



U.S. Department of Justice

Environment and Natural Resources Division

LL:DAJ

90-6-2-63C

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SEP 22 2003

September 18, 2003

Department of Water Resources

via FedEx Mail

Diana R. Delaney, Chief Deputy Clerk
Snake River Basin Adjudication
DISTRICT COURT
253 Third Ave., North
Twin Falls, Idaho 83303-2707

Re: SRBA Case No. 39576
Subcase Nos. 35-12996, 43-10957, *et al.*

Dear Ms. Delaney:

Enclosed for filing is the following original documents in the above mentioned subcases:

1. **MOTION FOR SUMMARY JUDGMENT AND MEMORANDUM IN SUPPORT**
2. **AFFIDAVIT OF FREDRIC W. PRICE**

Thank you for your time and attention in this matter.

Sincerely,

David A. Jarvis
Paralegal

Enclosures

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SEP 22 2003

Department of Water Resources

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**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

In Re SRBA	)	Subcase Nos.: 35-12996, 43-10957, 43-10997,
	)	43-11005, 43-11052, 43-11054, 43-11056, 43-
	)	11058, 43-11069, 43-11071, 43-11158, 43-
	)	11160, 43-11166, 43-11172, 43-11268, 43-
	)	11272
	)	
Case No. 39576	)	MOTION FOR SUMMARY JUDGMENT
	)	AND MEMORANDUM IN SUPPORT
	)	

Descriptive Summary

This is the United States' Motion for Summary Judgment and Memorandum in Support thereof for the above referenced subcases.

Motion

The United States hereby moves for a ruling pursuant to I.R.C.P. 56(a) that its claims based upon Public Water Reserve No. 107 (PWR 107) to water from springs and waterholes located on the

federal public lands are not defeated by an unperfected entry to homestead the public lands containing the claimed springs or waterholes.

Memorandum

I. Background

Claims based upon the Presidential Executive Order dated April 17, 1926 and known as Public Water Reserve No. 107 (PWR 107) have been the target of objection and challenge for many years in the SRBA. Initially, the State of Idaho and others challenged the validity of the PWR 107 federal reservation in a matter titled Basin Wide Issue 9. In that contest, presiding SRBA Judge Hurlbutt ruled that PWR 107 only reserved to the United States small parcels of land and not the water from springs and waterholes located on the land. *Memorandum Decision and Order, Re: Basin Wide Issue 9*, subcase 91-00009 (Issued Dec. 9, 1996). The Idaho Supreme Court unanimously overturned the Court's decision ruling that "PWR 107 evidences an express intention by Congress that reserves a water right in the United States." *United States v. Idaho*, 959 P.2d 449, 452 (1999).

After the basin-wide issue was decided, the State filed hundreds of individual objections asserting that the United States' claims to stockwater should not exist. The State argued that the reason the PWR 107 water right should not exist is that certain claimed springs and waterholes were tributary to a river or stream. Special Master Haemmerle ruled in favor of the State on this issue. Order Granting State's Motion for Summary Judgment (Issued March 5, 1999) at p. 8. Special Master Cushman also examined the State's reasons for why the water right should not exist and, in a second order, ruled that springs on the federal public domain with water that leaves the reservation

while on the surface are not reserved by PWR 107. Second Order on Joint Submission (Issued October 29, 1999). Judge Burdick disagreed with the Special Masters and ruled that PWR 107 “created an appurtenant implied federal reserved water right in the spring or waterhole giving rise to the land irrespective of whether or not water flowing from the spring or waterhole is tributary to a perennial running stream.” *Memorandum Decision and Order on Challenge (Scope of PWR 107 Reserved Rights); Order of Recommitment to Special Master Cushman* Consolidated Subcases 23-10872 et al., Joint Submission Subcases 23-10894 et al. (hereinafter “Memorandum Decision on Scope of PWR 107”) (Issued December 28, 2001), at 35.¹⁷

While the State’s objections advanced through the Court, the United States continued to present testimony in the form of affidavits at required hearings for its PWR 107 water right claims. See I.C. § 42-1411(A). In these affidavits, the BLM affiant swears that he or she has reviewed the claim file and the field investigation report in support of the claim; that the claim is to a spring or waterhole containing water sufficient for the watering of livestock; and that the spring or waterhole is located on unreserved federal public land. These affidavits have been accepted by the Court for years. In an order dated November 16, 1998, Special Master Haemmerle states that

[u]nder the express provisions of PWR 107, the United States alleges that the *prima facie* elements for a PWR 107 reserve are as follows:

- a. Identification of a spring or waterhole;
- b. Located on land that was unreserved federal public lands in 1926; and
- c. Containing sufficient water for purposes of stock watering.

This court agrees with these *prima facie* elements.

¹⁷ Judge Burdick also concluded that the decision “constitutes a final disposition of the objections raised in this matter” *Id.* at 36. The State’s objections, therefore, are resolved and any further objection at this stage is untimely. Nevertheless, the United States recognizes the Court’s authority to *sua sponte* raise issues regarding the validity of a water right claim.

Order Denying Motion for Default Judgment (PWR 107)), subcases 57-02493, *et al.*² Accordingly, the United States has filed affidavits for approximately 2570 subcases attesting to these elements of a PWR 107 water right.

At a hearing earlier this year, Special Master Cushman denied certain United States claims to water rights based on PWR 107 upon the discovery that the lands described in the claims had entry applications pending on the date of the reservation, April 17, 1926. *Special Master's Report and Recommendation, subcase 65-19812, et al.* The Special Master concluded that the entry applications demonstrate that the lands “were homesteaded” at the time that President Coolidge signed PWR 107 and that the water on the lands was appropriated. *Id.* Accordingly, the Special Master ruled that the places of use containing the water were not reserved. The United States filed a motion asking the Special Master to alter or amend his ruling. That motion is pending.

At the August 22, 2003 status conference on the 16 subcases referenced in the above caption, the Special Master established a dispositive motion briefing schedule on the legal issue of whether a homestead entry application pending at the establishment of Public Water Reserve No. 107 (PWR 107) defeats the federal reservation. The Bureau of Land Management (“BLM”) reviewed the claims to water rights subject to the August 22, 2003 status conference and has determined that only two of the claims contain land parcels that were ever subject to homestead applications. *See attached Affidavit of Fredric W. Price.* One claim, 43-11160, was subject to a Stock Raising Homestead Entry filed on December 13, 1920 and subsequently relinquished on May 12, 1921. *Id.* at

² The claims for subcases 57-02493 *et al.* were initially denied based upon the Special Master’s determination that the quantity of water claimed was in error. This matter was subsequently settled when the BLM agreed to accept 0.02 cfs or 13,000 gallons per day as the decreed water amount.

