads kept twice as much land out of agricultural entry as they were entitled to earn. When they did sell, they sold for as much as they could obtain, a policy which mightily offended those who felt virgin lands should be disbursed to actual settlers in free grants.

Reform groups from the eastern states brought railroad grants to a halt in 1871. They also wanted forfeiture of unearned, partially earned, and unsold grants. Forfeiture was more difficult, however, because of Supreme Court dictum that the grants belonged to the railroads once they were made. In 1890, after long agitation, a general forfeiture law was enacted, bringing about the reversion of some grants to the United States.

One notable example of forfeiture of railroad grant land involved the Oregon and California Railroad Company. A federal grant had been made in 1866 for 3,728,000 acres to that railroad to build a line south from Portland to California. The grant contained a settlers' clause requiring the railroad to sell the land in parcels of not more than 160 acres and at not more than $2.50 an acre. When construction fell behind schedule and local sentiment rose against the high rates charged for shipments on the completed segments, a strong demand grew for forfeiture of all the land grant. Congress would not go so far since part of the line, connecting Sacramento to Portland, had been completed. In 1888 a compromise was reached by which over 800,000 acres were forfeited along the uncompleted line near Portland. Thereafter the railroad company disregarded the two settler clauses in its grant and sold larger tracts at higher prices. It stopped selling by 1908 because what was left of its grant had steep slopes, not suited for farming, but covered with heavy stands of Douglas fir. After long and complicated suits and legislative action, 2,891,000 acres of the grant were declared forfeited and repossessed by the federal government.

Another smaller area, the Coos Bay Wagon Road grant land, has a similar history. The two forfeited grants were known commonly as the O & C lands, and they were deemed revested and reconveyed to the United States. The O & C lands returned to the Department of the Interior contain some of the finest stands of Douglas fir forest to be found in the United States, making them extremely valuable.

Figure 3.5: Western Oregon, O & C Lands
(Bureau of Land Management)



During and after their construction, the railroads conducted an intense advertising campaign in Europe as well as in the eastern United States for immigrants to the West. The railroads had a great deal of land to sell, more than any owner other than the federal government and the states. To produce income they wanted to create farm communities and towns to provide continuing rail traffic. The sales campaigns of the railroads succeeded remarkably well, and soon the western states produced huge quantities of grain and livestock to ship to eastern markets. The flood of immigrants westward was so large that the Superintendent of the Census reported in 1890 that, "The Frontier is gone."

The railroad grants caused significant problems which remain unresolved even today. One is the checkerboard pattern of land ownership by which the railroads or their grantees acquired alternate sections, leaving the adjacent sections in government ownership. The erratic pattern of land ownership was further complicated by the effect of the various agricultural settlement laws; they allowed private parties to select and acquire their pick of the available public domain. If the government sections had all passed into private ownership, as originally contemplated, the distinction in ownership would have disappeared by now. Instead, many of the government sections were eventually reserved or withdrawn and remain in the public domain. The resulting crazy quilt of land ownership in national forests and grazing districts makes administration difficult for the Forest Service and the BLM, respectively. It also makes access to the public lands by the public, whether mineral operators, recreation seekers, or other users, difficult if not impossible.

Another troubled legacy of railroad grants is the title to minerals under the railroad grants. Railroad grants have proven to contain minerals despite the restriction against acquisition of any mineral land except iron and coal lands. When the railroads sold their grant lands, they made a practice from the first of reserving various minerals. In the light of modern exploration techniques, the railroad grants are believed valuable for many minerals other than iron and coal. Unfortunately, the railroad reservations, like other private mineral reservations, are frequently ambiguous, causing continual title uncertainty and litigation.

Thomas v. Union Pacific Railroad Co.

United States District Court, District of Colorado, 139 F. Supp. 588 (1956), aff'd, *239 F.2d 641 (10th Cir. 1956)*

ROGERS, District Judge.

