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OREGON & CALIFORNIA RAILROAD GRANT LANDS

MAY 28, 1926.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed

Mr. SINNOTT, from the Committee on the Public Lands, submitted the following

REPORT

[To accompany H. R. 11329]

The Committee on the Public Lands, to whom was referred H. R. 11329, for the relief of the counties in Oregon and Washington within the boundaries of which are located the lands formerly granted to the Oregon & California Railroad Co., but which lands were later recaptured by the United States Government because of the failure and refusal of said company to comply with the enforceable covenants contained in the acts making the grant, having considered the same, respectfully report it back to the House with the recommendation that it do pass.

The following is the report of the Secretary of the Interior on the bill:

DEPARTMENT OF THE INTERIOR,
Washington, May 27, 1926.

Hon. N. J. SINNOTT,
Chairman Committee on Public Lands,
House of Representatives.

MY DEAR MR. SINNOTT: I am in receipt of your request for report on H. R. 11329; also of your letter inclosing copy of hearings before the committee on said bill.

I inclose herewith copy of letter of May 19, 1926, addressed to the chairman of the Senate Committee on Public Lands and Surveys, which sets forth the views of the department upon the situation.

Very truly yours,

HUBERT WORK, *Secretary.*

DEPARTMENT OF THE INTERIOR,
Washington, May 19, 1926.

Hon. ROBERT N. STANFIELD,
Chairman Committee on Public Lands and Surveys,
United States Senate.

MY DEAR SENATOR STANFIELD: I have your letter of May 19, 1926, relative to the Oregon-California land-grant situation in the State of Oregon. I have also been furnished with copy of hearings held before your committee, at which

appeared representatives of the 18 counties in western Oregon suffering by loss of tax revenue under the operation of the so-called revestment act, which took from the tax rolls the lands recovered from the railroad company, provided for their classification, and for the disposition of the lands and the timber thereon.

You ask whether the fact that the moneys which it was anticipated would be available to the counties in lieu of taxes have not been so available is due to administration of existing law, or whether the situation is one which requires a change of policy by Congress.

The existing law, as construed by the department, as well as the conservation of the resources and the securing of a proper return from the disposition thereof, required, in the opinion of the department, the policy which has been followed. The lands and timber are now being disposed of as rapidly as applications therefor are presented, but the receipts up to the present time have been insufficient to pay to the railroad company the amount awarded to it by the courts and by law, and to also pay the amount awarded by law to the counties, in lieu of taxes.

I have personally heard the representatives of the counties interested, and have given the subject much consideration, and am unable to point out a way by which relief can be afforded to the counties under existing law.

I can only suggest, therefore, that the Congress, in the light of the situation as it now exists, shall give the matter consideration, with a view of adopting a policy which will meet the situation.

Very truly yours,

HUBERT WORK, *Secretary.*

Congress in the sixties made a grant in aid of the construction of a railroad from Portland, Oreg., to the southern boundary of the State for the purpose of developing that section, promoting its settlement and prosperity. The grant consisted of the odd-numbered sections of land on either side of the axis of the railroad, and in case any such lands had been disposed of, then the company could select other lands in a strip 10 miles wide on either side of the primary limits.

The company completed the railroad about the year 1885 and so earned the interest given to it in the lands, which was limited to $2.50 per acre. The act provided:

And provided further, That the lands granted by the act aforesaid shall be sold to actual settlers only, in quantities not greater that one quarter section to one purchaser and for a price not exceeding two dollars and fifty cents per acre—

which means that the Congress gave the railroad a bonus of $2.50 per acre, which the company was to realize from the sale of land, and that all other benefits that might be derived from the land were reserved for the settler-purchasers. Since the grant was in praesenti, the lands became subject to local taxation, and prior to the revestment act had been on the tax rolls of the counties in which they were situated for many years, producing a total tax of about $460,000 per year.

The lands with whatever of agricultural value, timber (although at that time timber was of little value), minerals, etc., they contained were not conveyed in fee simple to the railroad company with the full right to said company to their use and disposal, but were conveyed under the proviso limiting the interest of the company to not to exceed $2.50 per acre, but with the right to sell and convey good title to purchasers qualified to buy under the terms of the proviso.

The following quotation from 238 U. S. 408–409, states the manner in which the company dealt with the lands:

One hundred and sixty-three thousand four hundred and thirty and twenty-eight one-hundredths acres of the granted lands were sold by the Oregon & California Railroad Co., prior to May 12, 1887, nearly all of which were sold to actual settlers, in small quantities, although in a few instances the quantities exceeded 160 acres to

one purchaser and the prices were slightly in excess of $2.50 an acre. A rapidly increasing demand for the lands in large quantities and at increased prices commenced about 1889 or 1890 and has continued ever since. From 1894 to 1903 some of the granted lands were sold to persons not actual settlers in quantities and at prices exceeding the maximum designated in the provisos, and in several instances in quantities of from 1,000 to 20,000 acres to one purchaser at prices ranging from $5 to $40 an acre; and in one instance a sale of 45,000 acres at $7 an acre to a single purchaser. About 5,306 sales were made, aggregating 820,000 acres, of which sales about 4,930 were for quantities not exceeding 160 acres and 376 sales in quantities exceeding 160 acres to one purchaser, aggregating 524,000 acres. The latter sales were to persons other than actual settlers and for other purposes than settlement and at prices in excess of $2.50 an acre; and approximately 478,000 acres were sold since 1897 and approximately 370,000 of the 524,000 were sold to 38 purchasers in quantities exceeding 2,000 acres to each purchaser. Approximately three-fourths of all sales made since 1897 were made by contracts providing for the payment of the purchase price in from five to ten annual payments and execution of conveyance upon final payment, a considerable number of which contracts were pending when this suit was brought.