Attachment 1. The other claim, 43-11268, was subject to an Enlarged Homestead Entry filed on July 22, 1921 and subsequently cancelled on September 22, 1926. *Id.* at Attachment 2. This latter claim, therefore, had an application to homestead pending when PWR 107 was created on April 17, 1926. However, as the United States demonstrates below, the mere existence of an application to homestead does not defeat a PWR 107 reservation.

II. Argument

1. A homestead entry application that is not perfected does not give the entryperson a real interest or a land appropriation.

The State claimed at the August 22 status conference that the filing of an entry application demonstrates that the particular tract of public land was occupied and appropriated at the time of the PWR 107 reservation. Because PWR 107 applies to “vacant, unappropriated, unreserved public land”, the State argues that the entry application must defeat the reservation.^{3/} This is incorrect as a matter of law and, as explained below, as a matter of fact.

The filing of a homestead entry application grants to the entryperson a vested right good against all other entries. Against the United States, however, the entryperson has only an inchoate interest prior to the issuance of a land patent. *Guerra v. Packard*, 236 Cal.App.2d 272, 291-292 (Cal.App.1965). An inchoate interest is “an interest in real estate which is not a present interest, but

^{3/} PWR 107 provides:

[I]t is hereby ordered that every smallest legal subdivision of public land surveys which is vacant, unappropriated, unreserved public land and contains a spring or water hole, and all land within one quarter of a mile of every spring or water hole located on unsurveyed public land, be and the same is hereby withdrawn from settlement, location, sale or entry, and reserved for public use in accordance with the provisions of Section 10 of the Act of December 29, 1916.

which may ripen into a vested estate if not . . . extinguished.” *Black’s Law Dictionary* 762 (6th ed. 1990).

The inchoate interest of a homesteader became a real interest upon “proving up”, i.e., showing that he or she complied with the homesteading laws including payment to the United States and permanent improvements to the entered lands.⁴ A failure to “prove up” resulted in the cancellation of the entry. All of the entries for the lands containing springs or waterholes claimed in the SRBA by the United States under PWR 107 failed, including the entry on the land claimed in subcase number 43-11268 that was pending at the time of the signing of PWR 107. Since these interests were extinguished and did not vest against the United States, the entrypersons had no real interest against the United States and their application could have no effect upon the federal reservation.

This situation is markedly different from the circumstances in the *Order Disallowing Uncontested Federal Reserved Water Right Claims* (Mountain Home AFB), subcase numbers 61-11783, 61-11784 and 61-11785 (Issued April 6, 2001), where Judge Burdick ruled that a federal reservation may not exist on land acquired from a non-federal entity. Here, the lands never left

⁴ Homesteading in America began with the Homestead Act of 1862, ch. 75, 12 Stat. 392 (not codified), which granted the entryperson title to 160 acres of the public domain by either submitting payment of \$1.25 per acre or by occupying the land for five years and paying a registration fee of 30 dollars. Occupancy meant the construction of a house and cultivation of a minimum percentage of acreage. *Id.* Under the Enlarged Homestead Act of 1910, ch. 298, 36 Stat. 531, *repealed by* Federal Land Policy and Management Act, Pub. L. 94-579, § 702, 90 Stat. 2787 (1976), the size of the land parcel a homesteader could claim was raised to 320 acres for dryland farming in arid western states. The Stock-Raising Homestead Act of 1916, ch. 9, 39 Stat. 862, *repealed by* Federal Land Policy and Management Act, Pub. L. 94-579, § 702, 90 Stat. 2787 (1976), further raised the maximum size of a land entry parcel to 640 acres for dryland grazing and, instead of cultivation, the entryperson had to make improvements to the land valued at not less than \$1.25 per acre.

federal ownership. Since the springs and waterholes have always been on federal public lands and continue to be needed for stockwatering purposes on the public lands, the Idaho Supreme Court's conclusion still holds, "[w]ithout the reserved water right for such springs and waterholes the purpose of PWR 107 would be entirely defeated because Taylor Grazing permittees would not have water needed for stockwatering purposes." *State of Idaho*, 959 P.2d at 453.

2. The Congressional authority for PWR 107 demonstrates that where entrypersons failed to comply with the homestead laws their entries do not defeat a withdraw and reservation.

The legislative history of PWR 107 demonstrates that homestead entries that failed to be perfected and patented could not defeat a withdrawal and reservation. The enabling legislation for PWR 107 begins with the *Pickett Act of 1910* ("Pickett Act"), ch. 421, 36 Stat. 847 (*repealed by* Federal Land Policy and Management Act, Pub. L. 94-579, § 702, 90 Stat. 2787 (1976)), granting the President the power to withdraw and reserve public lands. *See generally, State of Idaho*, 959 P.2d at 451-52. The *Pickett Act* excepted from the executive's withdrawal authority "any lawful homestead" existing on the date of such withdrawal, provided the entryman or settler "continues to comply with the law under which the entry or settlement was made." *See* Pickett Act attached as Exhibit A. In subcases 43-11160 and 43-11268 -- and all other claims made pursuant to PWR 107 -- the entryperson or settler did not continue to comply with the law under which the entry or settlement was made. The homestead entries were relinquished or cancelled prior to patent. As a result, the Pickett Act's homestead exemption to subsequent withdraws made under its authority, including PWR 107, does not apply.

In *Stockley v. United States*, 260 U.S. 532, 544 (1923), the Supreme Court examined the

effect of a similar homestead exclusion provision in a 1908 executive order that withdrew certain oil lands subject to “existing valid [homestead] claims.” The purpose of the homestead exception, the Court concluded, was to exempt from the withdrawal order

claims which had been lawfully initiated and which, upon full compliance with the land laws, would ripen into a title. The effect of a preliminary homestead entry is to confer upon the entryman an exclusive right of possession, which continues so long as the entryman complies in good faith with the requirements of the homestead law.

Id. at 544. In the subcases at bar, the homestead claims did not ripen into a title. Thus, the unperfected homestead entries were, and remained, inchoate rights that had no force or effect against the PWR 107 reservation.

3. The Congressional authority for PWR 107 did not allow homestead entry onto lands containing bodies of water needed for the public.

The legislative history of PWR 107 also shows that, as a matter of law, an entryperson could not appropriate land containing springs and waterholes needed or used by the public. The PWR 107 executive order was created under the direct authority contained in the *Stock Raising Homestead Act of 1916* (“SRHA”), ch. 9, 39 Stat. 862 (*repealed by* Federal Land Policy and Management Act, Pub. L. 94-579, § 702, 90 Stat. 2787 (1976)), which incorporates by reference the *Pickett Act of 1910*. *See* SRHA attached as Exhibit B; *see generally State of Idaho*, 959 P.2d at 452.⁵⁷ The SRHA allowed qualified persons to make a stock-raising homestead entry for up to 640 acres of unappropriated, unreserved public lands, provided the lands had been designated by the Secretary of the Interior as

⁵⁷ Although SRHA and the Pickett Act were repealed by the Federal Land Management Act (“FLPMA”), the FLPMA provided that all withdrawals in force on the date of enactment of FLPMA shall remain in force until specifically changed in accordance with FLPMA. *See State of Idaho*, 959 P.2d at 451.

