

# EXHIBIT 18

# History of Public Land Law Development



*Written for the Public Land Law Review Commission*

*by*

**Paul W. Gates**

*with a chapter by*

**Robert W. Swenson**

Washington, D.C.

November 1968

## CHAPTER XIV

Land Grants for Railroads and  
Internal Improvements

Congress early recognized that public aid for the construction of roads, canals, river improvements, and railroads was necessary to make possible the settlement of the interior lands and that these internal improvements would increase the demand for the public lands and enhance their selling price.<sup>1</sup> The 5-percent clause in the Ohio Enabling Act marked the first sharing of income from land revenues with the states. The legislatures of six public land states were allowed to dispose of three-fifths of the 5 percent for roads, with Congress appropriating the balance; the remaining public land states received the full 5 percent of the net proceeds to appropriate for roads or education as they saw fit. The sums received by the states do not appear large today but the allocation of \$712,744 to Illinois and \$596,634 to Ohio before 1860 provided for numerous projects in those days. By 1883 a total of \$7,123,549 had been distributed to the states.<sup>2</sup>

<sup>1</sup> For a useful study of the road work required of all property owners in New York and the possibility of commuting it to a cash payment in the colonial and early national period see Gould Colman, "Highway Development in New York State, 1691-1906" (Master's thesis, Cornell University, 1953). It is interesting to note that New York set aside 50,000 acres of public land to compensate persons building bridges or laying out roads on the state's public lands. *Ibid.*, p. 11.

<sup>2</sup> California was the one state that did not receive a share of the 5-percent fund for many years after its admission. Not until 1906 did Congress vote it the full 5 percent of the net proceeds from sales since 1850. Thomas Donaldson, *The Public Domain*, p. 238; Act of June 27, 1906, 34 Stat., Part I, p. 518.

As originally planned and applied to the early states two-fifths of the 5-percent fund was to be used by the Federal government to build roads and other internal improvements leading to the West, all of which, like the money spent for the same purpose within the western states, would draw settlers and land buyers and assure continued demand for the land. Whatever doubts Congress might have had about appropriating money to the states for road building, it could have none about using part of this fund itself for such construction, for the Constitution declared that Congress "shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States" and to establish post roads.

## The Cumberland Road

In 1806 Congress authorized the laying out of a road 4 rods wide from Cumberland, Maryland, to the Ohio River and appropriated \$30,000 from the 2-percent fund to begin it. The road was to be "raised in the middle of the Carriage-way with stone, earth or gravel or sand" and was to be well drained. Preliminary surveys led to the selection of a route by way of Uniontown and Washington, Pennsylvania, to Wheeling, Virginia, on the Ohio. In 1811 construction was begun and by 1818 the Cumberland, or National Road, had been completed to Wheeling, though in somewhat rough form. Water transportation being available there, the necessity for ex-



BUILDING THE MISSISSIPPI VALLEY RAILROAD IN KANSAS

From A. D. Richardson,  
Garnered Sheaves

tending the road on into Ohio did not appear quite so pressing. Not until 1833 was it to reach Columbus. All accounts indicate that the completion of this route across the Cumberland Mountains, which provided fair connections with Baltimore, gave rise to a great volume of traffic. Settlers moved west and livestock, grain, and other commodities moved east to market. The obvious success of the Cumberland road was not to lead the United States into an enlarged program of road building because even before it was completed the canal era had begun and canals rather than roads were being demanded.<sup>3</sup>

#### Canals of Early Interest

At the request of the Senate, Albert Gallatin in his famous report of April 4, 1808,

<sup>3</sup> Archer B. Hulbert, *The Cumberland Road*, "Historic Highways of America," Vol. 10 (Cleveland, 1904), passim; Caroline E. MacGill, *History of Transportation in the United States before 1860* (Washington, 1917), pp. 15 ff.

on "Roads and Canals" had drawn attention to the possibility of developing an intercoastal waterway from Boston to Georgia by the construction of four canals across headlands and had suggested the feasibility of all the major canals which were later undertaken to connect the rivers flowing into the Atlantic with those flowing into the Ohio and the Great Lakes.

For the large interstate projects he maintained that "the General Government can alone" carry them out.<sup>4</sup> Prominently mentioned in the Gallatin report were canals to connect the Hudson with Lake Huron and Lake Erie. Efforts to gain congressional aid for a canal across New York State were unavailing though there was some discussion of diverting a part of the proceeds from Calhoun's bonus bill to that end. Madison's veto laid the matter of Federal aid to rest.<sup>5</sup>

<sup>4</sup> *American State Papers, Miscellaneous*, I, 724-921.

<sup>5</sup> *Annals of Congress*, 14th Cong., 1st sess., pp. 295, 361, 934, 1062.

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<sup>9</sup> *Wa*  
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1946).

Then, taken up by New York and pushed to completion in 1825, the Erie Canal was a spectacular success in showing the results that could be expected from the building of internal improvements into largely undeveloped areas. Before its completion profound changes were occurring along its route in the agricultural development of the area it was to serve, in the shift from subsistence to commercial agriculture, and in the emergence of new flourishing cities of Buffalo, Rochester, Syracuse, Utica, and the rapid growth of Albany, and most of all New York, which thus captured the trade of the interior.<sup>6</sup> The canal era came to flower with the completion of the Erie. State after state hoped through canal construction to emulate New York's success.

Among the canal projects undertaken as a result of the remarkable success of the Erie were the Welland Canal around the falls at Niagara on the Canadian side,<sup>7</sup> Pennsylvania's costly and unsuccessful effort to connect the waters of the Susquehanna with the headwaters of the Ohio,<sup>8</sup> the Chesapeake and Ohio Canal, and the James River and Kanawha Canal.<sup>9</sup> These were planned to return to Montreal, Philadelphia, Washington, and

Richmond trade with the interior they had lost to New York.

John Quincy Adams had a breadth of view regarding the powers of the Federal government that was forward-looking and modern, in contrast to those of Madison and Monroe.<sup>10</sup> He had no doubts about the power to aid in building internal improvements or the wisdom of such a policy.