On January 1, 1903, the company withdrew from sale all of its lands and refused to accept offers for any of them, asserting that they were timber lands and unsuitable for settlement. At the time the answer was filed there remained unsold 2,360,492.81 acres, of which 2,075,616.45 acres were theretofore patented under the land-grant acts, and 284,876.36 at that time remained unpatented, all of which are claimed by the company under the land grants.

Since January, 1903, over 4,000 persons have applied to purchase certain of the unsold lands, claiming that they desired to do so for the purpose of settling and establishing homes thereon, and each applicant stated that he was willing and able to tender at the rate of $2.50 per acre therefor. Until about the year 1890 or 1891 there was substantially no demand for the granted lands except for the purpose of settlement, and nearly all of the sales prior to the year 1894 were made for settlement and to settlers.

Prior to 1894 the company maintained an immigration bureau to induce settlement upon the lands, and the greater part of the sales made after that year were to persons not settlers and for prices exceeding $2.50 per acre.

It was testified that the gross amount of lands that inured to the Oregon & California Railroad Co. under both the east side and the west side grants was 3,182,169.57 acres, and it was stipulated that between the years 1871 and 1906 there were patented under the east side grant 2,745,786.68 acres and between the years 1895 and 1903 there were patented under the west side grant 128,618.13 acres, leaving unpatented 307,764.76 acres.

At the time the answer was filed there remained unsold of the granted lands 2,360,492.81 acres, of which 2,075,616.45 acres were theretofore patented to the Oregon & California Railroad Co. under the land grants and 284,876.36 thereof at that time remained unpatented, all of which unsold lands are claimed by the railroad company under and by virtue of the grants. The reasonable value of said unsold lands exceed the sum of $30,000,000. There is a table attached to the answer showing the net amount received by the railroad company to be, after all disbursements, $2,495,094.03.

The refusal of the company to sell the lands in compliance with the law led to proceedings to require it to do so, and the matter came to the United States Supreme Court, which declined to declare forfeiture, but decided the provisions were enforceable as written, and left the settlement of the matter to Congress—

to provide by legislation for their disposition in accordance with such policy as it may deem fitting under the circumstances, and at the same time secure to the defendants all the value the granting acts conferred upon the railroads.

The decision of the Supreme Court was handed down on June 21, 1915.

In pursuance of this decision, Congress passed an act on June 9, 1916, providing for the disposition of the lands, the payment of the balance of the bonus due the railroads, and—

SEC. 9. That the taxes accrued and now unpaid on the lands revested in the United States, whether situate in the State of Oregon or the State of Washington,

shall be paid by the Treasurer of the United States upon the order of the Secretary of the Interior, as soon as may be after the approval of this act, and a sum sufficient is hereby appropriated out of any money in the Treasury not otherwise appropriated.

The act provided that an appraisal of the lands and timber should be made, and that all except power-site lands, should be offered for sale by the Secretary of the Interior. The moneys as received should first be applied to the reimbursement of the Treasury for the moneys advanced to pay the taxes due the counties under section 9, quoted above, and to the payment of the amounts found due the railroad company under the act. Thereafter, as moneys were received they should be divided equally between the State and counties of Oregon and the public interests as represented by the reclamation fund and the Treasury of the United States as follows: 25 per cent to the irreducible school fund of the State, 25 per cent to the counties, 40 per cent to the reclamation fund, and 10 per cent to the United States Treasury.

It was expected by Congress that the lands and timber would find ready market and that sales would be made sufficient in amount not only to pay the preferred claims, as stated above, but to make substantial distributions under the law, and that the counties would duly receive from such distribution moneys substantially equal to the taxes these lands should bear.

But for several reasons this expectation has not been realized, and no such distribution has been made, although the value of the recaptured lands with the timber thereon has greatly increased, and no distribution will be made in the near future, for there is still due the railroad approximately $4,000,000, which amount may be reduced to some extent by decision of the courts in suits now pending.

Prior to the act of revestment the total area of these counties subject to taxation was 11,600,000 acres. The revestment withdrew from taxation 2,400,000 acres, leaving only 9,200,000 acres subject to taxation, and 13,800,000 acres tax free as Government holdings out of a total acreage of approximately 23,000,000; that is, only about 40 per cent of the total area, and approximately that per cent in value, is subject to taxation. The revestment removed about 20 per cent of the total taxable property of all the counties, and in many local districts 50 per cent of their taxable property from the rolls.

The people in these counties are endeavoring to develop and settle them. The presence of such large areas in Government ownership, exempt from taxation, is a serious matter. The unexpected removal of large areas subject to taxation has placed on them an unexpected burden. The people of Oregon did not ask or expect the Government to revest the grant land. They asked and expected that the Government would enforce the proviso in the granting acts for their sale, and until so disposed of the lands would have remained on the tax rolls. They asked that the original intent of Congress, which was to aid in the development of the country, be carried out.

The following table shows graphically the situation:

County	Acreage of grant lands	Assessed value of grant lands	Taxes for 1915	County	Acreage of grant lands	Assessed value of grant lands	Taxes for 1915
Benton	54,410.00	$817,035	$20,858.19	Linn	62,911.48	$742,785	$11,790.18
Clackamas	98,183.74	1,148,005	31,602.65	Marion	33,095.00	407,520	8,449.37
Columbia	18,037.90	726,040	16,463.99	Multnomah	9,687.00	210,770	3,486.97
Coos	125,848.00	1,354,130	41,944.80	Polk	37,323.00	622,660	14,899.38
Curry	11,885.00	123,600	2,407.84	Tillamook	29,781.00	163,100	2,684.51
Douglas	644,379.76	5,981,944	99,109.80	Washington	20,734.18	181,200	4,530.85
Jackson	447,190.00	4,071,890	68,903.70	Yamhill	30,425.50	199,627	4,696.85
Josephine	189,138.00	1,714,730	35,290.55	Clark, Wash	492.50	10,900	431.94
Klamath	43,011.00	423,490	12,207.77				
Lane	302,787.00	3,316,305	84,152.22	Total	2,175,305.98	22,324,931	465,923.88
Lincoln	15,986.00	104,200	2,012.32				