“stock-raising lands”.⁹ 43 U.S.C. § 291. Designated stock-raising lands, however, excluded lands containing springs or waterholes needed or used by the public. Section 10 of the SRHA, states:

[L]ands containing water holes or other bodies of water needed or used by the public for watering purposes shall not be designated under this Act but may be reserved under the provisions of [the Pickett] Act of June twenty-fifth, nineteen hundred and ten, and such lands heretofore or hereafter reserved shall, while so reserved, be kept and held open to the public use for such purposes under such general rules and regulations as the Secretary of the Interior may prescribe.

SRHA 39 Stat. at 865 (emphasis added).

Pursuant to these restrictions, the application and affidavit of entrypersons under the SRHA states that the land “does not contain any water hole or other body of water needed or used by the public for watering purposes.” See Attachment 1 to the *Affidavit of Fredric W. Price*, Stock Raising Homestead Entry filed by William Hart Udy, dated December 13, 1920. The restrictive language became even more explicit by 1930 when an entryperson for small stock grazing operations on the public domain had to sign a supplemental affidavit stating:

That there is no spring, water hole, stream or surface supply of water of any kind upon said land needed or used by the public for watering livestock; that there is no known surface supply of water on any of the subdivisions of said land so applied for; that it and the whole thereof is unwatered dry land suitable for grazing purposes only and that save during the snowy season and rainy periods water for livestock grazed thereon will have to be obtained from a well or wells to be sunk or a reservoir or reservoirs to be constructed thereon.

⁹ An entryperson could apply for the designation of a public land parcel as suitable for stock-raising homestead entry provided his or her application was supported by an affidavit showing “prima facie that land applied for is of the character contemplated” by the SRHA. SRHA at § 292. Until the Secretary of the Interior determined that the land was actually of that character, however, the application was suspended. *Id.*

See Supplemental Affidavit of Homestead Applicant Charles E. Gaskill, dated March 14, 1931, attached as Exhibit C, cited in the *Memorandum Decision on Scope of PWR 107* at 16, n. 13.

Accordingly, stock-raising lands containing a spring or waterhole were never legally “appropriated” by entrypersons under the SRHA.⁷ Thus, these lands were available for reservation under PWR 107.

3. For subcases involving claims made pursuant to PWR 107, the SRHA affidavits avowing that the entry land does not contain any body of water needed or used by the public for watering purposes are not accurate.

As discussed above, the SRHA affiant had to swear the land he or she was applying to homestead did not contain any waterhole or other body of water needed or used by the public for watering purposes. Despite this requirement, many parcels of public lands that were claimed under the SRHA do contain springs and waterholes necessary for use by the public. We can be certain of this because the BLM has visited these sites and conducted field verification of the spring’s or waterhole’s existence and filed PWR 107 claims for these sources in the SRBA. *See Affidavits of Deena M. Teel*, re: subcase 35-12996 (dated Dec. 10, 2002), and *Steven R. Davis*, re: subcases 43-10957, et al. (dated March 14, 2003). Why, then, would entrypersons have averred that no water sources existed? As the United States has previously argued -- and this Court has previously recognized -- “settlement” on public lands was subject to gross speculation and fraudulent behavior:

⁷ PWR 107 also requires that the land reserved under the executive order be “vacant”. The United States, of course, has no way of definitively proving that the lands subject to a pending entry when PWR 107 was signed were vacant. However, any occupancy made under color of the SRHA on lands containing springs and waterholes was illegal. In addition, these entrypersons failed to “prove up” the five years of residency required under the homestead laws. Therefore, even if a homestead entry application existed, it may be assumed that residency was not established and the land was vacant.

[T]hose involved in the livestock industry developed a number of schemes for either controlling or acquiring ownership of lands immediately surrounding key water sources. A number of these schemes were unlawful and fraudulent. . . . Stockmen used “strawmen” for the purpose of making entries under the Homestead Act or other applicable land laws on lands immediately surrounding water sources and then “legitimately” purchased back those same lands.

Memorandum Decision on Scope of PWR 107, at 13. It is likely, therefore, that the entryperson was either not forthcoming in his application or was not sufficiently familiar with his land entry parcel.

For example, Mr. William Hart Udy filed an entry to homestead the land containing the spring now claimed by the United States in subcase number 43-11160. *See* Attachment 1 to the Affidavit of Fredric W. Price.⁸ Mr. Udy solemnly swore in his petition for stock-raising homestead designation that “there are no springs or bodies of water” in his claimed parcel of land, including the northeast quarter of the northwest quarter of section 10. This is the location of the spring claimed by the BLM pursuant to PWR 107. Mr. Udy subsequently relinquished his entry claim. There is no reason stated for the relinquishment. The record does not show if his claim was relinquished because he was under scrutiny by federal officials or rival entrypersons, or if the true spring-bearing characteristic of the land was discovered by Mr. Udy after filing his application. We do know that the SRHA application was bogus because a quarter-quarter section claimed by Mr. Udy does contain a spring with water needed for the public.

Thus, in Mr. Udy’s case -- and all other subcases involving SRHA land entries where the

⁸ Mr. Udy’s entry application was relinquished on May 12, 1921, before the establishment of PWR 107. Nevertheless, because the majority of the homestead entries applications filed or existing in 1926 were submitted under the SRHA an examination of the effect of an entry under the SRHA on the federal reservation is warranted.

United States has filed for a water right under PWR 107-- the entries are inaccurate and the inchoate interest bestowed upon the entryperson upon filing of an application never ripened into a right of occupancy, an appropriation, or any other cognizable legal interest that defeats the PWR 107 reservation.

4. The enhanced land entry relating to subcase no. 43-11268 did not vest and does not defeat a reservation under PWR 107.

While the majority of homestead entries filed in the 1920s were made under the SRHA, the parcel of land containing the spring claimed in subcase number 43-11268 was subject to an Enlarged Homestead Act entry filed by Robert A. Hall. *See* Attachment 2 to the *Affidavit of Fredric W. Price*. In 1909, Congress passed the *Enlarged Homestead Act* (“1909 Enlargement Act”), ch. 160, 35 Stat. 639 (*repealed by* Federal Land Policy and Management Act, Pub. L. 94-579, § 702, 90 Stat. 2787 (1976)), increasing the number of acres a homesteader could claim from 160 acres to 320 acres, providing the land was “not susceptible of successful irrigation at a reasonable cost from any known source of water supply.” *See 1909 Enlargement Act* attached as Exhibit D. This law was adopted because by the start of the twentieth century the irrigable lands of the western states were largely appropriated by earlier homesteaders. The remaining public lands available for disposal (and still in demand by persons wishing to acquire homesteads) were dry lands to be cultivated without irrigation.