The ultimate question presented by the issues drawn between the defendant's Motion to Dismiss and the Complaint of some score of plaintiffs, concerns the relative rights of the plaintiffs who seek leases for oil and gas under the Mineral Lands Leasing Act of February 25, 1920, as amended, 30 U.S.C.A. § 181 et seq. on the one hand, and the defendant Union Pacific Railroad Company which had reserved all oil, coal and other minerals in land conveyed by the United States of America to the defendant or its predecessors in title pursuant to Acts of Congress of July 2, 1864, July 3, 1866 and the Joint Resolution of Congress of March 3, 1869, known as the "Railroad Grants", on the other hand.

Inasmuch as the Motion to Dismiss is dispositive of the cause, it is necessary that the pleadings be set forth in some degree of detail. Jurisdiction of the Court is sought pursuant to the provisions of Title 28 U.S.C. § 1331, as the purported action of the plaintiffs is in rem between citizens of the United States, the matters and things in controversy, exclusive of interest and cost exceed the sum of $3,000, and the action involves the construction and effect of certain Congressional Acts, the Railroad Grant Acts above-mentioned, and the Federal Leasing Act. Each plaintiff claims lands in Adams County, State and District of Colorado, alleged to be available for Federal Oil and Gas Leases pursuant to the Mineral Lands Leasing Act of February 25, 1920, as amended, supra.

The Complaint alleges that the defendant Union Pacific Railroad Company obtained patent to said lands from the President of the United States, and that its patents contained the following restrictive clauses:

Young revels (and loses sleep) over new power

By TOM MILLER
Daily News Staff Writer

Alaska Rep. Don Young said he hasn't had a good night's sleep since Republicans took over the leadership of the U.S. Congress.

The defeat of the Democrats in Congress meant Young became the chairman of the Committee on Resources.

On election night, Young first savored his victory over Democrat Tony Smith ("There was no love lost," he said) and then went to bed. But at 3 a.m. his eyes popped open and he thought, "I'm the chairman!"

It's the first time since statehood that an Alaskan has been the chairman of a House committee, he said.

Young was in Ketchikan Friday night for the District One Republicans' Lincoln Day Dinner. He spoke to reporters in the afternoon.

Young said he felt a sense of responsibility, and joy and relief because of the Republican victory in the 1994 election.

It's hard, he said, for a lay person to imagine the sense of frustration that he had felt for years while watching Congress pass into law legislation that Young thought was terrible and burdensome to Alaska and to the country.

Rep. Don Young

It's also hard for him to get a good night's sleep, he said. Every night, he lies awake thinking about what he has to do, who he has to talk to, and what to work on next.

Most work is on the Republican Contract With America. The session is eight-weeks old, he said, and there have been 100 votes on issues, compared to 13 at this point last year.

Young talked about several issues

See 'Young,' page A-5

Young

Continued from page A-1

important to him and to Republicans:

• The Endangered Species Act needs change, he said.

"We will get that done."

Young acknowledged that there are people in Alaska and in Southeast who think the wolf and other animals are endangered but said, "They think. That's all it is — they 'think.'"

If a threat exists, it should be addressed, he said. But the law was never intended to lock up vast lands and resources, he said.

• Young said thousands of pages of new regulations have been created each year in recent times and that the confusion serves only to tell people what they can't do. None of them help get anything accomplished.

The U.S. "was slowly being developed into a socialist country," he said. "We have to change it back to be great again."

Need time

He said it would take more than two years to change what has happened over the past 40 years.

"My motto is 'Two, four, and many more,'" Young said.

• Asked about a resolution, offered by Sen. Robin Taylor, R-Wrangell, that would urge the federal government to relinquish control over land in 22 states, Young said, "Sen. Taylor's resolution is already being seriously discussed in Washington."

• On subsistence, Young said the state should pass a constitutional amendment to give rural preference.

"I didn't say 'racial preference,' but 'rural.'"

• The balanced budget amendment passed by the House must be passed by 38 states to become the law of the land, said Young. It will pass overwhelmingly in Alaska, he said.

Ketchikan was Young's only stop in Alaska. He planned to head back east Saturday morning.

"I'm here because Ketchikan's been good to me over the years," he said.

Young said he originally declared his candidacy in Ketchikan in 1972.