Congress in the revestment act of 1916, realizing the serious situation that would be created by the act, provided for advancing to the counties the taxes for 1913, 1914, and 1915 from the United States Treasury, totaling about $1,570,000, since the railroad company, after the beginning of the suits to require it to comply with the terms of the granting acts, had refused to pay the taxes for these years. That is, Congress realizing that so far as the counties were concerned that it had assumed the obligations imposed by the granting acts, provided for the payment of taxes accrued prior to revestment, and proposed thereafter to make a distribution of 25 per cent of the proceeds of the sales of lands and timber (after the payment of certain amounts as stated previously) in lieu of taxes.

The result of the act of revestment has greatly increased the taxes to be paid on the remaining property, has injured and is injuring their development, embarrasses them in meeting obligations incurred while these lands were yet on the rolls, and deters the construction of roads, bridges, and school facilities, which are greatly needed.

The bill does not propose that the Government shall pay the counties any moneys in lieu of taxes on lands publicly held. It does propose, in view of the unforeseen and distressing conditions that have arisen and now exist by reason of the delays in the disposition of the lands and timber contemplated in the revestment act but not realized, that the Government advance now the amount of taxes that would have accrued on the lands for the years 1916–1926, inclusive, had they not been revested, and for subsequent years until the counties have received the 25 per cent coming to them under the revestment act, or until the sales have been made to such an extent that the yearly distribution to the counties practically equals the former taxes collected therefrom. The bill will not give to counties any more money than the reversing act provides, but it does make the money available before the sales occur.

The bill provides that when sales are made and amounts are available for distribution, the 25 per cent due the counties shall be withheld from the counties and paid into the Treasury until all amounts advanced to them from the Treasury have been repaid thereto.

Congress by providing in the revestment act for the payment of the accrued taxes for 1913, 1914, and 1915 has set the precedent and recognized the reasonableness and right to advance the moneys.

The Government has the sole disposition of the lands. It can dispose of them or hold them. The counties have no voice in the matter and should not be made to suffer in the event of delay.

The taxing districts wherein the grant lands are located had a right to believe and did believe that these lands would for all time bear their share of the expense of the building and development of the country; costs were necessarily high because of relatively small population. Predicated upon the faith that they would forever have this source of tax revenue, these taxing districts—counties, ports, school districts, and road districts—went forward with their program of governmental development; indebtedness, floating and bonded, was incurred; courthouses, schoolhouses, and roads were built, harbors were improved, and all the necessary work of building a Commonwealth was done, although it exhausted the credit of many of the counties.

Then the Congress passed the revestment act and swept from the tax rolls of these counties taxable property assessed at $22,500,000 and bearing an annual tax revenue of $460,000.

The grant lands, due to their location in the hilly and mountainous sections of the counties, represented in many taxing districts over half of the taxing value. The revestment act doubled the tax burden of those least able to bear it—the farmers and small ranchers in the hills, of the class that make up the bone and sinew of this Nation. The fact that Congress did not intend such a result does not lessen the burden.

While the more isolated districts were the heaviest sufferers, the loss to the counties as a whole was by no means slight. The full effect of this loss of tax revenue may be more clearly understood when we take into consideration the fact that in the great majority of the counties affected less than half the total area was subject to taxation while the grant lands were yet taxable, the balance being held in Federal reserves of various kinds.

Approximately 80 per cent of the grant lands are located in five counties, namely, Coos, Douglas, Jackson, Josephine, and Lane. The following table shows the relative amount of tax on the grant lands and the tax on the balance of the taxable property of these five counties:

County	Tax, not including grant lands	Tax on grant lands	Percentage relation
			Per cent
Coos	$700,340.04	$41,944.80	6
Douglas	497,007.99	99,109.80	20
Jackson	701,404.43	68,903.70	10
Josephine	260,253.18	33,290.55	14
Lane	908,433.01	84,152.25	9

During the 10 years since the revestment act the affected counties have lost in tax revenue approximately $5,000,000 by reason of the revestment of the grant lands.

The Supreme Court, in the litigation over the grant lands, refused the Government's prayer for forfeitures, holding that there was grant of absolute title, subject only to the power of Congress to re-

quire performance of the covenant—the settler's clause. The covenant was for the benefit of the people of the State of Oregon, a fact recognized by the Supreme Court and by the Attorney General and the Congress while considering legislation looking to the enforcement of the covenant in the granting act.

Such provision was made for distribution of the net proceeds accruing from the disposal of the revested lands as would, in the opinion of Congress, substantially effect the result contemplated in the granting acts. The interest of the State of Oregon, and particularly of the counties affected, was thought to be protected by payment to the State and counties of 50 per cent of such net proceeds, 25 per cent to each.

Unfortunately, however, the result expected has not been realized. Ten years have passed since the revestment act was passed and no returns have been forthcoming. Sales of lands and timber have brought in less than $4,000,000, considerably less than is necessary to reimburse the Government for its liability to the railroad company. The time when there will be money for distribution under the terms of the revestment act is, therefore, still in the future.

The sales under the act have not only failed to secure to the counties; in 10 years there has been nothing paid. The fact that there will be an ultimate settlement will not meet the present crisis and does not help the taxpayer in those counties, who is to-day paying upward of 40 mills in annual taxes. Help for him is now imperative.

The State of Oregon and the various counties affected objected, and strenuously, to any disposition of the lands that would take them from the tax rolls of the counties. They have never wavered in their contention of right to an interest in the grant lands.