Hall’s claim under the *1909 Enlargement Act* was filed on July 22, 1921 and was contested approximately six months later. The protester alleged in his contest application that Hall

never established residence of the said lands and has never performed any costs of settlement only to brake [sic] 4 or 5 acres of land and has abandoned the said lands and is living remote from the same having never built any house or made any other improvements thus not complying with the homestead laws.

Attachment 2 to *Affidavit of Fredric W. Price* at 40. That protest failed for lack of personal service of the contest notice. A second challenge was filed on March 13, 1926 wherein the protester alleged that Hall

has never established residence, never lived on this land, never having built a house, or made any other improvements , excepting inclosing [sic] said land with a fence. And has never cleared, broke or cultivated any of the said land.

Attachment 2 to *Affidavit of Fredric W. Price* at 29. This protest was successful upon a ruling by the U.S. Department of the Interior General Land Office that the allegations were deemed to be true upon Hall's failure to answer the contest application and on September 22, 1926, his entry was cancelled. Therefore, the record demonstrates that this parcel of land was vacant, never occupied and never appropriated. Accordingly, under the facts of this case, the United States' claim to a PWR 107 water right for subcase number 43-11268 should be decreed.

The United States, however, should not be required to examine the particular entry information for each claim made under PWR 107. The task of investigating the historical use of federal lands that contain PWR 107 spring sites is time-consuming. The BLM must examine Master Title Plats, Historical Indices, and Serial Registry pages to determine where, when and what type of entry was attempted. In addition, research in the National Archives is necessary to try to determine why an entry was relinquished or canceled. This burdensome requirement is unnecessary because the requirements for establishing a PWR 107 water right are satisfied regardless of whether a

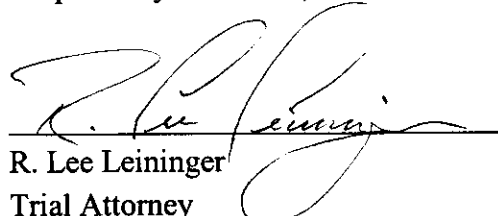
homestead entry application existed at the time of the enactment of the executive order. The entryperson had no real interest in the land upon filing an application to homestead and, because all such applications were extinguished prior to vesting, the entryperson never acquired a real interest. Therefore, the land was never appropriated or legally occupied and was available for reservation under PWR 107 on April 17, 1926.

III. Conclusion

For the foregoing reasons, the United States respectfully asks that the Special Master recommend that these subcases be decreed based upon the federal reservation PWR 107 and rule that the United States is not required to submit evidence on the land entry status of the area surrounding the spring or waterhole sources at the time of the reservation.

DATED this 18th day of September, 2003.

Respectfully submitted,


R. Lee Leininger
Trial Attorney
United States Department of Justice

CERTIFICATE OF SERVICE

I certify that on this 18 th day of September, 2003, I served a true and correct copy of foregoing Motion for Summary Judgment and Memorandum in Support upon the following individuals by serving as indicated, postage pre-paid, addressed as follows:

via Federal Express mail:

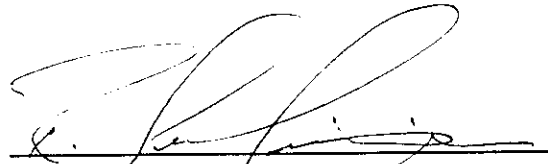
Diana R. Delaney, Chief Deputy Clerk
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David Barber, Esq.
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IDWR Document Depository
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Boise, ID 83720-0098



R. Lee Leininger
U.S. Department of Justice

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"SEC. 12. This act shall go into effect and be law from and after the date of its approval by the governor of the Territory of Hawaii, subject, however, to the approval of the Congress of the United States.

"Approved this twenty-sixth day of April, A. D. 1909.

"WALTER F. FREAR,

"Governor of the Territory of Hawaii."

SEC. 2. That Congress may at any time alter, amend, or repeal said Act.

Approved, June 25, 1910.

CHAP. 420.—An Act Granting certain public lands to the State of Colorado for the use of the State Agricultural College, for agriculture, forestry, and other purposes.

June 25, 1910.
[H. R. 24012.]

[Public, No. 302.]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior is hereby authorized and directed to convey to the State of Colorado, for the use and benefit of the State Agricultural College, at Fort Collins, Colorado, for experimental, educational, and kindred uses in forestry, agriculture, horticulture, grazing, stock raising, and such other uses included in the work of experiments and instruction at said college, and the experiment station connected therewith, one thousand six hundred acres of vacant, unoccupied, unentered, and nonmineral land, or so much thereof as the state board of agriculture may select and designate, upon the payment therefor of the sum of one dollar and twenty-five cents per acre.

Public lands.
Granted to Colorado
for State Agricultural
College.

SEC. 2. That said land shall be selected by said state board of agriculture from any vacant, unoccupied, and unentered, nonmineral public land in township seven north, ranges seventy, seventy-one, seventy-two, seventy-three, and seventy-four west, of the sixth principal meridian, in the county of Larimer, State of Colorado, and the tracts so selected shall not contain less than forty nor more than one hundred and sixty acres each.

Selection.

Approved, June 25, 1910.

CHAP. 421.—An Act To authorize the President of the United States to make withdrawals of public lands in certain cases.

June 25, 1910.
[H. R. 24070.]

[Public, No. 303.]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President may, at any time in his discretion, temporarily withdraw from settlement, location, sale, or entry any of the public lands of the United States including the District of Alaska and reserve the same for water-power sites, irrigation, classification of lands, or other public purposes to be specified in the orders of withdrawals, and such withdrawals or reservations shall remain in force until revoked by him or by an Act of Congress.

Public lands.
Temporary with-
drawals by President
for power sites, irriga-
tion, etc., authorized.

SEC. 2. That all lands withdrawn under the provisions of this Act shall at all times be open to exploration, discovery, occupation, and purchase, under the mining laws of the United States, so far as the same apply to minerals other than coal, oil, gas, and phosphates: *Provided*, That the rights of any person who, at the date of any order of withdrawal heretofore or hereafter made, is a bona fide occupant or claimant of oil or gas bearing lands, and who, at such date, is in diligent prosecution of work leading to discovery of oil or gas, shall not be affected or impaired by such order, so long as such occupant or claimant shall continue in diligent prosecution of said work: *And provided further*, That this Act shall not be construed as a recognition,

Mining rights con-
tinued.

Exceptions.

Provisos.
Rights of bona fide
oil or gas claimants.

Status of prior
claims.

Homestead, etc., settlements excepted.

Restriction on new forest reserves.