During his administration and that of the National Republicans an astonishing number of major enterprises that were to absorb huge sums before they were completed were undertaken by a young country of less than 12 million people, widely scattered, and possessed of no great wealth. Surveys for roads and canals were energetically pushed by the Army Engineers, and Congress was prodded by local interests to adopt a series of measures that put the government squarely into the financing and to a certain extent into the construction of roads and canals. Included were post or military roads in Alabama, Florida, Arkansas, and Michigan, as well as the extension of the National Road in Ohio; improvement of the navigation of the Ohio and subscriptions to the stock of the Louisville and Portland Canal (\$235,000) to be built around the falls of the Ohio at Louisville; the Chesapeake and Ohio Canal (\$1 million) to parallel the Potomac River to Cumberland, Maryland; the Chesapeake & Delaware (\$450,000) to unite these two great bays; and the Dismal Swamp Canal (\$200,000) to link by water Chesapeake Bay and Albemarle Sound in North Carolina.<sup>11</sup>

While commercial interests of the seaboard were hatching these and many other schemes for the building of canals to extend into the interior from the coast, the people of the

<sup>6</sup> Ronald E. Shaw, *Erie Water West. A History of the Erie Canal, 1792-1854* (Lexington, Ky., 1966), pp. 32, 63-69, 299. The total of collections to 1883, when tolls were abandoned, was \$121,461,871 or an average of more than \$2 million yearly. The original cost of the canal was \$7,143,789, which with all costs, including enlargement, was more than taken care of by tolls.

<sup>7</sup> Hugh G. J. Aitken, *The Welland Canal Company. A Study in Canadian Enterprise* (Cambridge, Mass., 1954), pp. 20-21.

<sup>8</sup> Richard I. Shelling, "Philadelphia and the Agitation in 1825 for the Pennsylvania Canal," *Pennsylvania Magazine of History and Biography*, 62 (April 1938), 175 ff.; Avard L. Bishop, "The State Works of Pennsylvania," *Transactions of the Connecticut Academy of Arts and Sciences*, XIII (New Haven, 1907), 149 ff.

<sup>9</sup> Wayland Fuller Dunaway, *History of the James River and Kanawha Canal* (New York, 1922), *passim*. Walter S. Sanderlin, *The Great National Project. A History of the Chesapeake and Ohio Canal* (Baltimore, 1946).

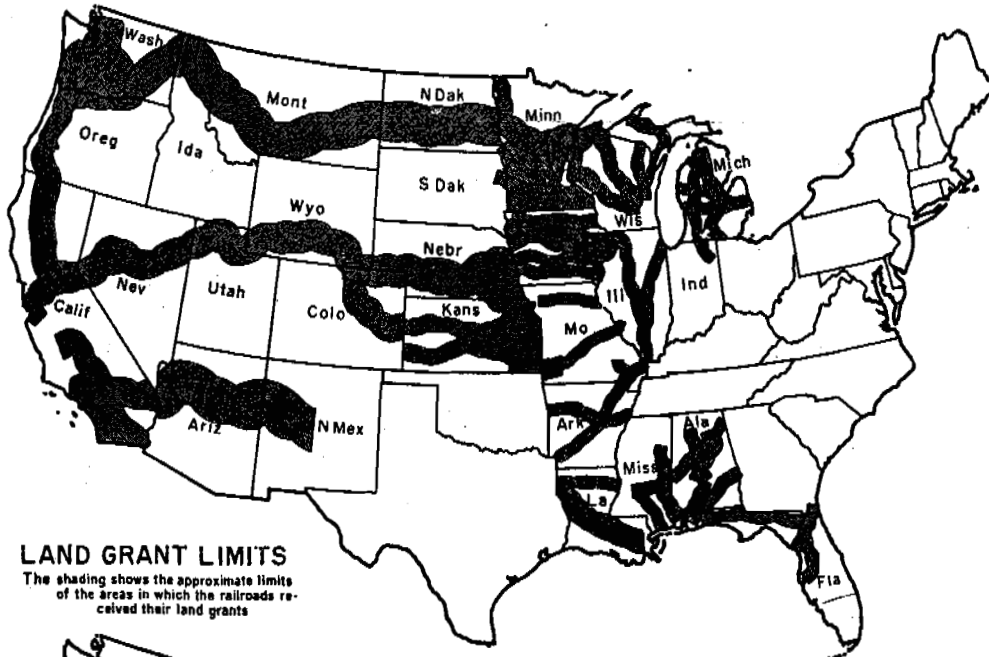
<sup>10</sup> Samuel Flagg Bemis, *John Quincy Adams and the Union* (New York, 1956) displays Adams' rugged nationalism.

<sup>11</sup> Carter Goodrich, *Government Promotion of American Canals and Railroads, 1800-1890* (New York, 1960), p. 41; Ralph D. Gray, *The National Waterway. A History of the Chesapeake and Delaware Canal, 1769-1965* (Urbana, Ill., 1967), *passim*.



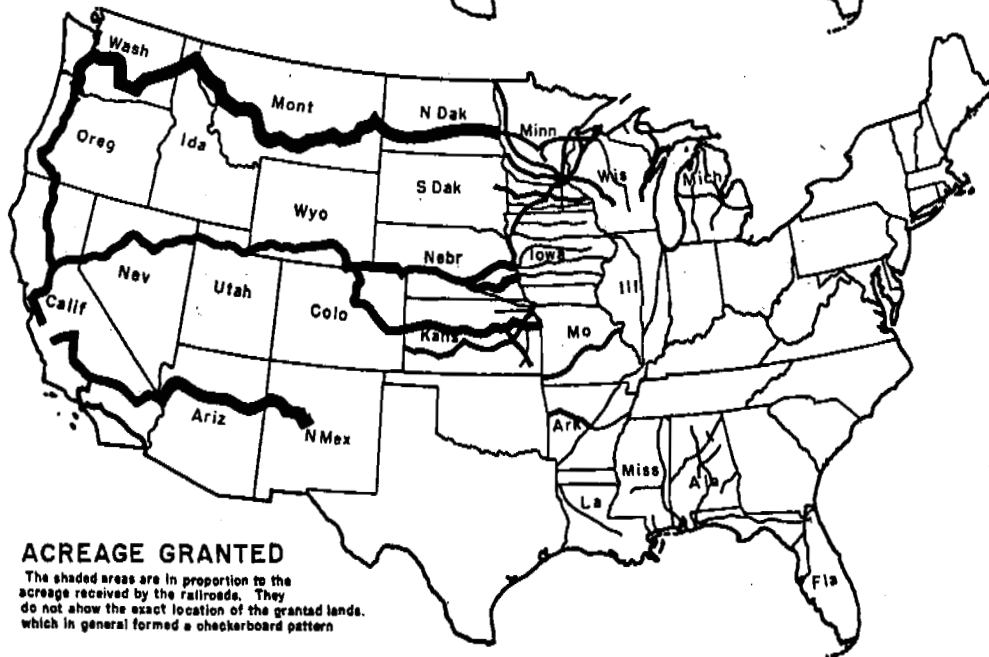
## HISTORY OF PUBLIC LAND LAW DEVELOPMENT