The Congress having, by its act, over objection of the State of Oregon, taken from the State and counties the source of a half million dollars' annual revenue, and having attempted to provide a payment in lieu of the revenue so taken, and the provision so made having proven inadequate, to the detriment of the State and counties, it follows that Congress is obligated, morally at least, to make redress for the injury caused.

The measure of the injury suffered by the counties is the amount they would have received in taxes had the revested lands remained on the tax rolls. The bill provides redress for that injury by payment commensurate with that loss. It simply makes the counties whole. It does at this time what the revestment act was intended to do. It corrects a mistake.

The bill does not contemplate a departure in governmental policy. It is in line with the policies of the Government in its dealings with the Indian tribes and the reclamation works, where reimbursable advances are made to the extent of tens of millions of dollars.

The payments here provided for are reimbursable from the Oregon & California land-grant fund. The ultimate sufficiency of the fund to make reimbursement is without question. In the forfeiture litigation it was stipulated between the railroad company and the Government that the lands were worth in excess of $30,000,000; informed authorities place the value at from $70,000,000 to $80,000,000.

The time of reimbursement is a matter for governmental determination. The lands and the timber thereon have a present value of more than the stipulated amount of $30,000,000, if sold outright. If the

provision of the revestment act, as to manner and method of sale, be carried out, it will take a longer time to make reimbursement; probably a decade. In the latter case there is no doubt but that the later sale of the timber will result in an increased price.

Whatever the policy as to sale, whether immediate or continued, it is incontrovertible that the Government is amply secured for all advances provided for in the bill and that there will be a considerable fund left for distribution under the terms of the revestment act. There can be no ultimate loss to the Government.

In conclusion, the committee believes that the bill provides for the doing of simple justice. The Government should do the equity it exacts of its people. Having by its own act done an unintentional, but none the less real, and very grievous injury to those remote counties of western Oregon, it should, at their petition, redress that injury and make the injured whole.

The bill offers a reasonable logical remedy for the existing wrong, without departure from governmental policy. The committee recommends its early enactment.

We append to this report a statement prepared by representatives of the county courts presenting in detail their situation.

The Congress of the United States early recognized that facilities for rapid transportation from coast to coast were essential to the Nation's development, and that settlement by its own citizens of the country's farthest confines was the surest guaranty of the integrity of the national boundaries. Aid was, therefore, extended at various times and in various ways, chiefly by large land grants, to private enterprise engaged in the building of those great arteries of national development and national safety, the transcontinental railroads.

These various land grants were not charitable bequests; they were intended and expected to, and, in fact, did yield a commensurate return to the Nation in increased commercial and social development, in national safety and unity. The Supreme Court of the United States (U. S. *v.* U. P. R. R. Co., 91 U. S. 72), in considering a similar granting act, said:

"Many of the provisions in the original act of 1862 are outside of the usual course of legislative action concerning grants to railroads, and can not be properly construed without reference to the circumstances which existed when it was passed. The War of the Rebellion was in progress; and, owing to the complications in England, the country had become alarmed for the safety of our Pacific possessions. The loss of them was feared in case those complications should result in an open rupture; but, even if this fear were groundless, it was quite apparent that we were unable to furnish that degree of protection to the people occupying them which every government owes to its citizens. It is true, the threatened danger was happily averted; but wisdom pointed out the necessity of making suitable provision for the future. This could be done in no better way than by the construction of a railroad across the continent. Such a road would bind together the widely separated parts of our common country, and furnish a cheap and expeditious mode for the transportation of troops and supplies. If it did nothing more than afford the required protection to the Pacific States, it was felt that the Government, in the performance of an imperative duty, could not justly withhold the aid necessary to build it; and so strong and pervading was this opinion, that it is by no means certain that the people would not have justified Congress if it had departed from the then settled policy of the country regarding works of internal improvement, and charged the Government itself with the direct execution of the enterprise.

"This enterprise was viewed as a national undertaking for national purposes; and the public mind was directed to the end in view, rather than to the particular means of securing it. Although this road was a military necessity, there were other reasons active at the time in producing an opinion for its completion besides the protection of an exposed frontier. There was a vast unpeopled territory lying between the Missouri and Sacramento Rivers which was practically worthless without the facilities afforded by a railroad for the transportation of persons and property. With its construction, the agricultural and mineral resources of this territory could be developed, settlements made where settlements

were possible, and thereby the wealth and power of the United States largely increased; and there was also the pressing want, in time of peace even, of an improved and cheaper method for the transportation of the mails, and of supplies for the Army and the Indians."

The foregoing statement of the "national purpose" involved in the land grants was approved in the case of O. & C. R. R. Co. *v.* U. S. (238 U. S. 393).

Among the grants so made was that known as the O. & C. R. R. Co. land grant. This land grant was authorized by Congress in several enactments passed during the years 1866 to 1870, inclusive. These acts provide, in substance, for the granting to such railroad company as might be designated by the State of Oregon of every alternate section of the public domain, designated by odd numbers, to the amount of 20 sections per mile, 10 on each side of the main line of such railroad company, to be constructed from the Oregon-California boundary line northward to the city of Portland, Oreg. As construction of the railroad progressed the lands granted were to be withdrawn from public sale, and the lands held by the Government within the limits of the land grant were not to be sold except at double the minimum price of other public lands.

The grants were made subject to a provision that the lands granted should be sold to actual settlers only, in quantities not greater than one-fourth section to one purchaser and for a price not exceeding $2.50 per acre.