Report of withdrawals to Congress.

abridgment, or enlargement of any asserted rights or claims initiated upon any oil or gas bearing lands after any withdrawal of such lands made prior to the passage of this Act: *And provided further*, That there shall be excepted from the force and effect of any withdrawal made under the provisions of this Act all lands which are, on the date of such withdrawal, embraced in any lawful homestead or desert-land entry theretofore made, or upon which any valid settlement has been made and is at said date being maintained and perfected pursuant to law; but the terms of this proviso shall not continue to apply to any particular tract of land unless the entryman or settler shall continue to comply with the law under which the entry or settlement was made: *And provided further*, That hereafter no forest reserve shall be created, nor shall any additions be made to one heretofore created within the limits of the States of Oregon, Washington, Idaho, Montana, Colorado, or Wyoming, except by Act of Congress.

SEC. 3. That the Secretary of the Interior shall report all such withdrawals to Congress at the beginning of its next regular session after the date of the withdrawals.

Approved, June 25, 1910.

June 25, 1910.
[H. R. 24149.]

[Public, No. 304.]

Alaska.
Miner's labor lien.
Persons entitled.

CHAP. 422.—An Act To create, establish, and enforce a miner's labor lien in the Territory of Alaska, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That every miner or other laborer who shall labor in or upon any mine or mining ground for another in the Territory of Alaska in digging, thawing, conveying, hoisting, piling, cleaning up, or any other kind of work in producing any mineral-bearing sands, gravels, earth, or rock, gold or gold dust, or other minerals, or shall aid or assist therein by his labor as cook, engineer, fireman, or in cutting and delivering wood used in said work, or in work in any like capacity in producing the dump, shall, where his labor directly aided in such production, have a lien upon the dump or mass of mineral-bearing sands, gravels, earth, or rocks, and all gold and gold dust, or other minerals therein, and all gold and gold dust extracted therefrom, for the full amount of wages for all the time which he was so employed as such laborer in producing the said dump, within one year next preceding his ceasing to labor thereon; and to the extent of the labor of the said miner or other laborer actually employed or expended thereon, within one year next prior to ceasing to labor thereon, the said lien shall be prior to and preferred over any deed, mortgage, bill of sale, attachment, conveyance, or other claim, whether the same was made or given prior to such labor or not: *Provided*, That this preference shall not apply to any such deed, mortgage, bill of sale, attachment, conveyance, or other claim given in good faith and for value prior to the approval of this Act.

Preference of lien.

Proviso.
Prior valid deeds,
etc., not affected.

Notice to be filed.

SEC. 2. That every laborer, within ninety days after the completion of the performance of the work or labor mentioned in the foregoing section who shall claim the benefit thereof, must, personally or by some other person for him, file for record in the recording precinct where the labor was performed a claim of lien containing a statement of his demand under oath, substantially in the following form:

Form.

NOTICE OF LABORER'S LIEN.

Territory of Alaska, _____ precinct, ss:

_____, claimant, against _____, defendant.

Notice is hereby given that _____, claimant, claims a lien upon (describing the dump or mass of mineral-bearing sands, gravels, earth, or rock, and its location with reasonable certainty) in the _____

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Whereas the projected celebration in said city will include industrial and other exhibitions, pageants, athletic games, tournaments, parades, conventions, and many other interesting features that will attract visitors from all parts of the United States; and

Whereas the citizens' committee, cooperating with the Illinois Centennial Commission, created by the Illinois General Assembly, are widely advertising the approaching events, with the result that a great increase of incoming and outgoing mail matter is anticipated at the Springfield post office; and

Whereas the size and importance of the city of Springfield, Illinois, and the extensive preparations being made by its citizens, cooperating with State organizations created for the purpose of celebrating the one hundredth anniversary of the admission of Illinois into the Federal Union give to said celebration a national character and significance: Therefore be it

Springfield, Ill.
Postal canceling
stamp to commemorate
admission of State, au-
thorized.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Postmaster General of the United States be, and he hereby is, authorized to prepare and deliver to the postmaster of Springfield, Illinois, a special canceling die to be used in the cancellation of mail matter in the post office of that city from December first, nineteen hundred and seventeen, to December third, nineteen hundred and eighteen, said die to be of such design as may be agreed upon by the Postmaster General and the Illinois Centennial Commission.

Approved, December 27, 1916.

December 29, 1916.

[H. R. 407.]

[Public, No. 290.]

CHAP. 9.—An Act To provide for stock-raising homesteads, and for other purposes.

Public lands.
Stock-raising' home-
stead entries on, al-
lowed.

Proviso.
Lands to be desig-
nated.

Character of lands to
be designated.

Proviso.
Applications for un-
designated lands.

Suspension until de-
termination.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the passage of this Act it shall be lawful for any person qualified to make entry under the homestead laws of the United States to make a stock-raising homestead entry for not exceeding six hundred and forty acres of unappropriated unreserved public land in reasonably compact form: *Provided, however,* That the land so entered shall theretofore have been designated by the Secretary of the Interior as "stock-raising lands."

SEC. 2. That the Secretary of the Interior is hereby authorized, on application or otherwise, to designate as stock-raising lands subject to entry under this Act lands the surface of which is, in his opinion, chiefly valuable for grazing and raising forage crops, do not contain merchantable timber, are not susceptible of irrigation from any known source of water supply, and are of such character that six hundred and forty acres are reasonably required for the support of a family: *Provided,* That where any person qualified to make original or additional entry under the provisions of this Act shall make application to enter any unappropriated public land which has not been designated as subject to entry (provided said application is accompanied and supported by properly corroborated affidavit of the applicant, in duplicate, showing prima facie that the land applied for is of the character contemplated by this Act), such application, together with the regular fees and commissions, shall be received by the register and receiver of the land district in which said land is located and suspended until it shall have been determined by the Secretary of the Interior whether said land is actually of that character. That during such suspension the land described in the application shall not be disposed of; and if the said land shall be designated under this Act, then such application shall

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be allowed; otherwise it shall be rejected, subject to appeal; but no right to occupy such lands shall be acquired by reason of said application until said lands have been designated as stock-raising lands.

SEC. 3. That any qualified homestead entryman may make entry under the homestead laws of lands so designated by the Secretary of the Interior, according to legal subdivisions, in areas not exceeding six hundred and forty acres, and in compact form so far as may be subject to the provisions of this Act, and secure title thereto by compliance with the terms of the homestead laws: *Provided*, That a former homestead entry of land of the character described in section two hereof shall not be a bar to the entry of a tract within a radius of twenty miles from such former entry under the provisions of this Act, subject to the requirements of law as to residence and improvements, which, together with the former entry, shall not exceed six hundred and forty acres: *Provided further*, That the entryman shall be required to enter all contiguous areas of the character herein described open to entry prior to the entry of any noncontiguous land: *Provided further*, That instead of cultivation as required by the homestead laws the entryman shall be required to make permanent improvements upon the land entered before final proof is submitted tending to increase the value of the same for stock-raising purposes, of the value of not less than \$1.25 per acre, and at least one-half of such improvements shall be placed upon the land within three years after the date of entry thereof.