## FEDERAL LAND GRANTS FOR RAILROADS



## LAND GRANT LIMITS

The shading shows the approximate limits of the areas in which the railroads received their land grants



## ACREAGE GRANTED

The shaded areas are in proportion to the acreage received by the railroads. They do not show the exact location of the granted lands, which in general formed a checkerboard pattern

Bureau of Land Management

## LAND GRANTS

interior were not in Indiana, and Illinois respectively; and 937 by 1830—were plantations and were planted in the form of alternating strips of 5 miles or more. They had their canals to connect them so sparsely populated areas. Their tax was their tax. They might accomplish having established at least for the time, roads were fit for plantations, one might money grants for with an abundance it seemed easier to of eastern states, so money grants for the about the extreme toward the West. It met western plantations to the States and Alabama for connect Lakes Erie Ohio and Mississippi of the navigation River at Muscle Shoals road construction

## Grants

This was not the grants for internal back somewhat. Brownstown of N Chippewa, Ottawa was ceded to the land 120 feet wide of the Miami of border of the Co. the land within

<sup>12</sup> Acts of March May 23, 24, 1828, c 305.

## LAND GRANTS FOR RAILROADS AND INTERNAL IMPROVEMENTS

345

interior were not indifferent to canals. Ohio, Indiana, and Illinois—in 1820 they had populations of 581,000, 147,000, and 55,000, respectively; and 937,000, 343,000 and 157,000 by 1830—were planning internal improvements and were pleading for Federal aid in the form of alternate sections of land for a depth of 5 miles on each side of the proposed routes. They had little prospect of carrying their canals to completion for many years, so sparsely populated were they and so narrow was their tax base, but with Federal aid they might accomplish their objectives. Congress having established the principle, at least for the time, that interstate canals and roads were fit projects for Federal appropriations, one might expect it to have made money grants for these interior states but, with an abundance of fertile land available, it seemed easier to use that. Representatives of eastern states, some of which had received money grants for their favored canals, growled about the extreme generosity being displayed toward the West. In 1827 and 1828 Congress met western pleas for aid by six acts giving land to the States of Ohio, Indiana, Illinois, and Alabama for the building of canals to connect Lakes Erie and Michigan with the Ohio and Mississippi Rivers, for the improvement of the navigation of the Tennessee River at Muscle Shoals, and for 100 miles of road construction in northwestern Ohio.<sup>12</sup>

## Grants for Ohio Roads

This was not the actual beginning of land grants for internal improvements, which date back somewhat earlier. By the Treaty of Brownstown of November 25, 1808, with the Chippewa, Ottawa, and other tribes, there was ceded to the United States a tract of land 120 feet wide running from the rapids of the Miami of Lake Erie to the western border of the Connecticut Reserve and "all the land within one mile of the said road,

on each side thereof, for the purpose of establishing settlements along the same . . . ." The treaty also ceded a 120-foot wide stretch of territory extending from Upper Sandusky to the boundary of land ceded by the Treaty of Greenville, for a "road only . . . ." <sup>13</sup> Here is an early instance of what became a not uncommon practice: incorporating in Indian treaties, which are subject to the ratification of the Senate only, provisions for the distribution of land being ceded before it could become part of the public domain and subject to the general land laws; such provisions might not have been acceptable to the House of Representatives. Congress implemented the Brownstown Treaty by an Act of February 28, 1823, authorizing the State of Ohio to lay out and construct the road from the Miami rapids to the Western Reserve, granted it a strip of territory 120 feet wide along the route "together with a quantity of land equal to one mile on each side thereof" to aid in financing construction; if the cost was exceeded by the return from the land the surplus was to be used for maintenance of the road. The road was to be completed in 4 years and the land was not to sell for less than the government minimum price. The grant totaled 60,000 acres.<sup>14</sup>

The second 120-foot right-of-way provided for in the Brownstown Treaty was not made use of by the Federal government. Instead, to aid the Columbus and Sandusky Turnpike Company to build a road connecting these two points and intersecting the Maumee road, Congress granted Ohio "one half of a quantity of land equal to two sections, on the western side of said road . . . ." Though awkwardly stated, and not fully developed in the Act of 1827, this was the beginning of a practice to be followed in most future instances of granting land for the construction of specific internal improvements: donating alternate sections or one half of the land

<sup>12</sup> Acts of March 2, 3, 1827, and April 17, and May 23, 24, 1828, 4 Stat. 234, 236, 242, 263, 290, 305.

<sup>13</sup> Charles J. Kappler, *Indian Laws and Treaties* (Washington, 1904), II, 100.

<sup>14</sup> 3 Stat. 727; William E. Peters, *Ohio Lands and Their Subdivisions* (Athens, Ohio, 1918), pp. 316 ff.

within a strip along the line of the project and reserving the other half for sale. The precedent was not fully spelled out, for in the 1827 Act and in an amendatory Act of April 17, 1828, two and three adjacent sections in alternate tiers of sections were granted whereas in later measures no adjacent sections were allowed. In later donations the price of the reserved sections was doubled so that it could be argued, as the *Congressional Globe* shows *ad infinitum*, that by giving half the land away and thereby making possible construction of the road, canal, or railroad, the government would recover from the reserved sections as much as it would have received from the whole. The Turnpike Company, capitalized at \$100,000, received 31,596 acres toward construction of the route. This was of crucial importance to its completion for the donation provided, when sold, 67 percent of the cost.<sup>16</sup> With two turnpikes and the National Road, constituting a total of 336 miles, plus such mileage as was being built by the state through the 3-percent fund Ohio was not doing badly.

#### Roads from Indian Lands

The practice of acquiring Indian land for road construction without having it become a part of the public domain was resorted to again in the negotiations with the Potawatomis in Indiana in 1827. After acknowledging the "attachment" the Indians felt toward the American people (which contemporaries would have regarded as mere mockery), and stating their wish to demonstrate their liberality and to "benefit them-

<sup>16</sup> 4 Stat. 242, 263; Peters, *Ohio Lands*, pp. 312 ff.; Harry N. Scheiber, "Internal Improvements and Economic Change in Ohio, 1820-1860" (Ph.D. dissertation, Cornell University, 1962), pp. 362-63. Mention might also be made of Zane's Trace, a route passable for horsemen through the forest from Brownsville to Wheeling for which Ebenezer Zane was permitted to enter 1,920 acres with military warrants on choice spots before the survey lines were run. Peters, *Ohio Lands*, pp. 184 ff., and map in Francis P. Weisenburger, *The Passing of the Frontier, 1825-1850*, Vol. III of Carl Wittke, (ed.), *The History of the State of Ohio* (Columbus, 1941), 99.