The Oregon & California Railroad Co. was the successor to the grant lands, and, after many vicissitudes of fortune, completed the railroad line from the California border to the city of Portland about the year 1885, and so became entitled to and received all of the grant lands. For a number of years after the completion of the railroad the company sold the grant lands under the strict terms of the so-called settlers' clause. However, as the country settled up and realization came of the real value of the timbered portion of the grant, comprising some 2,400,000 acres thereof, the railroad company began to sell the lands in violation of the terms of the act at increased prices and quantities and without regard to settlement thereon. Finally, and about the year 1903, the company withdrew the lands from sale at any price, although applications to the extent of thousands were made to purchase.

The willful and continued violation by the railroad company of the terms of the granting act finally resulted in the instituton of a suit by the United States Government to declare a forfeiture of the unsold portion of the grant lands.

The value of the unsold portion of these lands at the time of the commencement of this litigation was stipulated by the Government and the railroad company to be in excess of $30,000,000. The taxing authorities of the State of Oregon estimated the conservative value of the lands at $34,000,000.

This litigation reached its final determination in a decree by the Supreme Court of the United States. This decree held, in effect, that the lands were not subject to forfeiture by legal action but that the so-called settlers' clause was a continuing, enforceable covenant, and that Congress could, by appropriate legislation, require performance.

During the course of the litigation the railroad company refused to pay the taxes levied against the lands, and at the time of the final decree taxes had accrued and were unpaid for the years 1913, 1914, and 1915 in the total sum of approximately $1,500,000.

Pursuant to the decree of the Supreme Court, Congress in 1916 passed the Chamberlain-Ferris Act, revesting in the United States title to all of the unsold lands of the grant and providing for their classification as power-site lands, agricultural lands, and timberlands. Under the provisions of the act the agricultural lands were to be thrown open to homestead entry. The timber on the timbered lands was to be sold under direction of the Secretary of Interior, and the lands, after the sale and removal of the timber, were to be reclassified. The proceeds from the sale of the timber were to be placed in a special fund termed the "O. & C. land-grant fund."

The act further provided for payment by the United States to the railroad company of the sum of $2.50 per acre for the revested lands, payment to be made subject to an accounting to be had between the Government and the railroad company, and for payment by the United States to the counties in which the lands were situated of accrued taxes. The sums paid to the railroad company and to the counties were to be repaid the Government from the proceeds of the sale of the timber on the revested lands. The balance of this fund was to be distributed as follows: Forty per cent thereof to the United States reclamation fund; 25 per cent thereof to the State of Oregon for its common-school fund; 25 per cent thereof to the various counties in which the lands were situated for

school, highway, and port purposes; and the remaining 10 per cent to the United States Treasury.

The Chamberlain-Ferris Act was in the nature of remedial legislation, and the provisions of the act itself clearly show that it was the intent of Congress to carry out as nearly as possible the original purpose of the granting acts. That the distribution provision in the revestment act was a recognition of the right of the State of Oregon to share in the proceeds of the grant lands is clearly shown by the report of the Senate Committee on Public Lands; this committee in its report of May 18, 1916, shows its appreciation and understanding of the purpose of the grant and the right of Oregon therein, when it said:

"In justification of the apportionment to the State of Oregon proposed by the amendment made by this committee of a part of the proceeds of the sales of land and timber, it must be remembered that the grant lands were, by the granting act, dedicated to the settlement and upbuilding of the State of Oregon.

"The Supreme Court, commenting generally on the policy of Congress in making such grants, refers to them as a 'national purpose,' adding, 'And we may say that the policy was justified by success. Empire was given a path westward and posperous Commonwealths took the place of a wilderness.'

"This object which the Supreme Court so eloquently said Congress had in mind was largely defeated by the railroad company's failure to observe the settlers' clause. The major portion of the grant lands is still a wilderness—a 'vast solitude.'

"The railroad company was chosen as the agent of Congress to effect the settlement of the grant lands. It was untrue to its trust; except in a very small measure it refused to sell the grant lands to actual settlers, thereby retarding the settlement and development of the State of Oregon.

"Inasmuch as the original purpose of the granting acts was the welfare of the State of Oregon, your committee feels that this purpose should now be resumed. It can only be accomplished by devoting the grant lands or their proceeds to the original purpose of hastening the development of the State.

"The Government reimbursed itself for the grant in the grant itself. It provided that the even sections should be doubled in value. It never expected another dollar from these lands, except in transportation for its property and troops. From this last source it has received over $2,000,000; the Government has received in addition nearly $1,000,000 in the compromise suits under the 1912 compromise act. The 10 per cent allowance to the Government under this act will amount to several million dollars more. We deem it only just and equitable that Congress should make the allotments proposed by the amendments of this committee to the State of Oregon in reparation for the great damage it has sustained by reason of the refusal or permit settlement of the granted lands.

"In so far as changed conditions permit, it surely is no more than equitable that Oregon should reap the full benefit originally intended to be conferred on the State by the granting acts, viz, the devotion of the lands, or the proceeds therefrom, to the upbuilding of the State."

Such provision was made for distribution of the net proceeds accruing from the disposal of the revested lands, as would, in the opinion of Congress, substantially effect the result contemplated in the granting acts. The interest of the State of Oregon, and particularly of the counties in which the lands were situated, was thought to be protected by payment to the State and counties of 50 per cent of the net proceeds from the sale of the properties, 25 per cent thereof to the State and 25 per cent to the counties.

Unfortunately, however, the result expected has not been realized. Eleven years have passed since the revestment act was passed and no returns have been forthcoming. There are several causes why the results expected by Congress and by the people of Oregon to follow from the Chamberlain-Ferris Act have failed to materialize; inaccessibility of a considerable portion of the timber, poor market conditions, slowness of administrative action, and various other causes may be cited. Whatever the causes, the fact is clear that the act has failed of its purpose.

Not only have the State and counties of Oregon failed to secure any financial returns from the transaction; they have suffered a great and a continuing loss thereby.