SEC. 4. That any homestead entryman of lands of the character herein described, who has not submitted final proof upon his existing entry, shall have the right to enter, subject to the provisions of this Act, such amount of contiguous lands designated for entry under the provisions of this Act as shall not, together with the amount embraced in his original entry, exceed six hundred and forty acres, and residence upon the original entry shall be credited on both entries, but improvements must be made on the additional entry equal to \$1.25 for each acre thereof.

SEC. 5. That persons who have submitted final proof upon, or received patent for, lands of the character herein described under the homestead laws, and who own and reside upon the land so acquired, may, subject to the provisions of this Act, make additional entry for and obtain patent to contiguous lands designated for entry under the provisions of this Act, which, together with the area theretofore acquired under the homestead law, shall not exceed six hundred and forty acres, on proof of the expenditure required by this Act on account of permanent improvements upon the additional entry.

SEC. 6. That any person who is the head of a family, or who has arrived at the age of twenty-one years and is a citizen of the United States, who has entered or acquired under the homestead laws, prior to the passage of this Act, lands of the character described in this Act, the area of which is less than six hundred and forty acres, and who is unable to exercise the right of additional entry herein conferred because no lands subject to entry under this Act adjoin the tract so entered or acquired or lie within the twenty mile limit provided for in this Act, may, upon submitting proof that he resides upon and has not sold the land so entered or acquired and against which land there are no encumbrances, relinquish or reconvey to the United States the land so occupied, entered, or acquired, and in lieu thereof, within the same land-office district, may enter and acquire title to six hundred and forty acres of the land subject to entry under this Act, but must show compliance with all the provisions of this Act respecting the new entry and with all the provisions of existing homestead laws except as modified herein.

No occupancy prior to designation.

Areas of 640 acres allowed.

Provisos. Additions to former entries.

Limit. Selection of contiguous lands.

Improvements instead of cultivation required.

Additions to pending homestead entries.

Improvements required.

Homesteaders may enter additional contiguous lands.

Improvements required.

Relinquishment of former homestead to make grazing entry.

Conditions.

No commutation.
R. S., sec. 2301, p. 421.
Vol. 26, p. 1068.
Preferential right to
enter contiguous lands.

Proviso.
Division between
two or more applicants.

Allowance to first ap-
plicant.

Coal and mineral de-
posits reserved.

Disposal under min-
ing laws.

Locating and pros-
pecting allowed.

Surface entries for
mining purposes per-
mitted.

Conditions.

Proviso.
Mining patents sub-
ject to grazing rights,
etc.

SEC. 7. That the commutation provisions of the homestead laws shall not apply to any entries made under this Act.

SEC. 8. That any homestead entrymen or patentees who shall be entitled to additional entry under this Act shall have, for ninety days after the designation of lands subject to entry under the provisions of this Act and contiguous to those entered or owned and occupied by him, the preferential right to make additional entry as provided in this Act: *Provided*, That where such lands contiguous to the lands of two or more entrymen or patentees entitled to additional entries under this section are not sufficient in area to enable such entrymen to secure by additional entry the maximum amounts to which they are entitled, the Secretary of the Interior is authorized to make an equitable division of the lands among the several entrymen or patentees, applying to exercise preferential rights, such division to be in tracts of not less than forty acres, or other legal subdivision, and so made as to equalize as nearly as possible the area which such entrymen and patentees will acquire by adding the tracts embraced in additional entries to the lands originally held or owned by them: *Provided further*, That where but one such tract of vacant land may adjoin the lands of two or more entrymen or patentees entitled to exercise preferential right hereunder, the tract in question may be entered by the person who first submits to the local land office his application to exercise said preferential right.

(SEC. 9. That all entries made and patents issued under the provisions of this Act shall be subject to and contain a reservation to the United States of all the coal and other minerals in the lands so entered and patented, together with the right to prospect for, mine, and remove the same.) The coal and other mineral deposits in such lands shall be subject to disposal by the United States in accordance with the provisions of the coal and mineral land laws in force at the time of such disposal. Any person qualified to locate and enter the coal or other mineral deposits, or having the right to mine and remove the same under the laws of the United States, shall have the right at all times to enter upon the lands entered or patented, as provided by this Act, for the purpose of prospecting for coal or other mineral therein, provided he shall not injure, damage, or destroy the permanent improvements of the entryman or patentee, and shall be liable to and shall compensate the entryman or patentee for all damages to the crops on such lands by reason of such prospecting. Any person who has acquired from the United States the coal or other mineral deposits in any such land, or the right to mine and remove the same, may reenter and occupy so much of the surface thereof as may be required for all purposes reasonably incident to the mining or removal of the coal or other minerals, first, upon securing the written consent or waiver of the homestead entryman or patentee; second, upon payment of the damages to crops or other tangible improvements to the owner thereof, where agreement may be had as to the amount thereof; or, third, in lieu of either of the foregoing provisions, upon the execution of a good and sufficient bond or undertaking to the United States for the use and benefit of the entryman or owner of the land, to secure the payment of such damages to the crops or tangible improvements of the entryman or owner, as may be determined and fixed in an action brought upon the bond or undertaking in a court of competent jurisdiction against the principal and sureties thereon, such bond or undertaking to be in form and in accordance with rules and regulations prescribed by the Secretary of the Interior and to be filed with and approved by the register and receiver of the local land office of the district wherein the land is situate, subject to appeal to the Commissioner of the General Land Office: *Provided*, That all patents issued for the coal or other mineral deposits herein reserved shall contain

appropriate notations declaring them to be subject to the provisions of this Act with reference to the disposition, occupancy, and use of the land as permitted to an entryman under this Act.

SEC. 10. That lands containing water holes or other bodies of water needed or used by the public for watering purposes shall not be designated under this Act but may be reserved under the provisions of the Act of June twenty-fifth, nineteen hundred and ten, and such lands heretofore or hereafter reserved shall, while so reserved, be kept and held open to the public use for such purposes under such general rules and regulations as the Secretary of the Interior may prescribe: *Provided*, That the Secretary may, in his discretion, also withdraw from entry lands necessary to insure access by the public to watering places reserved hereunder and needed for use in the movement of stock to summer and winter ranges or to shipping points, and may prescribe such rules and regulations as may be necessary for the proper administration and use of such lands: *Provided further*, That such driveways shall not be of greater number or width than shall be clearly necessary for the purpose proposed and in no event shall be more than one mile in width for a driveway less than twenty miles in length, not more than two miles in width for driveways over twenty and not more than thirty-five miles in length and not over five miles in width for driveways over thirty-five miles in length: *Provided further*, That all stock so transported over such driveways shall be moved an average of not less than three miles per day for sheep and goats and an average of not less than six miles per day for cattle and horses.