selves by creating facilities for travelling and increasing the value of their remaining country," the Potawatomis agreed to cede to the United States, to aid in the construction of a road from Lake Michigan to the Ohio River, a strip of land 100 feet wide and a section of land for each mile of the road. The treaty provided that the land thus ceded should be at the disposal of the State of Indiana, though this was struck out by the Senate before ratification.<sup>16</sup> A statute of March 2, 1827, then donated the lands the Indians had ceded to the state. Construction of the road was pressed forward in 1830-35, and completed in the latter year. A total of 170,580 acres was received for the road. Sales came to \$252,136 and the cost of construction to \$251,848. Rarely did grants turn out so well.<sup>17</sup>

#### Canal Era

There was much greater public interest in canals than in turnpikes, although the latter probably were used by more people. Preliminary to voting money and land for in-

<sup>16</sup> Kappler, II, 274; 4 Stat. 234. It was in this same treaty that 44¼ sections or 28,480 acres were listed to be conveyed to individual Indians subject to the approval of the President. Like so many other individual reserves provided for in treaties with Indians in Ohio, Indiana, Illinois, Alabama, Mississippi, and Kansas, the small reserves in most instances seem to have fallen into the hands of whites rather quickly. Tipton, who had a major part in negotiating the treaty, himself was a grantee of numerous individual Indian reserves. He was also a strong advocate of the Wabash and Lake Erie Canal but in arranging to locate some of these individual reserves in the vicinity of the proposed route of the canal he was selecting the most valuable tracts on which towns and cities later developed, thereby depriving the Canal Company of substantial income. He compensated for this later by successfully urging a supplementary grant to make up for the individual reserves he and his associates had selected. I have told this story in considerable detail in my introduction to *The John Tipton Papers*, Nellie Armstrong Robertson and Dorothy Riker (eds.), (3 vols., Indianapolis, 1942), I, 31 ff.

<sup>17</sup> G. Prather, "The Struggle for the Michigan Road," *Indiana Magazine of History*, 39 (March 1943), 1 ff. and *id.*, "The Construction of the Michigan Road," *Indiana Magazine of History*, 50 (September 1944), 243 ff.



# EXHIBIT 19

FIRST

# PROGRESS REPORT TO THE CONGRESS

## CALIFORNIA DESERT CONSERVATION AREA



United States  
Department of the Interior  
Bureau of Land Management

## WILDERNESS

Public lands in the California Desert Conservation Area are being inventoried for the characteristics presented in Section 2(c) of the Wilderness Act of 1964: (1) an area where the earth and its community of life are untrammelled by man; (2) an area of undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation; (3) an area which generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable; (4) an area which has outstanding opportunities for solitude or a primitive and confined type of recreation; (5) an area which has at least 5,000 acres of land, or is of sufficient size to make practical its preservation and use in an unimpaired condition; and (6) an area which may also contain ecological, geological, or other features of scientific, educational, scenic, or historical value.

The Wilderness Inventory Program in the California Desert began in May 1978 and is scheduled for completion in February 1979. Completion of the California Desert Plan, September 30, 1980, will result in recommendations on those areas which have been determined to be suitable or unsuitable for inclusion in the National Wilderness Preservation System. Decisions on inclusion will be made by the Congress after further study.

Numerous public and organizational meetings have been conducted during the inventory period. During May 1978, 17 public meetings were held statewide to explain the procedures which would be followed during the inventory phase. Each of these meetings was followed, the next day,

by a workshop where specific areas on the Preliminary Inventory Map were discussed. A 45-day public review and comment period followed the initial public meetings, during which time the public was encouraged to provide the Wilderness Inventory team with input for inclusion in an Interim Inventory Map published in August.

Team members divided the Conservation Area into numbered roadless polygons and conducted on-the-ground checks in each, developing descriptive narratives on findings and rationales. Another series of workshops was conducted in August, after publication of the Interim Inventory Map, to permit public comment and discussion of the proposed Wilderness Study Areas. This was part of the 30-day review and comment period provided after map publication.

A Draft Wilderness Inventory Map of the California Desert Conservation Area is scheduled for release in November, followed by a 90-day public review and comment period during which public meetings will be conducted statewide to receive formal comments.

A Final Wilderness Inventory Map will include comments on the Draft and will be published in February 1979.

# EXHIBIT 20



IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

COUNTY OF INYO,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 1:06-CV-
	)	01502-AWI-DLB
DEPARTMENT OF THE INTERIOR, DIRK	)	
KEMPTHORNE, in his capacity as	)	
Secretary of the United States	)	
Department of the Interior, NATIONAL	)	
PARK SERVICE, MARY A. BOMAR, in her	)	
capacity as Director, National Park	)	
Service, JAMES T. REYNOLDS, in his	)	
capacity as Superintendent, Death	)	
Valley National Park,	)	
	)	
Defendants, and	)	
	)	
SIERRA CLUB, et al.,	)	
	)	
Defendants-Intervenors.	)	
	)	

DEPOSITION OF LEONARD HUARTE

163 May Street  
Bishop, California  
Wednesday, June 9, 2010; 2:32 p.m.  
Death Valley, California  
Thursday, June 10, 2010

JERI BETH RICH  
Certified Shorthand Reporter, CSR No. 4670  
Post Office Box 1481, Bishop, California 93515-1481  
(760) 872-4442

1     graded it. But I was on it, though, I know that.

2                     (A discussion was held off the record.)

3             Q.     (BY MR. BERNARD) So you believe that you  
4     graded that road a number of times?

5             A.     Probably from around at least from '73 to  
6     around '77, in that range. We -- then why we quit, I  
7     don't know, you know. We just kind of stopped grading  
8     it.

9             Q.     Do you recall why you graded it? Because  
10    you've testified back in March of '08 and again today  
11    that you were never told to grade the Last Chance Road;  
12    right?

13            A.     I know -- I forgot all about that little road  
14    when we did the last -- the deposition.

15            Q.     Okay.

16            A.     I totally forgot about it.

17            Q.     Well, you also testified in March of '08 that  
18    you didn't know whether that was a County road. Do you  
19    recall that?

20            A.     Probably, yeah, probably so.

21            Q.     I guess my question is if you -- if you  
22    weren't told by anybody to grade it and you weren't  
23    aware that it was a County road, why would you have  
24    graded it?

25            A.     Well, back then from -- we used to go out

1 Q. Does the -- that CAT 12 grader that you used,  
2 does it have a cab on it?

3 A. Yes.

4 Q. Do you know how high it -- the equipment  
5 stands, then, altogether?

6 A. Oh, gosh. I don't know. No, I don't, really.  
7 I don't know. Ten feet or so or -- nah, I'm not sure  
8 on that. It's pretty high but, you know --

9 Q. Do you recall, did you have any difficulty  
10 fitting that equipment underneath -- under overhanging  
11 trees or tree limbs?