The immediate result of the revestment of these lands was the removal from taxation within 18 counties in western Oregon of approximately 2,400,000 acres of theretofore assessable and assessed property, the valuation of which was, in round numbers, $22,500,000, with a resultant annual loss of approximately $460,000 in tax revenue.

The full effect of this loss of tax revenue can be more clearly understood when we take into consideration the fact that in the majority of counties affected less than half of the total area was subject to taxation, while the grant lands were yet taxable, the balance being held in Federal reserves of various kinds. The total taxable area of these counties, including the grant lands, was, in round numbers, 12,000,000 acres. The revestment act took from the tax rolls approximately 2,400,000 acres, leaving subject to taxation within these counties 9,600,000 acres out of a total area of approximately 24,000,000 acres.

It will thus be seen that the revestment act took from tax rolls of these counties approximately 20 per cent of their total taxable real property. This statement does not reflect the true condition in many parts of the counties. Many local taxing districts lost as much as 50 per cent of their taxable property.

The figures given above represent taxable acreage. The following table graphically shows the loss to the several counties in taxable value. The first column shows the total acreage of grant lands in each county; the second column, the total assessed value of these lands for 1915; the third column, the total tax levied for 1915 and paid by the United States under the terms of the Chamberlain-Ferris Act (the Government also paid the 1913 and 1914 taxes as well, a total of about $1,500,000).

County	Acreage of grant lands	Assessed value of grant land	Taxes for 1915
Benton	54,410.00	$817,035	$20.858.19
Clackamas	98,183.74	1,148,005	31,602.65
Columbia	18,037.90	726,040	16,463.99
Coos	125,848.00	1,354,130	41,944.80
Curry	11,885.00	128,600	2,407.84
Douglas	644,379.76	5,981,944	99,109.80
Jackson	447,190.00	4,071,890	68,903.70
Josephine	189,138.00	1,714,730	35,290.55
Klamath	43,011.00	423,490	12,207.77
Lane	302,787.00	3,316,305	84,152.22
Lincoln	15,986.00	104,200	2,012.32
Linn	62,911.48	742,785	11,790.18
Marion	33,095.00	407,520	8,449.37
Multnomah	9,687.00	210,770	3,486.97
Polk	37,323.00	622,660	14,899.38
Tillamook	29,781.00	163,100	2,684.51
Washington	20,734.18	181,200	4,530.85
Yamhill	30,425.50	199,627	4,696.85
(Clarke, Wash.)	492.50	10,900	431.94
Total	2,175,305.98	22,324,931	465,923.88

The above figures include only the patented grant lands. Approximately 300,000 acres of the grant lands were not patented, although the railroad company was entitled to patent and was the real owner thereof.

As shown by the above table approximately 80 per cent of the grant lands were situated in five counties, namely, Coos, Douglas, Jackson, Josephine, and Lane. The following table shows the relative amount of tax on the grant lands and the balance of the taxable property of these five counties:

County	Tax, not including grant lands	Tax on grant lands	Percentage relation
			Per cent
Coos	$700,340.04	$41,944.80	6
Douglas	497,007.99	99,109.80	20
Jackson	701,404.43	68,903.70	10
Josephine	260,253.18	33,290.55	14
Lane	908,433.01	84,152.25	9

The loss of taxes in these counties is the more tragic because the burden falls most heavily on those who are least able to carry it. To fully understand the situation, a description of the section of western Oregon where the grant is located, is necessary. The Oregon & California Railroad Co.'s line is constructed through the middle portion of three river valleys. When the railroad was com-

pleted and the land grant earned, a considerable portion of these river valleys had already passed into private ownership. The agricultural land in the valleys which was included in the grant lands was to a great extent sold to actual settlers soon after the completion of the railroad. The unsold lands, title to which was revested in the Government, consisted in the main of timbered lands located among the hills and running well up into the Cascade Mountain Range on the east and the Coast Mountain Range on the west. The local taxing districts which included the most of the grant lands were in the more isolated portions of the counties. The small farmers and ranchers who cut for themselves homes on the timbered hillsides and who had to strain every effort to make a bare living for their families and who had to tax themselves to the very limit to construct and maintain the roads and schools, were the ones who suffered the greatest loss when the railroad lands passed from the tax rolls. These citizens, of the type who make up the bone and sinew of this nation, had come to the Oregon country, invested their little capital and expended their time and labor upon the faith that the conditions then existing would not be changed to their detriment. The railroad lands were then on the tax rolls and in many of the localities were bearing upwards of half of the tax burden. With the revestment of these lands, the taxpayers found the taxes in these local districts greatly increased, in many cases doubled, and in every case a heavy burden, added seemingly without reason or justice.

The richer portions of the county in the main river valleys, while hard hit by the loss of from 5 per cent to 20 per cent of their general tax revenue, were better able to stand the loss.

Western Oregon is still a relatively new country.

Practically all of its material development has come in the last 50 years, since the completion of the railroad. To that extent the railroad served its purpose. Schools have been built, roads have been constructed—and there is no section in the United States where road construction is more difficult or costly—and public works have been promoted, all within a generation.

These counties relied upon the taxes accruing from the railroad lands to help pay for these public works. Indebtedness, floating and bonded, was incurred upon the belief that these lands would bear their share of the liquidation thereof. Many counties are now bonded to the constitutional limit; Lane, Douglas, and Jackson counties, for instance, are so bonded, the outstanding bonds aggregating approximately $4,000,000. This bonded indebtedness is the result of local highway improvement. The funds were used in the construction of highways through the very lands which were taken from the tax rolls by the revestment act. These roads heretofore constructed and those now under construction and contemplated will materially increase the value of every acre of the revested lands and in addition will increase the value of the great national-forest reserves, which bottle up and withhold from taxation fully 50 per cent of the potential taxable area of these counties.