SEC. 11. That the Secretary of the Interior is hereby authorized to make all necessary rules and regulations in harmony with the provisions and purposes of this Act for the purpose of carrying the same into effect.

Approved, December 29, 1916.

CHAP. 10.—An Act Providing for the taxation of the lands of the Winnebago Indians and the Omaha Indians in the State of Nebraska.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all of the lands in the State of Nebraska belonging to the members of the tribe of Winnebago Indians held under trust patents of allotments, and upon which the twenty-five-year trust period shall have expired, or shall expire, and which trust period shall have been or shall be extended as provided by law, shall be, and the same are hereby, made subject to appraisalment and assessment for the purposes of taxation and subject to taxation for local, school district, road district, county, and State purposes, as provided by the laws of the State of Nebraska now in force or to be hereafter enacted.

SEC. 2. That all of the lands in the State of Nebraska belonging to the members of the tribe of Omaha Indians now held under trust patents of allotments issued in eighteen hundred and eighty-five or subsequent thereto, and upon which the twenty-five-year trust period shall have expired, and which trust period shall have been extended, as provided by law, shall be, and the same are hereby, made subject to appraisalment and assessment for the purposes of taxation and subject to taxation for local, school district, road district, county, and State purposes, as provided by the laws of the State of Nebraska now in force or to be hereafter enacted: *Provided*, That any of the lands described in section one and section two of this Act, so long as the same shall be held under trust patents, shall not be subject to levy and tax sale, as provided under the laws of the State of Nebraska for

Water holes, etc., reserved for public use.

Vol. 36, p. 847.
Anie, p. 518.

Proviso.
Withdrawal for access, stock movements, etc.

Regulation of driveways.

Movement of stock.

Regulations, etc.

December 30, 1916.
[S. 6116.]

[Public, No. 291.]

Nebraska.
Winnebago Indian trust patent lands in, subject to State, etc., taxes.

Omaha Indian trust patent lands in, subject to State, etc., taxes.

Proviso.
Not subject to sale, etc.

Orig. Fee \$
Orig. Com. \$
Local Com. \$
Per. Man. \$

(Form approved by the Secretary of the Interior January 18, 1917.)

DEPARTMENT OF THE INTERIOR.

STOCK-RAISING HOMESTEAD ENTRY—ORIGINAL.

(Act of December 29, 1916.)

AMENDED—

RECEIVED
U. S. LAND OFFICE
BILLINGS, MONTANA
Date
Hour

Serial No
Receipt No

MAR 30 1931

Pat. Fees \$

U. S. Land Office

Billings, Montana

APPLICATION AND AFFIDAVIT.

Received
3-27-31

I, Charles E. Goshill (male), of Leasch, Powder River County, Montana, do hereby

apply to enter under the act of December 29, 1916 (Public No. 290, 64th Congress), subject to the reservation to the United States of all coal and other minerals in the land, together with the right to

prospect for, mine, and remove the same, 3 1/2 Sec. 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100

Township 2 N., Range 48 E., and SW 1/4, SW 1/4, and SW 1/4 of

Section 12

Township 3 S., Range 48 E., Montana Principal

Meridian, containing 560 acres.

I do solemnly swear that I am not the proprietor of more than 160

acres of land in any State or Territory; that I am a native born

citizen of the United States, and

am over 21 years of age, unmarried,

that this application is honestly and in good faith made for the purpose of actual settlement, use, and improvement by the applicant, and not for the benefit of any other person, persons, or corporation; that

I will faithfully and honestly endeavor to comply with all the requirements of law as to settlement and improvements necessary to acquire title to the land applied for; that I am not acting as agent for any

person, corporation, or syndicate in making this entry, nor in collusion with any person, corporation, or syndicate to give them the benefit of the land entered or any part thereof, or the timber thereon;

that I do not apply to enter the same for the purpose of speculation, but in good faith to obtain a home for myself, and that I have not, directly or indirectly, made, and will not make, any agreement or contracts, in any way or manner, with any person or persons, corporation, or syndicate, whatsoever, by which the title which I may acquire from the Government of the United States will inure in whole or in part to the benefit of any person except myself. I have not heretofore made any entry under the timber and stone, desert land, or preemption

laws, except as follows: spring, water hole, stream, or any known surface

supply of water; each subdivision of said land is wholly unwatered land suitable for grazing only.

(Circular 1066) No legal subdivision of said land contains any

spring or mineral spring and there is no such spring within said land.

I have not heretofore made a homestead entry except as follows: none

I further state that the land is not occupied and improved by any Indian; that it does not contain merchantable timber and no timber except a few scattered scrub pines of no commercial value on Sec. 34, 35, Range 48 E.

is not susceptible of irrigation from any known source of water

Posted March 18, 1931 in Vol. 45, p. 148, by P.H.S., Div. "O".

19-
150
105
531.00

that no part of said land is claimed, occupied, or being worked under the mining laws; that any person claiming the same under the public laws is other than myself.

5-10

Entered and paid S. E. B. "g" JUL 6 1931

SERIAL No

9:00 am
mail

SUPPLEMENTAL AFFIDAVIT OF HOMESTEAD APPLICANT.

3978167

I, Charles F. Gaskill, of Loesch, Montana, applicant
to make stock raising original homestead entry for E. H. Hart,
Hwy 90 E., SE 1/4 of Section 24, Township 2 S., Range 48 E., within
the Billings, Montana land district, having been first duly sworn,
depose and say:

5. ~~1055~~ That there is no spring, water hole, stream or surface supply of water of any kind upon said land needed or used by the public for watering livestock; that there is no known surface supply of water on any of the subdivisions of said land so applied for; that it and the whole thereof is unwatered dry land suitable for grazing purposes only and that save during the snowy season and rainy periods water for livestock grazed thereon will have to be obtained from a well or wells to be sunk or a reservoir or reservoirs to be constructed thereon:

16-1251-1 That there is not hot spring, mineral spring, or any known
spring of any kind upon said land whose waters have any healing
properties; that there is no such spring or springs within three miles
from the boundaries of the said lands. That said land and the
whole thereof is unwatered grazing land.

Charles A. Wood

We, Sven Swenson and Jack Caspell, of Loesch, Montana, of lawful age, having been first duly sworn, depose and say: That we are each well acquainted with the above described land and with each legal subdivision thereof; that we have known said land for several years last past, having frequently been over and upon the same; that we have read the foregoing affidavit relative thereto, know the contents thereof and that said statements are true to our best knowledge and belief.