12 A. No -- oh. I'm sorry.

13 No. There's one big pinion tree right there  
14 now but we went up this wash around that, I remember  
15 that.

16 Q. By "this wash," you're --

17 A. The road itself. Like I said, it's in that  
18 little wash itself, you know.

19 Q. So you went around the pinion?

20 A. And that tree probably wasn't as big as it is  
21 now in there, you know.

22 Q. So as you're going uphill, which side of the  
23 pinion would you go around?

24 A. That tree, that big pinion tree up there, we  
25 were probably on the, as you're going up, it would be

1 on the left side of the tree. But we did go around  
2 that. You can see where we went around it, too, on the  
3 high side, on the top side, too, there, you can see  
4 where we went around it.

5 It was just -- we -- that thing would get  
6 washed out so bad we'd just kind of -- had to make the  
7 road where, you know, we could, get dirt back in it.

8 Q. So you'd go around that pinion tree on the  
9 left-hand side as you're looking up the hill?

10 A. Going up, yes.

11 Q. Which would put it on the northeast side of  
12 the wash; correct?

13 A. Yes. Yes.

14 Q. Why didn't you remove the tree?

15 A. Good question. Probably -- I don't think --  
16 it's like I said, it's -- God, that's been, what,  
17 almost 40 years ago. So that tree wasn't very big  
18 then, I mean, you know, like it is now. It was pretty  
19 small, so.

20 Q. Apparently it was big enough that you had to  
21 go around it?

22 A. Well, I guess we went around it, I mean  
23 instead of mowing it down. I don't -- I don't really  
24 remember that tree being that much of a problem going  
25 up there.

1           MR. ZUKOSKI: Do you remember -- do you  
2 remember that tree being there 40 years ago at all?

3           THE WITNESS: Not really.

4           It's pretty good size now, though, that one  
5 tree there. But I sure don't really remember it.

6           Q. (BY MR. BERNARD) I'm just -- I'm still just  
7 curious about this, you going out and grading the road  
8 without -- nobody had told you to grade the road and  
9 you had no indication from anybody -- you didn't know  
10 if it was a County road.

11           Is that normal practice, go out and just grade  
12 roads you might find?

13          A. Well, to me, I guess the -- my first boss knew  
14 it was a County road because they evidently graded it,  
15 you know? I -- then when I showed up -- well, the new  
16 boss took over and I guess he -- he knew about it, I  
17 guess, so we just kept grading that little road. I --  
18 I -- I don't know, tell you the truth.

19           But it was supposedly on the, you know, it's  
20 on the County map so it's a County road so I don't  
21 think it was that important to grade it all the time,  
22 you know, as short as it is. It just went up to  
23 nothing really, you know.

24           And I don't know if that road ever connected  
25 down here to come up. I don't see how it could have,



# EXHIBIT 21

# THE OXFORD ENGLISH DICTIONARY

SECOND EDITION

*Prepared by*

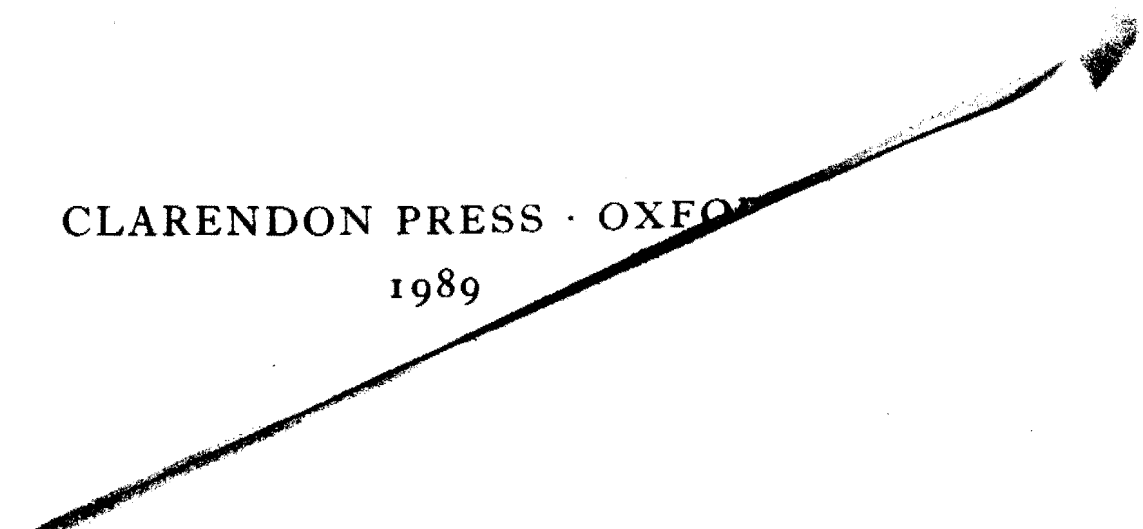
J. A. SIMPSON *and* E. S. C. WEINER

VOLUME VII

Hat–Intervacuum

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1989



lies of the high-up men. 1903 *Book Lover* May 3/1 In a high-up room in the Rue Lafayette. 1918 C. WELLS *Vicky Van it*. 23 A high-up Publican. 1920 J. M. HUNTER *Trail Drivers of Texas* 219 Our 'high up' officers were... somewhere in town. 1934 E. BOWEN *Cat Jumps* 74 The skies were disturbed by a high-up swift rustling sight; the summer birds flying south. 1940 'G. ORWELL' *Notebooks* 24 June in *World Review* (1950) June 27 High-up influences in England are preparing for a... sell-out. 1942 A. L. ROWSE *Cornish Childhood* 82 Myself sitting in the high-up baby's chair with the little tray attached in front. 1961 *Guardian* 27 May 3/7 His penetrating assessment of high-up American attitudes to Cuba.

Also *colloq.* as *sb.*, a person of high rank or status. Cf. HIGHER-UP.

1929 W. R. BURNETT *Little Caesar* vii. 299 Rico got in touch with some of the high-ups. 1939 *News Review* 30 Nov. 13/1 As time went on, the Nazi high-ups took Admiral Reader's advice. 1946 J. RICHARDSON *Phoney Fleet* 150 Two high-ups, jolly ones, or nobles. 1949 'M. INNES' *Journeymen Boy* i. 6 Only the high-ups had their heads substantially above the soapbuds. 1969 AUDEN *City without Walls* 84 How golden-tongued was Socrates, Who always spoke the truth, But high-ups do not like to think. 1971 *Physics Bull.* Dec. 735/2 Whitten and Poppoff, both high-ups in NASA's Ames Research Center, have filled the gap admirably despite their lack of academic background.