The grant lands had been added to the tax polls of the State of Oregon as fast as they were patented to the railroad company; the greater portion of these lands had been assessed and taxed for more than 25 years at the time of the revestment act. We think there was no question as to the right of the State of Oregon to tax these lands prior to revestment. The Supreme Court of the United States has passed upon the matter a great many times; the holding has always been that the grants were in praesenti and were grants of absolute title. In the litigation over the Oregon & California Railroad grant the Supreme Court said:

"It was a complete and absolute grant, limited only as prescribed."

The Attorney General of the United States in reporting on the Chamberlain-Ferris Act conceded the validity of the tax and admitted that the taxes which had accrued and were unpaid at the time the revestment act was under consideration were a lien upon the land, a cloud upon the title. The Senate Committee on Public Lands so held and the Congress likewise conceded the validity of the tax when it provided for the payment thereof in the Chamberlain-Ferris Act. There is no question as to the right of the State of Oregon to tax these lands up to the time of revestment. Primary disposition had been made, title was in private ownership, the lands were the proper subject of taxation. The revestment act was simply the taking from the State of Oregon of a material part of its tax revenue and the immediate giving of nothing in return. The distribution provision of the act holds out a promise for the future but does not provide funds for the present.

Congress, pursuant to the committee's recommendation, passed the revestment act; we may therefore logically conclude that the report of the committee represented the opinion of Congress as a whole.

We have then this situation: The Oregon & California grant lands were passed into private ownership by the Congress of the United States for the purpose of upbuilding the State of Oregon. Congress at the same time reimbursed itself for these lands by doubling the price of the adjoining public lands, thus requiring the purchaser of those adjoining public lands to pay the Government for its subsidy, to the railroad company. The railroad lands then became the subject of taxation, the source of a considerable tax revenue in 18 counties of western Oregon. To effectuate the original purposes of the grant, Congress then revested title to the lands in the United States and made what was thought to be adequate provision for payment to the State in lieu of its tax revenue from the lands. The provision for this payment has not proved sufficient to accomplish the purpose intended. It follows, then, as a matter of simple justice and equity, that some other provision should be made that will accomplish the result which the revestment act was intended to accomplish and in the accomplishment of which it has to date utterly failed.

Unquestionably in time the distribution provision of the revestment act will compensate for its loss of tax revenue. That ultimate compensation is certain; the uncertainty lies in the time of its performance.

In order that the State and particularly the counties affected and the smaller taxing units thereof may have the fullest measure of benefit from these lands, provision should be made for compensation at regular and certain intervals; such payment will enable the several taxing units to proceed in an orderly and business-like way with the governmental development.

This bill offers a reasonable and proper solution for this problem. The advancement by the Government of an amount equal to the sums which would have been paid in taxes had the revested lands remained in private ownership, will make the various taxing districts whole. These several taxing districts will be placed in the financial position they would have occupied had the railroad lands remained privately owned and taxable. The provision of the bill making this payment reimbursable form the O. & C. land grant fund permits this vitally necessary financial aid to the counties to be had when it is most needed, and at no ultimate expense to the Government. The charge will be against the proceeds from the sale of the revested lands; 10 per cent of the land-grant fund is all that the Government will receive under the revestment act and this amount it will receive regardless of whether this bill takes effect or not.

There is an essential and fundamental difference in the status of the O. & C. revested lands and the other Government-owned lands in the State of Oregon. Other Government-owned lands are termed the "unappropriated public domain;" title thereto is in the General Government, and is an attribute of sovereignty. The theory of government is that, in the first instance, the sovereign is the owner of the lands within its borders and is the source of all title thereto. Private ownership of lands results from an act of the sovereignty in divesting itself of title, by what we term a primary disposition.

The public domain in the State of Oregon represents those lands of which no primary disposition has been made. The United States is the proprietor of the public domain, and, like any other owner of land, has the right to make any desired disposition thereof. It may divest itself of title to private persons or it may refuse to do so, at its pleasure. In the State of Oregon it has refused to permit private individuals to acquire title to some 17,000,000 acres by placing such lands within what is termed the national-forest reserves, while the withholding from private ownership of vast acres of the public domain may to a large extent cripple the economic advancement of the State, yet it is for the General Government to say whether that policy shall be pursued. The State, whether injured or not, has no voice in the decision.

The Government-owned grant lands have a different status. Primary disposition was made of these lands when they were granted to the railroad company. Title, full and complete, was passed from the Government into private ownership. The only distinction between the grant lands and other lands of the public domain which have passed into private ownership, was in the fact that the United States entered into a contract with the railroad company, the substance of which was that the lands would be sold as hereinbefore stated, in specified amounts, at a specified price, and to a specified class of persons. Except for the purpose of enforcing that contract which the Supreme Court denominated a continuing, enforceable covenant, the United States had no right

to revest in itself title to the grant lands. Revestment was not made by virtue of sovereign power of control over the lands but was simply a procedure to require and enforce the covenant in the granting acts.

The Government then stands in the position of a trustee of the title to the grant lands obligated to carry out the original purpose of the grants, as that purpose has been defined by the Supreme Court.

The highest judicial tribunal has construed and enunciated the purpose of the granting acts. We have heretofore called attention to the Supreme Court's words on that subject. The great national purpose of the land granting acts was the upbuilding of a nation by placing in private ownership at a nominal price a considerable portion of the public domain. Private ownership of these lands carried with it the obligation to carry a proportionate share of the burden of government. Congress, when it granted the railroad company these lands, must have had that fact in mind. The proportionate carrying of the costs of government by these lands was, then, a part of the original purpose of the grants. All of the agencies of the General Government are agreed on that point. Congress, as we have heretofore shown, attempted to make reimbursement for the loss of taxes occasioned by revestment, by the contribution provision of the Chamberlain-Ferris Act.