Chas W Wood

I hereby certify that the foregoing affidavit and corroborative statements were read to or by applicant and witnesses in my presence before they affixed their signatures thereto; that affiants are to me well known, and that affiants subscribed and swore to the same before me at my office in Broadus, Powder River County, Montana, within the Billings, Montana land district on this the Sixth day of February, 1931.
14th day of March, 1931

Notary Public for the State of Montana,
residing at Broadus, Montana.
My commission expires December 22, 1932.

two years, and three of the nine members of labor, three to distinguished services industrial peace, and Any vacancies which election and appointment of the fully selected and serve for the period term." ended so as to read

herein constituted in the city of Washington, of representing industrial understanding between conferences in case of as in its discretion on, subject, however, ed by the trustees. subjects to be discharged with the conferences, and shall such meetings and

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tatives of the United l the provisions of August eighteenth, r three hundred and ited States, entitled

"An Act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-five, and for other purposes," and the amendments thereto be, and the same are hereby, extended to the Territories of New Mexico and Arizona, and that said Territories upon complying with the provisions of said Act shall be entitled to have and receive all of the benefits therein conferred upon the States.

SEC. 2. That this Act shall be in full force and effect from and after its passage.

Approved, February 18, 1909.

CHAP. 160.—An Act To provide for an enlarged homestead.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person who is a qualified entryman under the homestead laws of the United States may enter, by legal subdivisions, under the provisions of this Act, in the States of Colorado, Montana, Nevada, Oregon, Utah, Washington, and Wyoming, and the Territories of Arizona and New Mexico, three hundred and twenty acres, or less, of nonmineral, nonirrigable, unreserved and unappropriated surveyed public lands which do not contain merchantable timber, located in a reasonably compact body, and not over one and one-half miles in extreme length: *Provided*, That no lands shall be subject to entry under the provisions of this Act until such lands shall have been designated by the Secretary of the Interior as not being, in his opinion, susceptible of successful irrigation at a reasonable cost from any known source of water supply.

SEC. 2. That any person applying to enter land under the provisions of this Act shall make and subscribe before the proper officer an affidavit as required by section twenty-two hundred and ninety of the Revised Statutes, and in addition thereto shall make affidavit that the land sought to be entered is of the character described in section one of this Act, and shall pay the fees now required to be paid under the homestead laws.

SEC. 3. That any homestead entryman of lands of the character herein described, upon which final proof has not been made, shall have the right to enter public lands, subject to the provisions of this Act, contiguous to his former entry which shall not, together with the original entry, exceed three hundred and twenty acres, and residence upon and cultivation of the original entry shall be deemed as residence upon and cultivation of the additional entry.

SEC. 4. That at the time of making final proofs as provided in section twenty-two hundred and ninety-one of the Revised Statutes the entryman under this Act shall, in addition to the proofs and affidavits required under the said section, prove by two credible witnesses that at least one-eighth of the area embraced in his entry was continuously cultivated to agricultural crops other than native grasses beginning with the second year of the entry, and that at least one-fourth of the area embraced in the entry was so continuously cultivated beginning with the third year of the entry.

SEC. 5. That nothing herein contained shall be held to affect the right of a qualified entryman to make homestead entry in the States named in section one of this Act under the provisions of section twenty-two hundred and eighty-nine of the Revised Statutes, but no person who has made entry under this Act shall be entitled to make homestead entry under the provisions of said section, and no entry made under this Act shall be commuted.

February 19, 1909.
[S. 6155.]

[Public, No. 245.]

Public lands.
Enlarged homestead entries of 320 acres permitted.
States and Territories affected.

Proviso.
Designation of non-irrigable lands.

Applications, fees, etc.

R. S., sec. 2290, p. 420.

Additions allowed incomplete homestead entries.

Limit, etc.

Proof of cultivation required.
R. S., sec. 2291, p. 420.
Additional.

Regular homestead entries not affected.

R. S., sec. 2289, p. 419.

No commutations.

Utah.
Lands without
water for domestic
use.

Residence not re-
quired, if so desig-
nated.

Proviso.
Cultivation re-
quired.

SEC. 6. That whenever the Secretary of the Interior shall find that any tracts of land, in the State of Utah, subject to entry under this Act, do not have upon them such a sufficient supply of water suitable for domestic purposes as would make continuous residence upon the lands possible, he may, in his discretion, designate such tracts of land, not to exceed in the aggregate two million acres, and thereafter they shall be subject to entry under this Act without the necessity of residence: *Provided*, That in such event the entryman on any such entry shall in good faith cultivate not less than one-eighth of the entire area of the entry during the second year, one-fourth during the third year, and one-half during the fourth and fifth years after the date of such entry, and that after entry and until final proof the entryman shall reside within such distance of said land as will enable him successfully to farm the same as required by this section.

Approved, February 19, 1909.

February 19, 1909.
[H. R. 16274.]

[Public, No. 246.]

CHAP. 161.—An Act To amend section ten of chapter two hundred and fifty-two, volume twenty-nine, of Public Statutes at Large.

United States courts.

Vol. 29. p. 182,
amended.

Marshals.
Office deputies, etc.,
allowed.

Expenses, serving
writs, etc.

Per diem increased.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section ten of chapter two hundred and fifty-two, volume twenty-nine, Public Statutes at Large, is hereby amended by striking out in the twelfth line of said section the word "two" and inserting in place thereof the word "three," so that said section as amended shall read as follows:

"SEC. 10. That when in the opinion of the Attorney-General the public interest requires it, he may, on the recommendation of the marshal, which recommendation shall state the facts as distinguished from conclusions, showing necessity for the same, allow the marshals to employ necessary office deputies and clerical assistance, upon salaries to be fixed by the Attorney-General, from time to time, and paid as hereinafter provided. When any of such office deputies is engaged in the service of any writ, process, subpoena, or other order of the court, or when necessarily absent from the place of his regular employment, on official business, he shall be allowed his actual traveling expenses only, and his necessary and actual expenses for lodging and subsistence, not to exceed three dollars per day, and the necessary actual expenses in transporting prisoners, including necessary guard hire; and he shall make and render accounts thereof as hereinafter provided."

Approved, February 19, 1909.

February 19, 1909.
[H. R. 21560.]

[Public, No. 247.]

CHAP. 162.—An Act To provide for circuit and district courts of the United States at Gadsden, Alabama.

Alabama northern
judicial district.
Middle division cre-
ated.
R. S., 532, p. 89.

Terms at Gadsden.
R. S., secs. 572, 558,
pp. 98, 120.

Proviso.
Court rooms.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the middle division of the northern judicial district of the State of Alabama is hereby established, composed of the counties of Cherokee, Dekalb, Marshall, Etowah, and Saint Clair.

SEC. 2. That a term of the circuit and the district courts of the middle division of the northern judicial district of the State of Alabama shall be held at Gadsden, in Etowah County, in said State, on the first Tuesday in February and on the first Tuesday in August of each year: *Provided, however*, That suitable rooms and accommodations are furnished for the holdings of said courts, free of all expense to the Government, until a public building shall be provided for by law.