**highveld** ('haifelt, 'harvelt). [Partial transl. of Afrikaans *hoëveld*, f. *hoog* high + *veld*.] The inner plateau of the subcontinent of South Africa, which is from 5,000 to 6,000 feet above sea-level.

1878 A. AYLWARD *Transvaal To-day* 18 The High-veld... The large, bare, but healthy elevated plateau—the great watershed of the Transvaal. 1905 J. W. GREGORY in *Rep. Brit. Assoc.* 399 The old rocks that form the foundation of the present high veld of Rhodesia. 1906 RIDER HAGGARD *Bentley* v. 63 They were on the Transvaal high-veld. 1907 P. FRANKLIN *Jack of Bushveld* 223 For perhaps a week the towering bulwarks of the Highveld were visible as we toiled along. 1954 D. D'EWES *Mydorp* 51 Sirius and the Southern Cross, shining with the ecstatic brightness that only the high-veld sky can offer. 1961 L. VAN DER POST *Heart of Hunter* i. ii. 45 My first memories are of the incomparable starlight of the high-veld of Southern Africa and the far sea-ward that goes with it. *Ibid.* iii. xii. 161 The light of a high-veld sunset. 1971 *World Archaeol.* iii. 178 The highveld reaches an altitude of 5,500 feet at Johannesburg. 1972 *Stand. Encl. S. Afr.* v. 522/1 Highveld, Tvl. and O.F.S. It lies about 1200 to 1800 metres above sea-level, more or less between 26° and 30° S.

**high water.** The state of the tide when the surface of the water is highest; the time when the tide is at the full.

1626 CAPT. SMITH *Accid. Yng. Seamen* 17 It flows quarter flood, high water, or a still water. 1656 *Tr. Hobbes' Elem. Philos.* (1839) 439 In twenty-four hours and almost fifty-two minutes; which is... the time between the high-water of one day and the high-water of the day following. 1719 DE FOE *Cruise* ii. xi. Put out to sea... at high-water. 1860 *All Year Round* No. 69. 449 High water is never so high, and low water is never so low, at quadratures as at syzygies.

Hence **high-water mark.** (a) *lit.* The mark left by the tide at high water, the line or level then touched; *esp.* the highest line ever so touched. Also, by extension, the highest line touched by a flooded river or lake.

1553 BRENDEN Q. *Curtius* F.vj. The worcke did growe from the bottome of the Sea... but not yet brought to the hygh water marcke. 1626 BACON *Sylva* 42 Between the Low water and High water Marke. 1748 ANSON'S *Voy.* ii. viii. 219 They... lay their eggs... in the sand, just above the high-water marcke. 1878 HUXLEY *Physiogr.* 180 The standard taken is neither high-water mark nor low-water mark, but the mean level between the two. 1892 J. D. HOOD *Waterspouts Yorksh. Wolds* 48 Traces of the high-water-mark line apparent throughout the village.

(b) *fig.* The highest point of intensity, excellence, prosperity, or the like, attained.

1814 EARL OF DUDLEY *Let.* 13 June (1840) 43 The high-water mark of English faction is very much below the ebb of French violence. 1856 EMERSON *Eng. Traits, Personal Wks.* (Bohn) ii. 132 The tide of Immortality is the high-water mark which the intellect has reached in this age. 1890 *Sportator* 31 May 766 He [Defoe] nearly touches the high-water mark of English prose.

(c) *ocular colloq.* A dirty mark showing the limit to which a person has washed.

1886 in BAUMANN *Londinismen* 1899 *Daily News* 31 Jan. 6.4 The high-water mark is plainly visible above a tattered scarf tied loosely round his neck.

**highway** ('haiwei). Forms: see HIGH a. and WAY. [f. HIGH a. 7, 19 + WAY. In OE. a true compound; but in 15-17th c. often two words. Often antithetic to BY-WAY.]

1. a. A public road open to all passengers, a high road; *esp.* a main or principal road forming the direct or ordinary route between one town or city and another, as distinguished from a local, branch, or cross road, leading to smaller places off the main road, or connecting two main roads. *the king's highway*: see quot. 1895.

1599 in *Earle Land Chart*. 130 Circumcincta ab oriente Strata heuwei a merite strete to scufeling forde. c. 1200 *Trin. Chart. How.* 131 He nolde noht turnen ut of pe heyseweic. c. 1325 *Poems times Edu.* ii (Percy Soc.) lvi. Thei goth out of the hy-way. c. 1400 *Three Kings Cologne* (1886) 55 There were also bysede pis hille a hyseweic, and to pis hyseweic were... wyes mynyng to gydir. 1450-1530 *Myrr.* our Lady 140 There ys a difference bytwyxe an hyghe waye and a bypthe, for the hyghe waye ys large and commune to all. 1604 F. HAKING *Modest Def.* 22 To make the Point as

plaine as the Kings high-way. 1662 *Vettry Bks.* (Surtees) 109 Chosen Overseers for the hy wayes for this present year. 1796 MORSE *Amer. Geog.* i. 452 The state [Connecticut] is chequered with innumerable roads or high ways crossing each other in every direction. 1813 *Examiner* 26 Apr. 260/1 The Coroner's Jury brought in a verdict of self-murder, and the poor creature's body was barbarously mangled by a stake, and buried in the highway. 1851 HELPS *Comp. Solit.* i. (1874) 5 To make a road for himself... instead of using the King's highway. 1895 POLLOCK & MAITLAND *Hist. Eng. Law* i. 22 The two phrases ['the king's peace' and 'the king's highway'] are, indeed, intimately connected; they come from the time when the king's protection was not universal but particular, when the king's peace was not for all men or all places, and the king's highway was in a special manner protected by it.

b. *to take (to) the highway*, to become a highwayman, footpad, etc.

1722 DE FOE *Col. Jack* (1840) 71 We will take the highway like gentlemen. [1817 J. EVANS *Excurs. Windsor* 31 Embarrassment... that had induced him to so rash a step as the highway.]

c. In allusion to Matt. xxii. 9, 10, Luke xiv. 23. 1843 H. BONAR *Hymn, 'Go labour on'* vii. Go forth into the world's highway, Compel the wanderer to come in. 1898 *Daily News* 6 Oct. 6/7 The South London officials of the Salvation Army have... been... gathering together of late from the highways and by-paths of Lambeth those who... are entitled to be ranked as 'Hooligans'. 1908 *Westm. Gaz.* 27 Jan. 1/3 It is highways and hedges work, and we shall need van for van and lecturer for lecturer. 1948 A. J. TOYNBEE *Civilization on Trial* vi. 111 The United States—who had previously not only welcomed European immigrants but whose employers of labour had sought them in the highways and hedges of Europe and compelled them to come in.