Let it be understood that the amount proposed to be advanced to these counties is in no sense the payment of a tax on Government land. The revested lands, while title remains in the United States, are nontaxable; that fact is not questioned, nor is it attempted to secure the equivalent of a tax by indirection. The bill proposes simply a present advancement to be repaid from funds to accrue at a later date. The amount to be paid is made equivalent to what would have been paid in taxes simply because that is the best measure of the need of the counties. The revestment act contemplated distributing a certain share of the land grant proceeds to these counties to offset the loss of tax revenue, payment to be made after the proceeds are received by the Government; this inserts the element of uncertainty as to date and amount of returns. The present bill contemplates the same measure of relief for the counties, but adds the element of certainty as to amount and time of payment.

The distributive provision of the revestment act was expected to result in payment to the various counties equivalent to or in excess of the tax revenue lost by the revestment of the grant lands. This expectation was held by the Congress and the people of Oregon alike. It has not been realized; no payments have been made in 11 years. Each year the counties have had to face a greatly increased tax burden; payment of the added tax has worked a heavy hardship. Foreclosures and sales of property for delinquent taxes to the extent of hundreds annually have resulted in many of these counties. These excessive tax levies are rapidly proving confiscatory to the extent that they are contributory to a speedy and sure absorption of the equity of the taxpayer in the property taxed. The present bill contemplates simply giving to these counties the financial aid the revestment bill was intended to give but did not give. The reimbursement to these counties of the loss they have sustained is an act of simple justice.

Precedent for the procedure proposed by this bill is not lacking; in fact, it is found in the revestment act itself, in the provisions for the payment to the counties of three years accruing taxes on the land and the charging of such payment to the land-grant fund. The same procedure is followed in the handling of Indian affairs. Approximately $28,000,000 have been appropriated and advanced for irrigation purposes on Indian lands, reimbursement to be had from the proceeds of the sale of the land. Approximately $3,000,000 has been advanced for industrial purposes on account of Indian service. These are in the nature of reimbursable payments.

The most striking precedent is the reclamation plan which involves reimbursable payment of literally tens of millions of dollars, reimbursement to be had from proceeds of the sales of the Government land within the project and from reclamation charges against the privately owned lands.

The situation herein pictured is not imaginary; it is very real. These counties have never had the economic chance that has been given to the Eastern and Central States, which latter sections have had the full economic benefit of all of their natural resources. This benefit has reflected in advancement of every material character, and in a present low rate of taxation in comparison with the rate in western Oregon. These counties have, on the other hand, had the benefit of only half their natural resources. The great natural store of wealth in western Oregon lies in its timber. During the Roosevelt administration, Government-owned timber lands to the extent of approximately half the total area of these

counties was withdrawn from sale, entry, or other disposition, and placed within national forest reserves, to be held for the benefit of the Nation as a whole. The withdrawal was at the expense of the counties in which the withdrawn lands are located; it meant that 50 per cent of the area of the land-grant lands has taken an additional one-tenth of the total area from taxation, leaving two-fifths of the total area of these counties subject to taxation.

We have no quarrel with the general theory of conservation of natural resources. We do feel, however, that it is not just to ask us to bear the total cost thereof, and then to suffer the additional loss of from 5 to 20 per cent of our already crippled tax revenue.

The question has been raised as to when the Government may reasonably expect to be reimbursed for this advancement to the counties. That is matter for the Government's own determination. If it is so desired the timber on the revested lands may be placed on the market immediately, at a price that will yield many millions of dollars in excess of the amount charged against the grant, including the proposed advancement, and a ready sale can be had. Or the Government may hold the timber and secure the highest market price and, ultimately, secure a considerable sum in excess of the present estimated value of the land and timber. The time of reimbursement is a matter of governmental policy. Whatever that policy may be, it is an absolute certainty that the land grant will make full reimbursement, with a huge sum remaining for distribution as the revestment act provided.

The enactment of this proposed legislation and the payment of the advancement therein provided will mean that burdensome indebtedness in these counties may be liquidated, that necessary public works may be completed, that highways may be constructed and schools equipped, and that the present heavy burden of taxation may be proportionately reduced. An annual tax levy of 40 mills is not unusual in these counties and is too heavy a burden to longer carry. A lightening of the load will mean increased investment, increased population, and increased prosperity, and must necessarily correspondingly enhance the value of Government holdings in the State. The value of the revested land and the forest reserves will advance with the prosperity of the sections in which they are located.

In conclusion we say that our counties have suffered a heavy and an uncalled-for financial loss, and all without intention on the part of the Government which has caused it. A mistake has been made. Our interests have been overlooked. The mistake can be rectified; our counties can be made whole; all this can be done with no resultant loss to the National Government.

Our cause is just; equity pleads for us. If this Government be, as the immortal Lincoln has said, a government not only of and by the people, but a government also for the people, our petition should receive favorable consideration at the Government's hands. The natural resoucres of a Nation are its bread of life. Other States have their full loaves. We have had our loaf cut in two and seen half thereof held for the Nation as a whole. Another generous slice has been taken in the revestment of 2,400,000 acres of taxable land. We ask for the return of but a crumb.

Respectfully submitted.

W. H. Gore, chairman; R. H. Mast, county judge, Coquille, Oreg.; Victor P. Moses, county judge, Corvallis, Oreg.; H. L. Walther, Medford, Oreg.; Hon. W. H. Gore, Medford, Oreg.; Guy Cordon, Roseburg, Oreg.; Hon. J. K. Weatherford, Albany, Oreg.; W. A. Wiest, Klamath Falls, Oreg.; H. N. Lawrie, Portland, Oreg., delegation representing counties affected.

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