2. *transf.* a. The ordinary or main route, or line of communication followed, by land or water.

c. 1400 MAUNDREV. (Roxb.) xv. 70 In pe desertes of Araby by pe hie way toward Egypt. 1684 ROXB. *Ball.* (1885) V. 404 From Westminster-Hall to the Temple chace The River of Thames 'twas made a High-way. 1837 W. IRVING *Capt. Bonneville* i. 79 The Platte has become a highway for the fur traders. 1868 G. DUFF *Pol. Surv.* 220 The great sea on the west, the natural highway of commerce.

b. Any track well-beaten or regularly traversed by animals or things.

1579 TOMSON *Calvins Serm.* Tim. 253/2 Poore ignorant men runne thus like cranes, and... goe the beastes high way, (as the proverbe is). 1622 T. SCOT *Belg. Psalmist* 17 You may observe the pathes and high-ways betwix one nest and another, is track't and beaten plaine with their little feet. 1855 BAIN *Senses & Int.* iii. 1. 328 The Concurrence of Sensations in one common stream of consciousness,—in the same cerebral highway. 1866 B. TAYLOR *Poems, Passing the Sirens* 179 But mark the burning highway of the sun.

c. *Computers.* (See quot. 1962.)

1949 D. R. HAKTKE *Calculating Instruments & Machines* (1950) viii. 107 A number of source-gates... on the right, and a number of destination-gates on the left, are connected by a single bus labelled 'Highway'. In this bus there is a further gate, labelled 'transfer gate', which exercises the main control over transfer of words between the various sources and destinations. *Ibid.* 108 An instruction... opens the corresponding S-gate and D-gate through selecting circuits; then at the appropriate time the main transfer gate in the highway opens. 1962 *Gloss. Automatic Data Processing Terms (B.S.I.)* 87 Highway, a major path along which signals travel from one of several sources to one of several destinations. 1964 F. L. WESTWATER *Electronic Computers* i. 7 The number... can either be allowed to pass on to one of the so-called 'highways' in the computer or it can be obliterated. *Ibid.* 9 Numbers are driven out on to the highways serially by admitting electronic pulses to the registers.

3. *fig. a.* A course of conduct leading directly to some end or result.

1598 F. MERES *Tr. Lewes' Sinner's Guide* Title-p., Brought into the Highway of Everlasting Happiness. 1625 BURGESS *Pers. Tithes* 36 This were the high way to become sonnes of Belial indeed. 1690 CHILD *Disc. Trade* Pref. (1694) 25 Trades that we have lost, and are in the highway to lose. 1875 JOWETT *Plato* (ed. 2) V. 288 That state... I perceive to be on the highway to ruin.

b. The ordinary or direct course (of conduct, thought, speech, etc.).

c. 1637 B. JONSON *Disco., Otium Studiorum Wks.* (Rtidg.) 748/2 He never forced his language, nor went out of the highway of speaking, but for some great necessity or apparent profit. 1871 E. F. BURR *Ad Fidem* vi. 90 To march... in an orderly way, along the highways of thought.

4. *attrib. and Comb.* a. as **Highway Board**, **hedge, passage, side, theory**; b. frequenting or plying one's trade on the highway, as **highway robber, stander, thief, woman**; c. used to run on the highway, as **highway dog, nag**, etc.; d. **Highway Code**, in Britain, an official publication containing the 'rules of the road', *esp.* for motor vehicles; first published in 1931, it has appeared subsequently in revised editions; also *transf.*; **highway rate, tax**, one imposed for the maintenance of highways; **highway robbery**, (freq. in trivial use of something that is exorbitantly expensive).

1930 *Act 20 & 21 Geo. V. c. 45* 51 The Minister shall... prepare a code (in this section referred to as the 'highway code') comprising such directions as appear to him to be proper for the guidance of persons using roads. 1935 *Archit. Rev.* LXXXVIII. 110/3 The free issue of the Highway Code to all of his Majesty's lieges who have come (or are supposed to have come) to years of discretion is a portent. 1958 *Listener* 20 Nov. 835/1 The importance of reading the Highway Code. 1959 *Daily Tel.* 1 July 1/3 Highway Code revised for motorists. 1970 'A. GILBERT' *Death wears Mask* x. 166 And then there's the Highway Code. 1972

*Listener* 23 May 375/3 There was a book that... had broken the Highway Code of conventional English culture. 1611 MARKHAM *Constr. Cont.* i. i. (1668) 10 A couple of good 'high-way dogs, that is to say, Hounds... that... will hunt as well upon a dry, hard high-way as upon the freshest mould. 1660 OTWAY *Caius Marius* iii. iii. Some Beggar's rotten Rags... left dangling on a 'Highway Hedge. 1622 MARBE tr. *Aleman's Guzman d'Alf.* iii. 75 He bestowed his blessing vpon mee, and with it a good 'high-way-Nag. 1621 QUARLES *Div. Poems, Esther*, Making a 'Highway-passage through the Main. 1840 HOOD *Knt. & Dragon* viii. He collected... 'Highway-rates on the roads. 1690 *Land. Gaz.* No. 2607/2 Any 'Highway Robbers, House-Breakers, or Murderers. 1904 KIPLING *Traffic & Discoe.* 330 The other six hundred [acres] are nearly all let to folk who knew my folk... but this Turpin is a new man—and a highway robber. 1978 J. WEDGWOOD *Let.* 19 Mar. (1965) 218 On Monday night last there was three 'highway robberies between this place and Newcastle. 1853 MRS. GASKELL *Cranford* x. 181 She indeed inclined to the idea that, in some way, the French were connected with... the burglaries and highway robberies. 1886 *Lantern* (New Orleans) 3 Nov. 2/3 Highway robbery is no name for it. 1920 A. HUXLEY *Limbo* 122 The organized highway robbery of Red Cross collectors. 1941 'R. CROMPTON' *William does his Bit* ii. 36 'I've heard people talk about highway robbery quite lately.' 'Yes, but they only mean people chargin' too much for meals,' explained Ginger, 'not the old sort.' 1967 J. B. PRIESTLEY *It's Old Country* ix. 107 Nothing on the wine list... under two-pound-ten. Highway robbery by candlelight. 1658 SIR T. HERBERT *Trav.* (ed. 2) 87 Unexpected onsets of the Coolies and 'high-way rogues. 1669 WOODLIDGE *Syst. Agric.* (1681) 174 Any poor Cottage that lives by the 'High-way-side. 1600 ROWLANDS *Let. Humours* Blood xviii. 34 Three 'high-way standers, haueing cross-lesse curse Did greete my friend with, Sir give vs your purse. 1897 *Daily News* 13 Sept. 7/5 The Colonial railway policy has been almost entirely dominated by what is called the 'highway theory. 1618 BOLTON *Florus* ii. xvii. (1636) 146 From huntsman turning 'highway theefe.

**highwayman** ('hai,weiman). [f. *prec.*: formerly as three words or two, without or with hyphens. In some districts with chief stress on *way*.]

1. One who frequents the highway for the purpose of robbing passengers; *esp.* one who does this on horseback, as distinguished from a *foot-pad*.

1649 *Thomasson Tracts* (Brit. Mus.) DXXXIII. xxxi. 20 This last session there suffered 28, most of them high way men. 1692 BENTLEY *Boyle Lect.* 34 'Tis like the friendship of pickpockets and highwaymen, that is said to observe strict justice among themselves. 1768-74 TUCKER *Li. Nat.* (1852) ii. 553 The charms of riot and debauchery make highwaymen and housebreakers. 1783 COWPER *Gilpin* 237 They raised the hue and cry:—'Stop thief! stop thief!—a highwayman!' 1789-1840 [see FOOT-PAD], 1849 MACAULAY *Hist. Eng.* iii. 1. 382 It was necessary to the success and even to the safety of the highwayman that he should be a bold and skilful rider.

*fig.* 1694 *Acc. Sev. Late Voy.* ii. (1711) 25 We take... Guns and Lances, to resist the Highway-men the Bears.

2. *local.* A surveyor of highways. [In use in north Lincolnshire and elsewhere.]

1888 FREEMAN in W. R. W. STEPHENS *Life* (1895) ii. 379 *Ex officio* guardians and highwaymen I count for a mistake.

3. Used *attrib.* or in the possessive designating a type of long loose coat or cape suggestive of the kind once worn by highwaymen.

1901 *Daily Chron.* 9 July 3/5 Sarah Bernhardt... looked very striking in a wonderful gown... half-concealed by a long paleot of white silk, made in the 'highwayman' shape, with a number of natty little capes. 1960 *Guardian* 20 July 7/1 A very dashing full length highwayman coat... with a huge cape collar. 1966 *Vogue* Nov. 88 (caption) Vogue's adventurers wear... highwaymen's coats.

Hence **highwaymanhood**, the condition of a highwayman (see FOOTPADDERY quot. 1861).

**highwood** ('harwood). [f. HIGH a. + WOOD *sb.*; cf. *high forest* (HIGH a. 21) and G. *hochwald*.] A forest of tall trees.

1900 J. NISBET *Our Forests & Woodlands* iii. 105 Data are not yet available to indicate anything like definitely what rotation of oak in highwoods will prove most remunerative. 1904 G. A. B. DEWAR *Glamour of Earth* v. 83 He turns bravely to the dripping highwood, to cut and lay in lands or rows the hazel and oak stems. 1905 J. NISBET *Forester* i. ii. 346 Highwood... woods... are not cleared... until... maturity. 1959 E. POUND *Thrones* cvii. 110 High-wood is called saltus.

**'high-wrought, a.**

1. Agitated or excited to a high degree.

1604 SHAKS. *Oth.* ii. i. 2 It is a high wrought Flood. 1702 ROWE *Tamerl.* v. i. The high-wrought Tempest in my Soul. 1814 SCOTT *Wat.* xxvii. The present high-wrought state of his feelings.

2. Wrought with exquisite art or skill; 'accurately finished, nobly laboured' (J.).

1728 POPE *Dunci.* ii. 187 Thou triumph'st, Victor of the high-wrought day, And the pleas'd dame, soft smiling, lead'st away. 1838 LYTTON *Alice* v. vi. She understood not his high-wrought scruples.

**higiene**, obs. form of HYGIENE.

**higle**, etc., obs. form of HIGGLE, etc.

**higlif** (iglif). [Repr. Fr. pronunc. of 'high life' (HIGH a. 5).] High society.

1911 'I. HAY' *Safety Match* xiv. 222 That variegated cosmos which... Gallic students of British sociology term 'Le Higlif'. 1925 A. HUXLEY *Along Road* iv. 256 English Higlif, as seen through the eyes of an Italian touring company, was worth coming for. 1960 *Harper's Bazaar* Oct. 141/1 Token names which evoke romance or the longed-for

# EXHIBIT 22

## The American Presidency Project

John T. Woolley & Gerhard Peters • Santa Barbara, California

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### • Franklin D. Roosevelt

#### **Executive Order 6910 on Withdrawal of Public Lands for Conservation.**

*November 26, 1934*

Whereas, the Act of June 28, 1934 (ch. 865, 48 Stat. 1269), provides, among other things, for the prevention of injury to the public grazing lands by overgrazing and soil deterioration; provides for the orderly use, improvement and development of such lands; and provides for the stabilization of the livestock industry dependent upon the public range; and

WHEREAS, in furtherance of its purposes, said Act provides for the creation of grazing districts to include an aggregate area of not more than eighty million acres of vacant, unreserved and unappropriated lands from any part of the public domain of the United States; provides for the exchange of State owned and privately owned lands for unreserved, surveyed public lands of the United States; provides for the sale of isolated or disconnected tracts of the public domain; and provides for the leasing for grazing purposes of isolated or disconnected tracts of vacant, unreserved and unappropriated lands of the public domain; and

WHEREAS, said Act provides that the President of the United States may order that unappropriated public lands be placed under national-forest administration if, in his opinion, the land be best adapted thereto; and

WHEREAS, said Act provides for the use of public land for the conservation or propagation of wild life; and

WHEREAS, I find and declare that it is necessary to classify all of the vacant, unreserved and unappropriated lands of the public domain within certain States for the purpose of effective administration of the provisions of said Act;

NOW, THEREFORE, by virtue of and pursuant to the authority vested in me by the Act of June 25, 1910 (ch. 421, 36 Stat. 847), as amended by the Act of August 24, 1912 (ch. 369, 37 Stat. 497), and subject to the conditions therein expressed, it is ordered that all of the vacant, unreserved and unappropriated public land in the States of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah and Wyoming be, and it hereby is, temporarily withdrawn from settlement, location, sale or entry, and reserved for classification, and pending determination of the most useful purpose to which such land may be put in consideration of the provisions of said Act of June 28, 1934, and for conservation and development of natural resources.

The withdrawal hereby effected is subject to existing rights.

This order shall continue in full force and effect unless and until revoked by the President or by act of Congress.

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